

Farm and Ranch Workplace Legislation

Recommendations Report

Report to Ministers

Technical Working Group: *Labour Relations Code*

Submitted to:

Minister Carlier
Agriculture and Forestry

Minister Gray
Labour

January 4, 2017

Letter to Ministers

Dear Minister Carlier and Minister Gray,

January 4, 2017

I have the honour to submit the Final Report of the *Labour Relations Code*, Technical Working Group.

It has been my privilege to act as Chair of this Technical Working Group, charged with considering changes to the *Labour Relations Code* to address the unique needs of the agriculture sector.

My role was to facilitate conversation among a diverse group of stakeholders, seeking consensus where possible, and providing strategic options where consensus could not be achieved. The role was a challenging one. The viewpoints were diverse and at times divergent.

Through education, hard work, engaged discussion and continual efforts to understand each other's viewpoints, the participants in this Technical Working Group were able to achieve consensus on several recommendations, including recommended changes to emergency provisions of the *Labour Relations Code* in the case of job action; exemption for family members; education of the Labour Relations Board and recommendations for how best the results of the Working Group can be communicated to the agricultural community. Several strategic options are also presented for your consideration.

I wish to commend the professionalism and engagement of each member to you. Our discussions were comprehensive and required a high degree of effort from each of our Participants. I would also like to acknowledge that this participation occurred during a busy time in the agricultural cycle.

The *Labour Relations Code* Technical Working Group participants listed below agree to, and support, the report's content.

John Lawton

Karen Shaw

Grace Strom

John Bland

Devin Yeager

Leanne Chahley

Mark Chambers

Dewey Funk

David Miller

Martin van Diemen

Terence Hochstein

Sincerely,



Cheryl Yingst Bartel
Chair, *Labour Relations Code* Technical Working Group

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Executive Summary

The *Labour Relations Code* Technical Working Group (“TWG”) was given a mandate to assist with the review of the *Labour Relations Code* (the “Code”) for farming and ranching operations, which mandate included providing advice, suggestions and recommendations from the perspective of the agriculture sector. If consensus recommendations could not be achieved, the TWG was to provide strategic options, with rationales for and against those options.

The task was a challenging one. There were matters where consensus could not be reached: adding the exemption for agricultural workers back into the Code, adopting Ontario’s *Agricultural Employees Protection Act*, adding a provision for first agreement arbitration; removing the right to strike/lockout for agricultural workers, and adding to the Code that the minimum number of employees it takes to unionize in the agriculture industry is five.

However, the TWG was, through diligent and persistent effort, able to provide consensus recommendations with respect to adding criteria to the legislation for what would be considered an “emergency” and warrant a Public Emergency Tribunal in the face of job action; for the exemption of family members from the application of the Code; and for representation on, and education of the Alberta Labour Relations Board with respect to the agricultural industry. As well, the working group was able to reach consensus on the need for clear and effective communication of any changes to the agriculture industry, and provided direction and assistance for how this could be effectively achieved.

Introduction

Prior to the *Enhanced Protection for Farm and Ranch Workers Act* (“EPFRWA”), the *Code* included an exemption for employees employed on a farm or ranch whose employment is directly related to primary agricultural operations, as well as for their employer. The *Code* does not provide these employees with the ability to collectively negotiate the terms and conditions of their employment, nor does the *Code* provide them, or their employer, with the right to strike or lockout should that negotiation not be successful.

Upon proclamation of section 4 of the EPFRWA, section 4(e) of the *Code* will be amended and the exemption of farm and ranch employees will cease. As noted in the “Working Group Mandate” section, below, the Labour Relations Code Technical Working Group was asked to review the *Code* and to provide advice, suggestions and recommendations for its application to farming and ranching operations, from the unique perspective of the agriculture sector. If variance in the legislation or particular regulations were required to address issues and concerns given the unique needs of the agricultural sector, the TWG was asked to provide recommendations and also a rationale for that variance. The TWG was also tasked with developing recommendations on how best the provisions of the *Code*, and its impact, could be communicated to, and understood by, the farming and ranching community in Alberta.

Members of the TWG were drawn from both the agricultural community (large and small operations) and from labour organizations and those who worked with such organizations. The Chair of the TWG was not drawn from either stakeholder group, but was appointed for her experience with building consensus among diverse interests, and board governance. It was the Chair’s role to both facilitate productive conversations around these divergent interests and determine when consensus could not be reached on a particular topic.

Considerable experience was brought to this table by both agricultural and labour representatives.

Consultation Process

The TWG initially engaged in exercises for forging solid working relationships. Members of the TWG were then tasked with developing Operating Principles and Core Beliefs, which would

inform how discussions would take place within the group. These understandings included respect, collaboration, engagement, honesty, integrity and openness. The TWG committed to dialogue rather than debate.

It was the Chair's responsibility to ensure that all voices were heard within the context of the various discussions. It was also the Chair's role to determine when discussion had reached the point of impasse, and consensus recommendations could not be reached, on any particular topic. If consensus could not be achieved, the TWG could provide strategic options to be considered by the government. The TWG developed and provided rationales for both its consensus recommendations, and its strategic options. In the case of strategic options, rationales were developed both for and against the option.

Certain agricultural representatives expressed frustration regarding the value and fairness of the consultation process and the limitations of the mandate. Other representatives disagreed that the mandate was inappropriately narrow and expressed frustration with discussion that tried to focus on issues that were outside that mandate. Despite these frustrations, the participants of the TWG were able to work together to develop both recommendations and strategic options.

While the consultation process was originally envisioned as a consideration of each section of the *Code* and its application to agriculture, it became clear this approach would not be responsive to the concerns and issues raised by the agricultural participants, nor the fact that these participants did not feel they had the technical expertise to approach the *Code* in this manner.

To address the issues of most concern to the participants, a method for achieving fulsome discussion and searching for consensus was developed that included initial validation of fears and concerns and identifying assumptions of the agricultural representatives on the TWG through the creation of a master list, which then served as the basis for organizing the discussions and identifying themes for discussion. In this context, individual provisions were then discussed.

Education was provided to TWG Participants through:

- a) Presentations on aspects of agriculture in Alberta and on the *Code* by our technical experts, Mike Decore (Labour) and Andrea Hanson (Agriculture);
- b) Education on the working of the *Code* provided by documentation prepared by the Alberta Labour Relations Board;
- c) A special presentation to the TWG by legal counsel for the Alberta Labour Relations Board, Mr. Jeremy Schick; and

- d) Members were also encouraged to reach out to their broader stakeholder groups or counsel and gather any other advice or information they required.

The Chair would like to acknowledge Mr. Schick's assistance in providing greater comfort to the members of the TWG regarding the working of the *Code*, and further to recognize the excellent engagement of the TWG participants in that presentation.

The TWG was presented with an "Issue Paper" which was prepared by agricultural representatives, with the assistance of their legal counsel, and outlined various issues. This Issue Paper was received and read by the participants.

The TWG also received and read a research paper which had been commissioned by the Ontario Changing Workplaces Review concerning the recent developments in the Supreme Court of Canada and the inclusion of agricultural workers in labour relations legislation in that province. That paper was commissioned from Michael Lynk, Professor of Law at the University of Western Ontario Law School. The Changing Workplaces Review is currently considering amendments to Ontario's *Labour Relations Act, 1995* and *Employment Standards Act, 2000* and released its Interim Report during the TWG consultation process.

Both papers were read by participants and informed our discussions.

The experience in other provinces was also considered, including research regarding the rates of unionization and certification in those provinces where agricultural workers are included in labour relations legislation.

It became clear that a significant concern from the agricultural community participants was with their perceptions of the impact of the right to strike or lockout on the agricultural sector, particularly the impact of work stoppage on animal health and food/crop spoilage. Considerable time was spent by the TWG in discussions concerning ways to address these specific fears and concerns. Some of the options discussed included regulations to limit the time periods when a strike could occur in various agricultural industries, changes to the emergency provisions in the *Code*, and removal of the right to strike.

While information was provided to the TWG which indicated that the risk of job action in Alberta is very low, it was acknowledged by the TWG that the right to strike is of great concern to the agriculture industry, especially in view of its obligations with respect to the maintenance of animal welfare.

No other specific concerns with particular provisions of the *Code* were identified, apart from the implications resulting from the right to strike, and the broader concept of the protection of animal welfare and crop damage in that case.

Key Communication Points and Records of Decision were created after each set of meetings. The content of these documents were agreed upon by all members of the TWG.

Mandate: Labour Relations Technical Working Group

The Technical Working Group (TWG) will assist with the review of *the Labour Relations (LR) Code* for farming and ranching operations, and provide advice, suggestions and recommendations from the perspective of the agriculture sector.

The mandate for the TWG consists of completion of the following tasks:

1. Review the general provisions under the LR Code, and their applicability to farming and ranching operations.
 - Where variance or modifications from existing general requirements are warranted, provide a recommendation and rationale for such variances.
2. Identify any overlap with other legislation, regulations, or regulatory agencies (federal, provincial, or municipal) to ensure that proposed labour relations rules for farming and ranching operations do not conflict with them.
3. Make any suggestions or recommendations on how best the provisions of the LR Code, and its impact, can best be communicated to, and understood by, the farming and ranching community in Alberta.

Recommendations

Topic 1: Impact strikes or lockouts will have on farms

Whether and how to make changes to the *Code* to address the impact of work stoppage through strike or lockout in the agricultural sector, and in particular to address its impact on loss of crops (and irreversible effects on crop cycle or food chain), and animal welfare issues.

Decisions

The following mandate items were agreed to by all working group members as an appropriate balance between worker needs and employer responsibilities in the event of the risk of job action. They are recommended to the government for consideration.

Recommendation	Rationale
<p>Add criteria to the Public Emergency Tribunal (PET) provisions to allow for A PET when there is imminent and irreversible damage to crops and/or livestock welfare in primary agriculture.</p> <p>Consideration should be given to where else this concept may suggest changes to any other provision in the Code.</p>	<p>Livestock welfare cannot be compromised, imminent and irreversible damage to crops and/or livestock cannot occur in primary agriculture.</p> <p>Welfare is defined by the National Farm Animal Care Council.</p> <p>Irreversible damage to crops would include consideration of food safety, and food spoilage directly resulting from a labour disruption.</p>

The following item outside of the mandate was not agreed to by all working group members as an appropriate balance between worker needs and employer responsibilities. It is presented as a strategic option for consideration:

Strategic Options	Rationales For and Against
<p>Add the Agriculture Exemption back in to the Code</p>	<p><u>Rational for:</u> We have culture in agriculture where we cultivate strong and healthy relationships with our workers. We more often see them as colleagues rather than employees. We feel adopting the <i>Code</i> will jeopardize that relationship.</p>

Rationale against:

Worker rights should be enhanced in the *Labour Relations Code* and the rights of organizing is a right that should be conveyed upon workers. It is the constitutional right of all workers in Canada to join a trade union and to collectively bargain in their work place. This right has consistently been applied across Canada in all other industries and is part of the international rights of workers that Canada has accepted in signing international treaties. The *Labour Relations Code* is well equipped to deal with the particular needs and circumstances of the agricultural industry.

The following mandate item was not agreed to by all working group members as an appropriate balance between worker needs and employer responsibilities. It is presented as a strategic option for consideration.

Strategic Option	Rationales For and Against
Remove the right to strike/lockout for Agriculture workers	<p><u>Rationale for:</u> Strike action during critical times will adversely affect the health and welfare of livestock, crops and other agricultural products. Agricultural producers have a mandate to never compromise food security, animal welfare, food safety and food wastage/spoilage. Agricultural Producers would prefer to develop distinct legislation relating to labour in agriculture.</p> <p><u>Rationale against:</u> The right to strike is a constitutional right and there is no basis for these workers to have fewer rights than others. The concerns of the industry can be addressed in a manner that is far less intrusive of the rights of agricultural workers. There already exists mechanisms within the <i>Code</i> to address the concerns of the industry and further we are prepared to discuss specific additional protections that would address industry concerns.</p>

Topic 2: Experience in other jurisdictions

To consider the experience in other jurisdictions with agriculture workers, in determining whether changes need to be made to the *Code*.

Decisions

The following items were not agreed to by all working group members as an appropriate balance between worker needs and employer responsibilities. They are presented as a strategic option for consideration:

Strategic Option	Rationales For and Against
Adopt the Ontario Agriculture Employees Protection Act model in Alberta	<p><u>Rationale for:</u> We find the Ontario model is a favourable model to pursue. The model is not under constitutional challenge and is operating. This means that failure to consider this option violates agricultural producer's constitutional rights. It previously has been challenged by the Supreme Court and it has survived the challenge. It is a constitutional right to organize but not unionize.</p> <p><u>Rationale against:</u> We find the Ontario model an unfavourable model to pursue. The Ontario model is the only provincial model that excludes farm workers from joining a union and being involved in the collective bargaining process. Other provinces include agricultural workers in their labour codes without difficulty in the agriculture industry. For example, British Columbia, Saskatchewan and Manitoba. Removing an employee's right to join a union could be discriminatory. We believe that the Ontario model will not continue in Ontario in the long run. In the long run it will be struck down by the courts as unconstitutional or the government will change the model in the current review they are undertaking of workplace laws.</p>

Topic 3: Composition of bargaining units - family members and minimum numbers to unionize

To consider the composition of bargaining units, including the issues of family members and minimum numbers to determine if variations need to be made in the *Code*.

Decisions

The following mandate item was agreed to by all working group members as an appropriate balance between worker needs and employer responsibilities. It is recommended to the government for consideration.

Recommendation	Rationale
Exclude Immediate Family	The inclusion of family members in the bargaining unit would adversely affect family relationships.

The following mandate item was not agreed to by all working group members as an appropriate balance between worker needs and employer responsibilities. It is presented as a strategic option for consideration:

Strategic Option	Rationales For and Against
Add to the <i>Code</i> that the minimum number of employees it takes to unionize in the agricultural industry would be 5	<p><u>Rationale for:</u> Smaller farm operations have a different relationship than larger farm operations with their employees. The relationship is more of a co-worker/family relationship than an employer/employee relationship. In other provinces they have minimum numbers for unionization. Smaller operations do not have the knowledge or the resources to deal with the <i>Labour Relations Code</i>.</p> <p><u>Rationale against:</u> Under the current Alberta <i>Labour Relations Code</i> the minimum requirement is 2 employees and there is no reason presented to the agriculture industry to deviate from that requirement.</p>

Topic 4: The Role of the Labour Relations Board and Agriculture

How can the Labour Relations Board be responsive to the needs of the agriculture industry when that industry has been previously exempted from the application of the *Code*?

Decisions

The following mandate items were agreed to by all working group members as an appropriate method for addressing the need for education of, and representation on, the Labour Relations Board. They are recommended to the government for consideration.

Recommendations	Rationale
Representation of agriculture industry should be reflected in the composition of the Labour Relations Board	The agriculture industry is complex and unique and the Board would benefit from the knowledge and experience that industry players would bring to the board.
The Alberta Labour Relations Board should meet with the agriculture industry to become educated about all aspects of agriculture in Alberta	The Board will benefit from this educational process just as it has benefitted from education in other industries such as it has in the oil industry.

Topic 5: Communication of changes to the agriculture industry

Decisions

The following mandate items were agreed to by all working group members regarding communication of changes to the agriculture industry. They are recommended to the government for consideration.

Recommendation	Rationale/Suggestions for Achieving Outcome
Government of Alberta to provide educational seminars and education materials directed to affected individuals and groups (example – industry associations, Association of Municipal Districts and Counties, etc.) across the province at multiple locations	Electronic and paper educational materials, ministerial support within the department; Work with industry associations and stakeholders to determine appropriate venues, timing, communities;

With appropriate advertising including in local newspapers and industry newsletters;

Chair willing to be part of rollout, if appropriate;

This education should be proactive to ensure the community understands the changes without inappropriate assumptions and rhetoric;

Be ready to answer questions;

It is important that government communicate that the industry was consulted but it was the government that made the final decision about what would be included in the *Labour Relations Code*.

Additional items discussed by the TWG

The TWG would like to propose the following strategic option that falls outside their mandate. It is noted below for consideration by government.

Strategic Option	Rationales For and Against
<p>First contract legislation that allows for an independent arbitrator to impose the first collective agreement when the parties reach an impasse</p>	<p><u>Rationale for:</u> It allows for a working relationship to develop between the employer, the union and the workers. Given that this industry is new to collective bargaining it avoids the possibility of bitter and harmful labour disputes at the beginning of the collective bargaining relationship.</p> <p><u>Rationale against:</u> It will remove decision making between the employer and employee in an industry that values strong relationships between the employer and employee. The agricultural industry has a long history of negotiating and collaborating directly with its employees; it has all the tools to reach consensus.</p>

Summary

The discussions by this TWG were comprehensive and ambitious in scope, and were carried out during a busy agricultural season. While consensus was not achieved on all items, the recommendations and strategic options in this report are provided to the government for its review and consideration.

APPENDICES

A. Technical Working Group Participants

Participants were selected against a range of criteria to ensure appropriate representation from a representative group of parties. Parameters included, but were not limited to, geography, agricultural sector, farm and ranch employers, farm and ranch employees, gender, expertise, and experience.

Technical Working Group Participants:

- John Lawton, Edmonton, producer, cattle feeder
- John Bland, Strathmore, producer and former RCMP Officer and Livestock Investigator
- Mark Chambers, Acme, worker/manager in large-scale hog production
- Martin van Diemen, Picture Butte, producer (dairy, poultry and mixed crops), director with Alberta Milk and Alberta Chicken Producers
- Karen Shaw, Sturgeon County, Sturgeon County Councillor, cow/calf producer
- Devin Yeager, Red Deer, secretary treasurer, UFCW Local 1118
- Dewey Funk, St. Albert, dairy and beef experience, labour relations officer, United Nurses of Alberta
- Terence Hochstein, Taber, executive director, Potato Growers of Alberta
- Grace Strom, High River, Alberta Beekeepers' Commission, producer
- Leanne Chahley, Lethbridge, labour lawyer
- David Miller, Fairview, Farm worker

B. Technical Working Group Terms and Conditions

Technical Working Group Overview

Each technical working group (TWG) has up to 12 representatives from the farming and ranching sector including both employees and employers, labour groups and technical experts, representing a broad and diverse range of voices.

Each working group will be chaired by an independent and impartial individual with demonstrated mediation, consensus and board governance experience.

Farm and Ranch Secretariat

The Secretariat is comprised of Agriculture and Forestry staff who provide project management, process design and facilitation, research, logistics/administrative, information gathering and packaging support.

Technical Working Group Support

Agriculture and Forestry and Labour will provide facilitation, coordination, Farm and Ranch Secretariat support, and technical expertise as required to all TWGs.

Expectations

Participants of TWGs will be involved in one of the following: a review of Employment Standards Regulation; Labour Relations; a review of Existing Health and Safety Related Requirements in the Occupational Health and Safety Code (two TWGs); a review of Best Practices for Health and Safety on Alberta's Farm and Ranch Operations; or Education, Training Resources and Certification.

Participants will share their knowledge, advice and input on how employment standards regulation, labour relations, existing health and safety related requirements in the *Occupational Health and Safety Code*, best practices for health and safety on Alberta's farm and ranch operations, or education, training resources and certification should be applied given the unique needs of employers and employees in the agriculture sector.

Participants will participate from May 12, 2016, until March 31, 2017, or earlier as determined by Her Majesty the Queen as represented by the Minister of Agriculture and Forestry.

Participants agree to:

Work cooperatively and collaboratively with other TWG participants to achieve the tasks set out in the TWG Mandate;

- a) Establish mutually agreed upon operating principles for the TWG;
- b) Uphold the mutually agreed upon operating principles for the TWG;
- c) Attend and actively participate in all TWG meetings and teleconferences.
Agreements are individual participation agreements, therefore substitutes or delegates may not attend. Because the timelines for this process are ambitious, significant progress will need to be made at each meeting;
- d) Prepare in advance of all meetings to ensure timely progress of the mandate;
- e) Provide input into the preparation of “key communication points” for delivery to the Minister;
- f) Provide input toward the advancement and accomplishment of the TWG Mandate, including Recommendation Development and Technical Working Group Communication described below; and
- g) Respond to emails in a timely manner, as required.

Meeting Schedule

Technical Working Group participants will meet:

- Between June 13 and 30, 2016, for one, possibly two, two-day meetings, depending on requirements.
- In late July or August, for either a one- or two-day meeting.
- Additional meetings or conference calls may be required at the discretion of the Chair in consultation with and approval of the Secretariat.
- With the exception of the first meeting, the Chair and TWG participants will determine the schedule for in-person meetings and conference calls.

Recommendation Development

TWG participants will provide input on content and format of the recommendations, and critically review draft recommendations for submission to the Minister of Agriculture and Forestry and Minister of Labour.

TWG decisions are reached through consensus. For the purposes of the TWGs consensus

means:

“A decision or direction that every TWG participant agrees to actively support. The group has gone through a decision-making process where the discussion is heard by all and the decision is an expression of the wisdom of the group.”

It is at the Chair’s discretion to decide when the group has put in sufficient effort to reach consensus. When consensus cannot be achieved, strategic options will be presented to the Ministers.

Technical Working Group Communication

Ministers

TWG Chairs, with input from participants, will formulate “key communication points” at the end of each meeting and deliver this information to Valerie Gilpin, designated Minister Representative with the Farm and Ranch Secretariat.

External

TWG participants are expected to act as ambassadors for their respective stakeholder groups. They will facilitate the exchange of relevant information to improve understanding of diverse interests and strengthen outcomes.

Participants can share the key communication points with the public.

Each TWG’s Chair serves as the official spokesperson for the group. TWG participants will direct all media inquiries to the Chair.

Internal

TWG decisions and actions will be recorded in a Record of Decisions.

The Secretariat, with Direction from the Chair, will ensure agendas are shared with participants prior to meetings and Record of Decisions are shared after each meeting.

The process and tools for sharing and storing relevant information will be agreed to by the Chair and participants.

Participant Contributions and Personal Information

Participant Contributions

Participants understand any written documents and quotations (“Material”) provided to the Government of Alberta, its employees, agents, representatives and sub-contractors can be used together with their name by the government for matters related to achieving the TWG Mandate. The Material may be made publicly available. All government communications where this Material appears is the property of the Government of Alberta, solely and completely.

Participants understand their consent is not required for the Government of Alberta to make use of the Material if it is not associated with their name or any other identifying information.

Participants understand they have no intellectual property rights in the Material.

The Government of Alberta shall not be liable to a participant for any claim arising from the use of the Material.

Participants understand that they may withdraw their consent in writing at any time. The withdrawal of their consent will only apply to the use of the Material in new communications or publications.

Personal Information

Participants understand personal information about them is collected pursuant to section 33(c) of the *Freedom of Information and Protection of Privacy Act* as it relates directly to and is necessary to develop recommendations for consideration by the Minister of Agriculture and Forestry and the Minister of Labour on how employment standards, occupational health and safety, and labour relations requirements should be applied given the unique needs of employers and employees in the agriculture sector. Questions about the collection of this information may be directed to Diane McCann-Hiltz, Director Farm and Ranch Safety 7000-113 Street Edmonton, AB T9G 1Y5 780-422-6081.

Mandate: Labour Relations Technical Working Group

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1. Review the general provisions under the LR Code, and their applicability to farming and ranching operations.
 - Where variance or modifications from existing general requirements are warranted, provide a recommendation and rationale for such variances.
2. Identify any overlap with other legislation, regulations, or regulatory agencies (federal, provincial, or municipal) to ensure that proposed labour relations rules for farming and ranching operations do not conflict with them.
3. Make any suggestions or recommendations on how best the provisions of the LR Code, and its impact, can best be communicated to, and understood by, the farming and ranching community in Alberta.