Submission on changes to the Alberta Labour Relations Code

by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and its Local 146

This submission is made jointly by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers Local 146 and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (the "Boilermakers") to the Alberta Government for consideration as part of the Labour Relations Code review.

The Boilermakers are making this submission in part because we believe that the Government may have heard that things are fine in the construction industry and that no changes are needed to the Code.

We are here to tell you that this is not the case.

The Boilermakers are an international union with local unions in all provinces of Canada and across the United States. The Boilermakers union has been actively representing boilermakers in construction, maintenance and local fabrication shops in Alberta for more than 60 years. Members of Local 146 build and maintain huge oilsands and other industrial facilities and now work on some of the biggest carbon capture and sequestration (CCS) projects in the world.

The Boilermakers union has worked extremely hard to develop and maintain respectful and productive relationships with the construction employers that employ us. We represent highly trained and highly skilled professional journeypersons and have invested significant energy and resources in maintaining a first-class apprenticeship program, working jointly with construction employers through the Boilermaker Apprenticeship Agency.

However, the sections of the Alberta Labour Relations Code governing construction continue to ignore our constitutional rights and those of our members. The Code continues to give construction employers excessive and unfair advantages over us. As a result, we believe it is imperative that the Government of Alberta commits to make significant changes to the construction-industry provisions of the Code in this current review.

Needed Changes

The Boilermakers wish to make a specific submission requesting changes to the two areas of the Code that have the most negative impact on our union and our members. In doing so, we wish to make it clear that changes are also needed to make the Code more fair in other areas, but we will leave it to others to comment on these areas.

In summary, our two requests for change to Alberta's Labour Relations Code are:

1. Disallow double breasting in construction. There is simply nothing fair about allowing the same construction company to operate both a union and non-union arm. This approach has become extremely common in Alberta. It allows for the employer to threaten or just imply that any disagreement with the union might lead to the work being performed by the non-union arm of the operation, with the union cut out of the work and its members shunted to the unemployment line. The Boilermakers submit that it is time to level the playing field for construction workers again.
2. Remove the special construction industry collective bargaining and strike provisions of s. 184 to 191 of the Code. No other province in Canada has anything comparable to the extreme level of intrusion into free collective bargaining in the construction industry set out in the Alberta Labour Relations Code. These provisions have a disproportionate impact on the construction industry unions and are likely unconstitutional.

The Boilermakers emphasize that we are willing to meet with the government to explain our concerns and to further illustrate them with examples. We would also like to share our experience in working with construction employers in other provinces that do not have such draconian legislation. The construction industry in those provinces is no less vibrant as a result.

Double Breasting

1. **Remove the ability of construction employers to double breast their operations and give the Labour Relations Board the discretion to make retroactive common-employer declarations in appropriate circumstances.**

We propose to remove section 192 and subsection 47(3) from the Code.
If this were done, common-employer declarations in the construction industry would be governed by the same provisions as those in every other industry.

Also, the Alberta Labour Relations Board (ALRB) cannot currently determine that a common-employer declaration takes effect from the date of the common control and direction, but only from the date of the application to the Board or later. This ties the hands of the ALRB in situations where the applicant could not reasonably have known of the control and made the application sooner.

The common employer provisions that apply to everything but construction, set out in sections 47 (1) and (2) of the Code, are virtually identical to the provisions of sections 192 (1) and (2), which specifically apply to the construction industry. The main difference is that section 192(3) requires that both entities under common control employ persons who do the applicant union's kind of work, which protects construction employers from being caught in a common-employer declaration.

It has come to be understood in Alberta, since the Code was adopted in 1988, that an employer in construction was permitted to double breast its operations without threat of a union application to have the operations declared under common control and direction. Applications to attempt to prove otherwise have simply not been made. Further, it has become the case that construction employers now believe that they have the legal right to double breast, or even triple breast their operation beyond construction and into maintenance as well.

The prejudice to the Boilermakers is huge. A single large construction employer will generally have a union arm that is certified with the Boilermakers. That same construction employer will generally have a non-union arm, which it operates without using members of the Boilermakers union. Finally, that construction employer may even have a third arm which operates with an employer-friendly union of convenience. The impact on the Boilermakers is:

- When there is unemployment in construction, the construction employer has disproportionately strong bargaining power. The construction employer can seek to enforce concessions, with the implied or even stated threat of using its non-union arm to do the work available, thus shutting out the union's members.
- When there are several such construction employers and they are the major construction employers in construction, which is the case in Alberta today, the impact is massive.
- Whether in times of full employment in construction or not, the use of a non-union arm by the same construction employer shuts the union and its members out of large portions of the work. This means that union-sponsored apprenticeship programs are underused and graduate fewer apprentices. For the Boilermakers who, jointly with construction employers, sponsor apprentices through Boilermaker Apprenticeship Agency, the impact is felt in fewer opportunities for apprentices. For Alberta's economy as a whole, the negative impact on apprenticeship programs limits the growth of a highly skilled workforce for the future.

- Double breasting gives construction employers an unfair advantage in day-to-day labour relations. The implied threat outlined above affects not only work rules and working conditions, but has an impact on issues such as health and safety, which has broader implications for Alberta society.
- Restricting the Alberta Labour Relations Board from making retroactive common employer declarations is unfair and encourages unlawful behaviour. The sale-and-transfer successorship provisions of the Code apply from the date of the transfer, not the date that the employer activities are discovered by the union. As a result, most employers work with unions to transfer their bargaining rights as part of sales and transfers of business. The employers understand that there is nothing to be gained and potential costly retroactive remedies to be paid if they try to keep their plans a secret from the union. The same principles apply in common-employer situations, except that Alberta's restriction on retroactive remedies encourages secrecy and cover-ups.

It is vital that Alberta government, no longer shackled by an extreme right-wing ideology, understand that no other province in Canada historically or presently considers double breasting even remotely legal.

A key element of Canadian labour legislation since World War II is that once employees join a union, their employer cannot circumvent that choice by transferring their work to another part of the operation, thereby denying that work to those employees who chose to be represented by a union. Successor rights and common-employer legislation, requiring that bargaining rights flow with work as it is sold or transferred to related entities under common control, has always been a part of modern Canadian labour legislation.

Balance between the rights and powers of the union and its members on one side and the employer on the other is a vital concept in labour relations across Canada. The tension between these sides as they collectively bargain and compromise sets fair and reasonable terms and conditions of employment based on market value. This in turn leads to an equitable balance between the profits of employers and the standard of living of the workers.

We can anticipate that construction employers will quickly claim that the industry will collapse if they cannot continue to double breast their operations. They will argue that since they have built large non-union arms, they should be allowed to continue them without change. The answer to these claims is that no other industry in Alberta has collapsed because employers cannot double breast. Neither has the construction industry in any other province been destroyed.

The simple answer to employers who want to keep the existing system of double-breasting is that they can either accept that the union should have bargaining rights for both operations or sell their non-union arm. And the answer to the suggestion that common-employer declarations would make the non-union arm unprofitable is that the employers can come to the bargaining table and bargain with the union for fair and reasonable working conditions for all their employees.

The Boilermakers submit that there is simply no logical or practical basis for the continued inclusion of double-breasting provisions in the Code, whatever the actual words of the existing Code might mean. We ask that the Government remove section 192 subsection 47(3) in their entirety and also that the last phrase of subsection 47(2) be changed to state that the common employer declaration will be effective from the date of common control and direction between the two entities. Construction-industry employers will then have the same rights and responsibilities as all other employers in Alberta and also the same restrictions in terms of common-employer activities.

Collective Bargaining in Construction

2. **Remove the special collective-bargaining, strike and mandatory interest-arbitration provisions for the construction industry as set out in sections 184 – 191 and instead allow construction bargaining, including strikes and lockouts, to proceed in the same manner as all other collective bargaining under the Code.**

Over the last ten years, the Supreme Court of Canada has made it increasingly clear that free collective bargaining and the right to strike are protected by the Canadian Constitution. In light of these rulings, in March of 2015, the Alberta Government consented to an Order of the Court of Queen's Bench that the provisions of the Labour Relations Code and of the Public Service Employee Relations Act that prohibited strikes of healthcare and public-service employees were unconstitutional. The Alberta Government has now provided the right to strike to those healthcare and public-service employees.

Alberta Boilermakers want the same right to bargain collectively in construction as employees in health care and public service now enjoy. Currently, they do not have that right. Trade unions and their members in the construction industry must follow the special collective-bargaining process and the strike provisions set out in sections 184 to 191. The result is that no construction union is able to control the course of its own collective bargaining or actually go on strike.

Even worse, when a union tries to bargain its own issues, the corresponding Registered Employer Organization can simply drag out the bargaining process until 75% of the other construction trades settle their collective agreements. Then the union that was seeking to bargain its own issues is forced straight to interest arbitration on an arbitrary timeline. And in a further insult to the free collective bargaining process, the union is forced at interest arbitration to accept the previously-established pattern.

There are no similar restrictions on collective bargaining in the construction sector in other provinces. For example, in Ontario, a system of accreditation similar to the Alberta system of registration has existed in the ICI sector since 1978. In a similar system of province-wide bargaining between construction employers and the unions for each trade, the Ontario Labour Relations Act does not require all the trades in the industry to bargain together. It does not require a coordinated approach to strike votes. It does not require a single strike notice from a group of trades. It does not require the trades to go on strike at the same time. And it certainly does not require any trade to finalize its collective agreement through interest arbitration or to accept an industry pattern developed by other trades.

Instead, the Ontario building trades enjoy basically the same right and process of collective bargaining in the construction industry as other unions. The Ontario construction industry is thriving and their system has not harmed it. The Boilermakers simply ask for the same system in Alberta, a system that respects both free collective bargaining and the right to strike.

The Boilermakers ask that sections 184 – 191 of the Labour Relations Code be removed and that the collective bargaining and the strike provisions that apply to the all unions governed by the Code apply to the construction industry as well.

All of which is respectfully submitted on September 30, 2016.

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 146