

ITEM	2
MANAGER'S REPORT NO.	57
COUNCIL MEETING	1983 09 26

RE: PUBLIC SECTOR RESTRAINT ACT

MUNICIPAL MANAGER'S RECOMMENDATION:

1. *THAT the recommendation of the Director Administrative & Community Services be adopted.*

* * * * *

1983 September 21.

TO: MUNICIPAL MANAGER
FROM: DIRECTOR ADMINISTRATIVE AND COMMUNITY SERVICES
SUBJECT: PUBLIC SECTOR RESTRAINT ACT

RECOMMENDATION:

1. THAT this report be received for information purposes.

R E P O R T

On 1983 July 07, Bill 3 was introduced into the Legislature. That Bill, entitled "The Public Sector Restraint Act", is one of the key pieces of legislation in the government's overall restraint legislation package.

Since July 07, the Bill has undergone review and revision, resulting in a number of changes. Attached is a copy of the revised Act as it now stands, incorporating the changes introduced to date. A copy of that Bill has already been made available to Members of Council, but is attached again for convenient reference.

The major changes which have been made to date include the following:

- The definition of termination now includes lay-off. Hence, an employer wishing to lay-off an employee, rather than terminate that employee, could do so under this Act.
- The earlier reference to termination "without cause" has been removed and the Bill amended to specify four causal areas where an employer is empowered to terminate employees under the Act:
 - insufficient work or insufficient operating funds
 - change in organizational structure
 - discontinuation of programs, activities or services
 - reduction in activity or service levels
- A new exemption provision has been added which enables the Compensation Stabilization Commissioner, upon application by any party to a collective agreement containing "termination" and compensation provisions which are "fair", "equitable" and "consistent with efficient management", to exempt the parties from the termination provisions of the Act. In other words, where the collective agreement in force has lay-off provisions, as do Burnaby's contracts, exemption can be allowed under the Act, so as to utilize the provisions of the contract.

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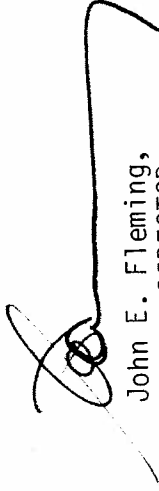
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- A new judicial review section empowering the court to order reinstatement with compensation has been added. This is in addition to and must be sought before the compensation provisions already in the Act.

What is still unclear at this time is whether an employer must terminate (lay-off) employees under this Act or can choose, in the first instance, to utilize lay-off provisions of the collective agreement. In other words, it is unclear at this time whether or not the legislation is permissive or mandatory in the case of employers like Burnaby, where there are lay-off provisions within the collective agreement.

What is also still missing from the legislative package of course are the regulations, which presumably will provide much of the detail as to the implementation of this restraint Bill, as with many of the other pieces of restraint legislation. Further reports will be prepared for Council on the subject, as that information becomes available.

JEF:bp
Attach.



John E. Fleming,
DIRECTOR.

ITEM
MANAGER'S REPORT NO. 2
57
COUNCIL MEETING 1983 09 26

Provincial Secretary
and Minister of
Government Services

No. 31

B I L L

1983

PUBLIC SECTOR RESTRAINT ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpretation

1. In this Act

"employee" means a person employed by a public sector employer but does not include a justice or a person employed as a justice;

"public sector employer" means

- (a) the government,
- (b) a corporation or an unincorporated board, commission, council, bureau, authority or similar body that has
 - (i) on its board of management or board of directors, a majority of members who are appointed by an Act, a minister of the Lieutenant Governor in Council, or
 - (ii) employees appointed under the Public Service Act,
- (c) a municipality, including
 - (i) a municipality,
 - (ii) a regional district, and
 - (iii) an improvement districtas defined in the Municipal Act,
- (d) a board of school trustees as defined in the School Act,
- (e) a university as defined in the University Act,
- (f) an institution as defined in the College and Institute Act,
- (g) a community care facility as defined in the Community Care Facility Act which receives funds from another public sector employer,
- (h) a hospital as defined in the Hospital Act or the Hospital Insurance Act which receives funds from another public sector employer,
- (i) a library board appointed under section 18 of the Library Act, and
- (j) an employer designated in the Schedule,
- (k) "terminate" includes lay off.

Termination of Employees

2. (1) Notwithstanding the Labour Code and the Public Service Labour Relations Act, where a public sector employer

2. (1) (a) considers that there

- (i) is insufficient work, or
- (ii) are insufficient current operating funds budgeted,

to maintain current levels of employment,

(b) makes a change in the organization structure of the employer,

(c) discontinues a program, activity or service of the employer, or

(d) reduces the level of an activity or service of the employer,

the public sector employer may terminate the employment of an employee in accordance with the regulations.

Exemption Order

2.1 (1) Where a written contract of employment or a collective agreement contains provisions that

(a) enable a public sector employer to terminate the employment of employees in the circumstances described in section 2 (1),

(b) provide fair and equitable procedures, which are consistent with efficient management, by which those terminations of employment will be implemented, and

(c) provide fair and equitable compensation to be paid to those employees whose employment has been terminated,

the Compensation Stabilization Commissioner appointed under the Compensation Stabilization Act may, on the application of a party to that contract or agreement, order that section 2 (1), (3) and (5) does not apply to the parties to that contract or agreement.

(2) The Compensation Stabilization Commissioner may

(a) impose any conditions he considers necessary in respect of an order made under subsection (1), and

(b) reconsider and revoke, amend or vary an order he has made.

2. (2) A public sector employer that is bound by a collective agreement that is in force on July 7, 1983 does not have the power to terminate the employment of an employee under subsection (1) until the collective agreement expires.

(3) Subject to subsection (2), subsection (1) and a regulation made under section 3 or 4 apply notwithstanding any provision of a collective agreement, and where there is an inconsistency between

(a) the power of termination under subsection (1) or a regulation made under section 3 or 4, and

(b) any provision of a collective agreement, subsection (1) or the regulation, as the case may be, prevails.

2. (4) For the purposes of subsection (2), a collective agreement expires on the date, stated in the agreement, of its termination or expiry notwithstanding any term of the agreement or any rule of law that provides that the agreement, or any subsidiary agreement, continues in force after the termination or expiry date.
- (5) A provision of a collective agreement entered into or renewed by a public sector employer after July 7, 1983 that is inconsistent with subsection (1) has no effect.
- (6) Notwithstanding the School Act, this Act applies to a teacher who is employed by a school board.
- (7) Where a school board intends to terminate the employment of a teacher under subsection (1), the termination takes effect at the end of the next school term, determined under the School Act.

Regulations respecting termination

3. (1) The Lieutenant Governor in Council may make regulations that he considers necessary or advisable respecting the implementation of terminations under section 2 (1).
- (2) A regulation under subsection (1) may establish criteria to be applied within a unit into which employees have been designated under subsection (3) (a) for the purpose of determining which of the employees within the unit will have their employment terminated.
- (3) A public sector employer is authorized to
 - (a) designate groups of employees into what it considers to be appropriate units for the purpose of applying the criteria referred to in subsection (2), and
 - (b) determine the manner of applying the criteria within units that have been designated under paragraph (a).
- (4) A regulation under subsection (1) may, in respect of employees, as defined in the Public Service Act or appointed under section 2 of that Act, authorize the employer to reassign, relocate or reclassify any employee.
- (5) For the purposes of the regulations, but without limiting the generality of subsections (1) and (2), the criteria referred to in subsection (2) may include
 - (a) the skills, abilities and qualifications of employees,
 - (b) operational requirements and efficiency,
 - (c) the seniority of employees, and
 - (d) the seniority provisions of a collective agreement.

Compensation

4. (1) The Lieutenant Governor in Council may make regulations that he considers necessary or advisable for providing for compensation for employees whose employment is terminated under section 2 (1).

4. (2) A regulation may provide benefits to an employee whose employment is terminated including, but not limited to
- (a) relocation and retraining allowances, and
 - (b) In respect of employees covered by the Pension College Act, the Pension (Municipal) Act, the Pension (Public Service) Act and the Pension (Teachers) Act, retirement benefits that are in addition to any benefits under the provisions of those Acts.
- (3) Compensation or benefits payable under this section to employees, as defined in the Public Service Act or appointed under section 2 of that Act, may be authorized by the minister under whose administration the employee falls, and where a minister authorizes payment of a monetary benefit under this section, the Minister of Finance shall make the payment out of the consolidated revenue fund.
- (4) Where the employment of an employee is terminated under section 2 (1), the employee is entitled to compensation in accordance with the regulations made under subsection (1).
- (5) An employee may elect not to claim compensation under this section by delivering a notice to that effect to his employer, and where he so elects, he is not entitled to claim compensation under this section.
- (6) Where an employee fails to make an election under subsection (5) within 60 days of the effective date of the termination of his employment, he shall be deemed to have elected to be paid compensation under this section, and on receiving that compensation, he is not entitled to any other remedy referred to in subsection (7).
- (7) An employee who makes an election under subsection (5) has the right to seek any other remedy, other than reinstatement of his employment, that he may have arising out of the termination of his employment, but nothing in this section gives him any additional rights to be entitled to such a remedy that he did not have before this Act came into force.
- (8) Where a public sector employer fails to pay an employee compensation in accordance with this Act, the employee may claim that compensation in court.

Powers of deputy minister

5. In respect of a ministry of the executive government, a deputy minister may exercise all of the powers of the government under this Act.

Judicial review

- 5.1 (1) On an application for judicial review respecting a termination of employment under this Act, a court may, in addition to any other powers it has, order that the employee be reinstated with compensation.
- (2) No application for judicial review respecting a termination of employment under this Act shall be brought later than 60 days after the effective date of termination.

5.1 (3) Notwithstanding section 4 (6), where an employee makes an application for judicial review respecting a termination of employment under this Act before the 60 day period in section 4 (6) has expired, the operation of section 4 (6) is suspended until the court has rendered its decision in the matter.

Public sector compensation

6. (1) In this section

"compensation" means all forms of pay benefits and perquisites paid or provided, directly or indirectly, by or on behalf of a public sector employer to or for the benefit of an employee;

"contract of employment" includes both express and implied contracts of employment;

"minister" means, in relation to a public sector employer specified by the Lieutenant Governor in Council, a member of the Executive Council designated by the Lieutenant Governor in Council for the purposes of this section to act as the minister under this section in relation to that employer;

"senior manager" means an employee

(a) who is

- (1) referred to in paragraphs (a) to (c) of the definition of employee in the Labour Code, or
- (11) a principal or vice principal or any other teacher who is employed by a school board and who holds a supervisory position, and

(b) who holds a position that is designated under subsection (2) as a senior management position.

(2) The Compensation Stabilization Commission, appointed under the Compensation Stabilization Act, shall, by regulation, designate a list of senior management positions for the purposes of applying this section to senior managers who hold those positions.

(3) The Lieutenant Governor in Council may make regulations that he considers necessary or advisable to achieve uniformity and fairness of compensation of senior managers who are employed by public sector employers, and to control and limit or reduce that compensation, and without limiting the generality of this, the Lieutenant Governor in Council may make regulations to

(a) establish, maintain and apply systems of classification of senior managers and of job evaluation, following principles that ensure objectivity,

(b) establish classes of senior managers and expand, reduce, divide, combine, alter or abolish existing classes,

(c) require public sector employers to supply to a minister information and records respecting the duties, compensation, terms and conditions of employment of senior managers employed by them, notwithstanding any enactment respecting confidentiality, or any contract,

6. (3) (d) authorize a minister to give such directions respecting the compensation of senior managers as the minister considers necessary or advisable to implement the regulations and to achieve the purposes of this section, and a public sector employer to which a minister gives a direction referred to in this section shall comply with the direction, and
- (e) add to or delete from the list designated under subsection (2), senior management positions.
- (4) Where
- (a) a provision of a regulation referred to in this section, or
- (b) a direction referred to in this section conflicts or is inconsistent with any other enactment or conflicts or is inconsistent with any contract of employment entered into, renewed or extended on or after July 7, 1983, the provision of the regulation or the direction prevails, but where there is a conflict or inconsistency between a regulation under this section and a direction under this section, the regulation prevails.
- (5) Nothing in or done under this section
- (a) affects any term or condition of a contract of employment for a fixed term or period that is entered into before July 7, 1983,
- (b) affects any term or condition of a contract of employment, other than a term or condition respecting compensation, or
- (c) frustrates or abrogates any contract of employment.
- (6) Where a public sector employer contravenes a direction referred to in this section, each member of the governing body of that employer commits an offence and is liable on conviction to a fine not exceeding \$2 000.
- (7) Subsection (6) does not apply to a member of a governing body who establishes that the contravention occurred without his acquiescence and that he made all reasonable efforts to prevent it.

Conflicts

7. Where there is a conflict between the Public Service Act and this Act or a regulation made under this Act, this Act or the regulation prevails.

Consequential Amendments

Hydro and Power Authority Act Amendment

8. Section 52 (6) of the Hydro and Power Authority Act, R.S.B.C. 1979, c. 188, is amended by adding "the Public Sector Restraint Act," after "the Petroleum Underground Storage Act,".

School Act Amendment

9. Section 153 of the School Act, R.S.B.C. 1979, c. 375, is repealed.

Commencement

10. This act comes into force by regulation of the Lieutenant Governor in Council.

SCHEDULE

Board of Parks and Recreation under section 485 of the Vancouver Charter

British Columbia Assessment Authority
British Columbia Buildings Corporation
British Columbia Development Corporation
British Columbia Ferry Corporation
British Columbia Housing Management Commission
British Columbia Hydro and Power Authority
British Columbia Institute of Technology
British Columbia Petroleum Corporation
British Columbia Railway Company
British Columbia Steamship Company (1975) Ltd.
British Columbia Systems Corporation
British Columbia Transit
British Columbia Utilities Commission
Capital Regional Hospital District
City of Vancouver
Compensation Stabilization Commissioner
Greater Campbell River Water District
Greater Nanaimo Water District
Greater Vancouver Regional Hospital District
Greater Vancouver Sewerage and Drainage District
Greater Victoria Water District
Insurance Corporation of British Columbia
Labour Relations Board
Metro Transit Operating Company
North Shore Union Board of Health
Pacific Coach Lines Limited
Pacific National Exhibition
Provincial Capital Commission
The British Columbia School Trustees Association
The Glendale Lodge Society
Workers' Compensation Board

