
Sent via e-mail: CWR.SpecialAdvisors@ontario.ca

October 20, 2016

Mr. John Murray and Mr. Michael Mitchell
Co-Chairs, Changing Workplaces Review
400 University Avenue
12th Floor
Toronto, Ontario M7A 1T7

Re: Changing Workplaces Review Interim Report

Dear Sirs:

On behalf of the Association of Municipalities of Ontario (AMO), which represents almost all of Ontario's 444 municipal governments, I am pleased to respond to the Changing Workplaces Review Interim Report. Municipal governments are significant employers in Ontario and operate in a public, accountable environment in which labour relations and human resources practices are transparent and where compliance with workplace rules is regularly achieved with human resources best practices.

This Interim Report is wide ranging and identifies approximately 50 issues and over 225 options of varying scope and impact. Given this, our comments will be at a high-level rather than being technical in nature. We understand that a key priority of the Changing Workplaces Review is the issue of precarious employment that comes with part-time and contract positions without benefits and security. Municipal governments generally provide stable employment for its staff with intensive human resources policies and procedures. However, they, like other employers, require increasing flexibility in decisions related to their workforces for the provision of municipal services and programs.

At its September 2016 meeting, the AMO Board of Directors identified the following key municipal concerns regarding the Interim Report:

Demonstrated Evidence of Proposals in the Changing Workplaces Review Interim Report Required

Any reform of the *Labour Relations Act, 1995* (LRA) and/or the *Employment Standards Act, 2000* (ESA) without demonstrated evidence that change is needed could produce unintended consequences that could be harmful to Ontario's labour relations environment. Detailed economic analysis of the impacts of each proposed recommendation and how it may affect employers and employees is required. In general, AMO believes that the proposals in the Interim Report need to be evidence-based and require significant cost/benefit analysis before they are brought forward in a Final Report.

Changes to current certification process/access to unionization (*Labour Relations Act*)

The Interim Report discusses a possible return to a card based certification system, however, we did not see any data suggesting that the secret ballot vote system has brought with it a significant reduction in both certification activity and success. Municipal employers would be concerned about the potential damage to direct workplace democracy if there is to be a return to card based certification. When we choose to be represented by those that govern us, the secret ballot provides anonymity and safeguards from potential interference.

The use of electronic membership evidence as opposed to paper membership cards is also identified as an option and is something that may be achievable with certain safeguards. That said, if card-based certification is implemented, this reliance on electronic membership evidence may raise concerns over the determination of true employee wishes unless there is a robust validation process.

The concept of requiring the disclosure of employee lists to a union at an as-yet undefined threshold of support is also introduced in the Interim Report. This option would be of great concern as employers cannot be placed in a situation that risks personal employee information privacy breaches.

AMO is not aware of any evidence or demonstrated need that would justify changes to the *LRA* certification process. The current provisions of the *LRA* governing the process of union certifications and decertification has not been shown to be broken. The current fast vote model ensures that every municipal employee affected by a possible application for certification is guaranteed a right to choose whether they wish to be represented by a union or not by way of a secret ballot vote. In our view, the speed with which the application process is concluded, combined with the self determination benefits of a secret ballot vote, provides for a neutral and balanced approach to the certification process that works on behalf of all parties in a workplace.

Consolidation of bargaining rights (*Labour Relations Act*)

The Interim Report asks whether the Ontario Labour Relations Board (OLRB) ought to have the power to consolidate or reconfigure bargaining units. The basis for providing consolidation or reconfiguration power to the OLRB is to allow for the expansion of union representational rights in industries or sectors where there are multiple small locations, and also perhaps to be used in a proposed new model where there is sectoral or multi-employer bargaining. Municipal employers would be concerned in expanding union representational rights to the sector where there are multiple small locations across distances and municipal boundaries.

Expansion of Ontario Labour Relations Board (OLRB) Prosecutorial Powers and Penalties (*Labour Relations Act*)

The Interim Report suggests that there is “widespread disregard for the law as evidenced by allegations of non-compliance”. However, there is no data to support this nor an indication of how many of these allegations of non-compliance are substantiated.

The Interim Report also suggests some potentially far-reaching changes including increased penalties, allowing private prosecutions to be brought in court, providing solely for state prosecutions or for removing the courts altogether and allowing the OLRB to “prosecute” and impose substantial administrative monetary policies. These changes have the potential to significantly transform the current role and perception of the OLRB in regulating labour relations.

Introduction of “Just Cause” standards (*Employment Standards Act*)

The introduction of “just cause” protection for non-union employees is also highlighted in the Interim Report. Currently, the *ESA* and the common law permit employers to terminate their non-union employees as long as the employer provides the appropriate notice and the reason for termination is not illegal. Employers need to be able to remove an employee from workplaces appropriately using best practices when there is a situation that demands such an action (e.g. illegal activities, significant incompetence). The introduction of a “just cause” standard would fundamentally alter the employment landscape in Ontario, and would require municipal employers to revisit their employment and termination practices.

Part-time and temporary employees (*Employment Standards Act*)

The Interim Report speaks to the situation of part-time employees and temporary employees, suggesting that such employees tend to receive lower wages, fewer benefits and are less likely to be unionized. The primary option being explored is a requirement to pay part-time, temporary, and casual employees the same wages as

are paid to full-time employees, unless there are objective grounds not to do so. Another option noted is the potential limitation of the number or total duration of fixed term contracts an employer can enter into with an employee. As mentioned at the outset, municipal employers generally provide stable employment and remunerate our employees well. Like most of the options in the Interim Report, we would need to see clear evidence and thorough analysis that would justify moving forward on any such proposal.

We would also be remiss if we didn't touch upon those matters that are out of scope in this review that are of significant interest to municipal governments. As you may know, AMO members are seeking key changes to the current interest arbitration system and the capacity to pay element for emergency service providers and the removal of the construction employers' designation of some municipal governments as they are currently prevented from openly tendering publically funded construction projects. We continue to look forward to constructive discussions on resolving these outstanding matters.

We look forward to further discussions with you and the Ministry of Labour on these municipal employer matters prior to the release of the Final Report. Should you have any questions on this letter and its contents, please contact Monika Turner, Director of Policy, at (416) 971-9856 ext. 318 or by email at mturner@amo.on.ca.

Sincerely,



Lynn Dollin
AMO President