Submission to the Ontario Changing Workplaces Review by the International Association of Machinists and Aerospace Workers

The International Association of Machinists and Aerospace Workers (IAM) has represented workers in Ontario for 125 years. We currently have over 12,000 members in Ontario, working in a broad range of industries and sectors across the province.

We welcome the opportunity to present our views the Changing Workplaces Review.

The Review has a very broad mandate to consider the impact of changes in Ontario workplaces and recommend labour and employment law reforms, with specific reference to the need for comprehensive review of the Labour Relations Act and Employment Standards Act.

We will talk generally about the state of the labour market in Ontario before making our recommendations for changes to legislation.

Background:

Section 3 of the Review's Guide to Consultations presents a picture of Ontario workplaces and briefly describes several key factors, including globalization, technological change, the shift to services, the growth of "non-standard employment", changes in work organization, and declining unionization rates.

Taken together, these factors are not random events, but reflect a concerted strategy undertaken over the last four decades to increase the power of employers and corporations, at the expense of democratically-elected governments and workers.

Through tax and fiscal policies, trade deals, attacks on social safety nets, austerity programs and direct attacks on workers and their organizations, this strategy has produced an increasingly unequal society, with consistently high levels of unemployment and underemployment, and increased insecurity for working families.

In the IAM, we have seen the devastating impact of these policies on our members in Ontario and their families. Over the last fifteen years, thousands of our members have lost their jobs as the result of plant closures in the manufacturing sector. While our representation in the service sector has grown, many of our newly-organized members in the service sector are not only lower-paid – frankly, many do not earn a living wage – but also have fewer benefits, and face the pressures of precarious employment and the constant threat of job loss.

Many things need to be done to reverse these trends and improve the lives of most Ontarians – full employment policies, a strengthened safety net, an end to austerity for workers and one-sided trade deals for corporations, but most of these are beyond the mandate of this review, so we will focus on government-mandated minimum employment standards and labour relations legislation for strong union representation. Reform in these key and complementary elements of our institutional and legal framework is essential for Ontario workers.

Labour Relations:

The Consultation Guide notes the long-term decline in private sector union coverage in Ontario. The ability of workers to join together in a union is an essential worker counterbalance to arbitrary employer power.

Our current labour relations system, based on certification, exclusive representation and restrictions on work stoppages, depends on a clear recognition by employers and government authorities of the legitimacy of trade unions, the right of workers to freely choose their workplace representation and the value of collective bargaining. This recognition is under question.

In practice, employers increasingly refuse to recognize union legitimacy, and work actively to thwart workers' right to act and bargain collectively. Aggressively anti-union employers are able, largely with impunity, to threaten, harass, and fire workers trying to exercise their basic right to select a bargaining agent.

In an organizing campaign, an employer can say or do virtually anything short of firing an employee with few negative repercussions. It is common for foreign workers to be threatened with deportation. Agency employees are told that they will not be asked back. Everyone hears that the business will close. Supervisors quietly threaten employees, with no witnesses. Union supporters get their hours reduced and more temps are hired.

If an employee is illegally fired for supporting the union, the firing creates an atmosphere of intimidation that often is enough to undermine an organizing campaign, even if the employee is ultimately re-instated.

The legislated prohibition on employer interference in worker choice lacks the teeth to be effective. Even a "victory" at the labour board on an employer misconduct complaint usually only means another vote, with the employer getting even more opportunities for threats and intimidation. The legal costs of fighting the employer can make it difficult for unions to even consider organizing small bargaining units.

The pursuit of legal remedies is often moot. If the union does win representation, there is usually no point in pursuing the matter when a first agreement needs to be negotiated. If the vote is lost, employees will usually not risk their jobs to testify on the union's behalf.

If the union is finally successful in getting certification, employers may simply refuse to bargain in good faith in an attempt to stifle the union.

Finally, employers with a collective agreement are increasingly contracting work out and using temporary agencies in order to evade the negotiated wages and working conditions.

For the labour relations system to function fairly and effectively for workers, we need both changes to the OLRA and changes to the enforcement process. Our recommendations:

1. Return to the system in which support for union representation through the collection of signed cards from a majority of bargaining unit members is sufficient for certification. Card check certification reduces the opportunity for employers to intimidate and coerce workers during a mandatory balloting period.
2. Institute a system of successor rights which requires a successor employer to take on the already-negotiated wages and working conditions when work is contracted out, so that workers' wages and working conditions cannot be continually undercut by unscrupulous employers.
3. Serious penalties, including criminal sanctions, against employers who violate the rights of workers to freely join the union of their choice. Workers need to be protected during organizing campaigns from employer threats and reprisals. There must be immediate re-instatement for workers discharged during a campaign, so that such action cannot be used as a crude employer tool to intimidate other workers. Justice delayed is justice denied.
4. Remove the discretion of the Labour Board to deny a union request for binding arbitration for a first agreement.
5. Remove the egregious injustice of prohibiting agri-business workers from forming trade unions, which condemns this largely temporary foreign workforce to essentially indentured labour.

Employment Standards

Commissioner Harry Arthurs, in his 2006 Report on federal labour standards, outlined these basic principles:

Labour standards should ensure that no matter how limited his or her bargaining power, no worker in the federal jurisdiction is offered, accepts or works under conditions that Canadians would not regard as "decent." No worker should therefore receive a wage that is insufficient to live on; be deprived of the payment of wages or benefits to which they are entitled; be subject to coercion, discrimination, indignity or unwarranted danger in the workplace; or be required to work so many hours that he or she is denied a personal or civic life.

It is against these principles that the legislated minimum standards in the ESA and their enforcement must be measured, in this era of responsibility-shedding employers and disposable workers. ESA standards are of particular importance to non-unionized workers in small workplaces and non-standardized employment. Unfortunately, these are precisely the places where evasion is easiest and enforcement the most difficult.

Standards provide fairness for employers as well as workers. Effective standards remove the pressure on better employers to lower standards to match or compete with less scrupulous competitors, creating a level playing field for employers as well as workers.

The growth of "flexibility" in employment generally means that workers must be flexible to the demands of employers, who increasingly walk away from their responsibilities to workers.

The growth of so-called non-standard employment is itself a symptom of the growing power imbalance between employers and workers. With good jobs hard to find and a tattered safety net, people must take whatever is offered – temporary jobs, jobs where agencies rake a commission off their wages, jobs offering too few hours, multiple jobs, jobs without benefits or even meeting minimum standards, or accepting contract or phony "self-employment" status at the cost of ESA protections. Young workers are particularly vulnerable.

The Employment Standards Act must be improved, and the exemptions and gaps which allow employers to discriminate and evade their obligations must be closed. Our recommendations:

1. A living minimum wage - $15/ hour, indexed to the cost of living, with no exemptions.
2. Increase vacation entitlement to 3 weeks after one year and 4 weeks after 5 years.
3. Require accrual of paid sick leave entitlements.
4. Remove the exemptions from ESA coverage.
5. Outlaw discrimination in wages, benefits and working conditions between workers classified as full-time, part-time, contract, temporary or casual, removing employers' ability to evade the standards.
6. Stop misclassification of employees as self-employed or independent contractors.
7. End the abuse of temp agency workers, by requiring that temp agency workers receive the same wages, benefits, and working conditions as other employees doing the same work. Make client companies jointly responsible for all worker rights. Put limits on long-term temp status.
8. An active and well-resourced public enforcement mechanism, that supports workers in their fight for their rights, including an anonymous complaint program and anti-reprisal protection.
9. Serious financial and criminal penalties to deter cheating employers, including those that contract out their work to temp agencies and others.
10. Protection for migrant workers from employer threats and reprisals, with registration, licensing and enforcement requirements for employers and recruiters.

We hope that the Special Advisors will seriously consider our proposals and make recommendations that will make Ontario workplaces fairer and healthier places for workers and their families.

Respectfully Submitted,

Dave Ritchie
General Vice President
International Association of Machinists and Aerospace Workers