Labourers' International Union of North America, Local 1059

Submissions to the Changing Workplace Review

LIUNA, Local 1059
56 Firestone Blvd.
London, Ontario
N5W 5L4

Mr. Jim MacKinnon

Tel: 519-455-8083
Fax: 519-455-0712

Email: jmackinnon@liuna1059.ca

September 14, 2015

INTRODUCTION

Labourers' International Union of North America, Local 1059 ("Local 1059"), represents 3000 workers and their families in the London Area. Local 1059 represents approximately 800 members working in the industrial sector, including members working for employers contracted to provide hospital housekeeping, cleaning and maintenance services to building owners.

A. AMENDMENTS NEEDED TO CLARIFY "WHO IS THE EMPLOYER"?

Companies are increasingly using labour supply companies to staff their workplaces and projects. After their brief visit to the labour supply company's placement office, workers have little connection to that entity, and their day-to-day employment experience is entirely determined by the "client" company. Every time we try to organize these workers, we are dragged into a prolonged, expensive fight at the labour board about who is the "true" employer. We need clear, consistent rules identifying the employer in these situations. The logical, true nature of these tripartite relationships is that the "client" has meaningful control over the employee's work and should be the employer in law.

Recommendation #1: *Amend the LRA to provide that the entity an individual is directly benefiting through that individual's labour is the employer of that individual for the purposes of the LRA.*

Recommendation #2: *Amend the ESA to provide that the "employer" for the purposes of the ESA is the "client" of the temporary help agency, and not the agency, when the employee is directed to work for the client by the agency. The agency would remain jointly and severally liable for all statutory contributions and remittances (CPP, EI etc).*

Recommendation #3: *Amend the ESA and LRA to deem anyone engaged to perform work for the benefit of an entity the "employee" of that entity for the purposes of the ESA and the LRA, regardless of the form of the relationship.*

The Client Company Should Be Deemed to be the "True Employer"

Contractors often use labour supply companies to hire employees for work on a project or short-term assignment.

The *LRA* should be amended to stipulate that the entity employees are directly benefitting through their labour is the employer for the purpose of the *LRA*.

Similarly, the problem of identifying "who is the employer" arises for the purpose of the *ESA* where temporary help agencies supply employees to client companies.

The solution to these repetitive and exploitive relationships need not be complex; statutory amendments should simply deem the client of temporary agencies the employer for all purposes under the *ESA* and the *LRA*. As an added disincentive to the agency should remain jointly and severally liable for all statutory contributions and remittances (CPP, EI etc).

B. AMENDMENTS NEEDED TO CLARIFY WHO IS AN "EMPLOYEE"

A similar but distinct problem that diminishes the job security, pension and employment insurance status of too many workers is the attempt by employers to turn employees into "contractors" or "consultants" and thereby make these individuals liable for their own tax deductions, pension and employment insurance contributions, thereby transferring the employment burden from employer to the employee for no appreciable increase in compensation. Employers also misclassify their employees as "independent contractors" (and improperly fail to classify themselves as "employees") to avoid their obligations under the *ESA* and *LRA*. This practice is endemic in many industries and most workers, especially low-income workers, do not have leverage to negotiate their status with their employer. It is common place and exploitive in the extreme to have, for example, early childhood educators or labourers, who wind up with next to minimum compensation, considered to be self-employed contractors.

Our proposed solution is to end this endless controversy and adopt a simple standard. If an individual is providing the benefit of his or her labour to an entity, that individual should be deemed by statute to be an employee of the entity regardless of any "contractual" forms adopted by the entity.

To protect low-and middle-income earners from this practice, a simple level of income from that entity must be reached before it is possible to be a contractor or consultant. We recommend that that standard be a high one: $150,000 per year, to discourage disingenuous attempts to make employees into the self-employed.

What this means in practice is that the entity that gets the benefit of the labour of the individual must pay that individual, deduct taxes, pay CPP and EI contributions and other employment taxes.

C. INSTITUTE PRE-1995 PROTECTIONS FOR BUILDING SERVICES WORKERS

Building owners award contracts to building services companies on a competitive bid basis and generally award contracts to the lowest bidder. Because successor rights in this industry were eliminated in the mid-1990's, as soon as we are able to negotiate reasonable rights for the building services workers we represent, the employer loses its contract through the tendering process. Any gains in rights we have made for these workers are lost and we have to start the organizing process again, from scratch. Compounding the vulnerability of these workers is the fact that they have no security of tenure. If their employer loses the building services contract, the successful bidder has no obligation to hire the former contractor's workers. The lack of successor rights and job security for building services workers contributes to their already vulnerable status.

Recommendation #4: *The pre-1995 provisions in the ESA and LRA respecting building services workers should be re-enacted to maintain bargaining rights and job security for workers employed by building services contractors.*

Protections in the *LRA* and *ESA* pre-1995

Prior to 1995, the *LRA* provided successor rights to unions when a building service contractor lost a contract (usually as a result of the tendering process). The *ESA* required that a new contractor offer the same or similar work to employees of the previous contractor, where available, pursuant to the same or comparable terms and conditions of employment.

However, these rights were eliminated through Bill 7, the *Labour Relations and Employment Statute Law Amendment Act, 1995*. As a result, now successor rights do not pass on when a building owner awards a contract to a new service provider. Where a union is able to organize contract services workers and bargain a first contract, their bargaining rights, negotiated benefits and job security are jeopardized every time the contract comes to an end and is put up for tender.

If their employer (the contract services provider) does not win the contract, successor rights do not flow to the new service provider performing work on site.

In most cases, when there is a change of building services provider, the same workers are hired by the new contractor, but without their union and for less pay and no benefits.

D. END DISCRIMINATION AGAINST TEMPORARY AND PART-TIME LABOUR

The vulnerability of workers who are unable to find permanent, full-time work, has been well documented. Workers are forced to work multiple jobs, for low wages, without benefits, and to the detriment of their well-being. The current explosion in employers' use of part-time and temporary labour needs a legislative solution. It is too inexpensive for employers to have a ready supply of near-slaves. The only way to increase the supply of decent, full-time, permanent jobs is to eliminate the incentives for employers to create these precarious positions. The cost of temporary and part-time labour must be proportional to the cost of full-time, permanent employees.

Recommendation #5: *Amend the ESA to require that temporary and part-time employees be paid the same rate as permanent employees performing similar work, and be provided with equivalent benefits or be compensated for the proportionate value of the benefits based on the their hours worked.*

Recommendation #6: *Amend the ESA to require that temporary and part-time employees be given at least 2 weeks' notice of their scheduled hours of work, and be paid a minimum of four hours pay on any day they perform any work for an employer.*

The Cost of Temporary Labour Should Be Equivalent to Permanent Labour

Temporary work is thriving because it is cheap. Employers can exploit the vulnerability of workers unable to find permanent work by offering them temporary or part time assignments with lower pay and no benefits. Steps must be taken to eliminate the incentive to create precarious work.

Decrease the "Flexibility" of Temporary Labour

One element of what makes work precarious from an employee's perspective is a lack of control, predictability and minimum guarantee in terms of their hours of work and income. This endless flexibility makes the use of temporary employees attractive for employers, but makes it impossible for employees to have a decent standard of living.

It deprives them of a reasonable family and social life, creates untenable childcare challenges, and compromises their ability to plan for the two or three part-time jobs they may be working in order to get by.

Our recommendations change the rules fundamentally. But there is no point in this review if it merely notes the problems and fails to offer fundamental improvements. The meaning of "flexible" workforce is an exploited workforce that is paid less for the same work, has less work, has unpredictable work, no benefits and no hope for benefits. The "market" has no incentive to change this situation; legislation is the only possible agent of change and it ought to be clear and unambiguous.

F. OBVIOUS AMENDMENTS NEEDED TO THE *LRA*

There are a number of obvious amendments that should be part of any reform of the LRA. The fact that arbitrators do not currently have the authority to grant relief from arbitration deadlines has terminated otherwise meritorious grievances on purely technical grounds.

Card-based certification should be allowed in the industrial sector. It has worked well in the construction industry and has led to a higher rate of unionization, allowing workers to earn a living wage and benefits. Unionization rates are dropping outside of the construction sector because in order to be unionized a majority of employees must vote in circumstances fraught with personal risk. Employees in precarious work arrangements are faced with voting against the interests of their own employer.

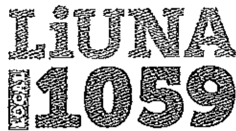
In decertification applications, the onus should be on the person bringing the application to prove it is voluntary. Currently, employers are able to get rid of bargaining rights by influencing its weakest employees. This must stop.

Recommendation #7: *Allow arbitrators to extend the time limits in a collective agreement to refer a matter to arbitration. Courts have held that the current language in the LRA denies arbitrators discretion to relieve against breaches of time limits. Legislative remedies are now required.*

Recommendation #8: *Allow for card-based certification in non-construction sectors.*

Recommendation #9: *In decertification, the onus should switch back to the applicant employee to prove that the application is voluntary.*

Recommendation 10: *The Province must either provide the OLRB with the resources to actually do the work for which it was devised, or develop an alternative funding mechanism to make the Board self-sufficient. Cases with continuations have large gaps of time between hearing dates. Three to five years Litigation is becoming common. This is not good Labour Relations sense.*



Skilled Labour Building The Future

Labourers' International Union
of North America,
Local 1059

56 Firestone Blvd.,
London, Ontario N5W 6L4
Tel. 519-455-8083
Fax. 519-455-0712
www.liunalocal1059.com

September 14, 2015

VIA FACSIMILIE (416) 326-7650

CHANGING WORKPLACE REVIEW ELCPB
400 University Ave., 12th Floor
Toronto, ON M7A 1TM
Fax: (416) 326-7650

Attention: C. Michael Mitchell
The Honorable John C. Murray