



THE CORPORATION OF THE

# Municipality of Neebing

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Submitted by Email to: [CWR.SpecialAdvisors@ontario.ca](mailto:CWR.SpecialAdvisors@ontario.ca)  
Followed by Regular Mail

September 18, 2015

Changing Workplaces Review, ELCPB  
400 University Ave.  
12<sup>th</sup> Floor  
Toronto, Ontario  
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**Attention: C. Michael Mitchell and John C. Murray, Special Advisors**

**Re: Submission from the Council of The Corporation of the Municipality of Neebing.**

Dear Sirs:

Neebing Council expresses its gratitude for the opportunity to provide input from an employer's perspective into the "Changing Workplaces Review" exercise. The format of this letter is to repeat the consultation question and provide Council's response.

The Municipality is a small, rural municipality in Northwestern Ontario. It is a small employer. The staff is comprised of some full time staff, some part time staff, some seasonal staff and some volunteers as follows:

Three full time and one part time office administration staff, not unionized;

One part time janitor/caretaker;

Five full time staff in the Roads Department, unionized through CUPE;

Four part-time landfill site operators, not unionized;

One part time Chief Building Inspector, not unionized;

Annual construction-season hiring of between one and three Roads Department staff, recognized in the union contract;

Annual hiring of between one to two summer students (one for groundskeeping and one in the office);

A dedicated crew of hard-working volunteers in the Neebing Emergency Services Department who are first responders and volunteer fire-fighters (some of whom are paid an honorarium on a regular basis and some of whom are paid a share of a departmental honorarium at the end of each year, divided on the basis of hours contributed);

Seven members of the Municipal Council (not considered employees), paid an honorarium monthly; and

Occasional other hires based on government funding availability (i.e. internships, etc.).

The comments contributed through this consultation are made through the context of being a small, public-sector employer. They reflect the experience in our municipality. As such, not all of the questions were relevant to our operations.

#### Questions Relating to Changing Workplace:

Q1: How has work changed for you?

##### Non-Union Workforce:

Needing has experienced some issues with staff turnover. It has proven difficult to retain qualified staff who are already trained in Municipal Office operations. There are so many particular requirements associated with municipal accounting and the reams of paperwork that are required by the Province, that fully trained staff do not appear available to us, at least at the levels of salary that we can afford. We have experienced loss of trained staff to other employers who can afford to pay more, and/or to whom the employee in question has less of a commute.

We have entered into shared services arrangements with neighbouring municipalities to help tide us over during recruitment and/or training periods. Our neighbours are experiencing similar problems. In a shared service arrangement, we will have a person employed by another employer, at our site, undertaking our work. That person's salary/benefits are the responsibility of the other employer. We pay that employer a fee to compensate it for our use of their employee.

We have hired someone who lives at some distance from the office, and this necessitated enabling remote connectivity for work-at-home circumstances. Work-at-home may be planned purposely, or may be required unexpectedly due to weather conditions impacting the commute.

In part due to dealing with the requirement to train someone otherwise not qualified for the position, we have started to hire our full time office employees on the basis of an employment contract covering a probationary period that sets out training goals and obligations. We have been using longer probationary terms, depending upon the training needs of the contracted employee.

Our part time, fully qualified Chief Building Official wishes to retire and it has proven difficult to recruit a trained replacement. We have a vast geographic area over which this person needs to cover inspections/supervision. The work is "unbalanced" in that the person is required to be extremely busy during the spring/summer/fall building season, but then has no work to speak of over winter. There is insufficient work to hire a full time person, yet the expense and expertise required to qualify for the position results in qualified individuals looking for full time employment elsewhere. Suggested shared service arrangements with neighbouring municipalities is problematical for this position because we all face the same issue – we would need the person to work 80 hour weeks in the building season to cover more geographical territory, and we would have nothing for him or her to do in the winter.

## Union Workforce:

Our union workforce is aging. We have had one retirement in the past 2 years after a long period without retirees. It did not prove difficult to recruit a new staff person to replace the retiree.

We have experienced sick leave absences associated with the aging work force, necessitating the extension of seasonal contracts in order to cover workload.

We have experienced workforce shortages due to increased obligations (under the union contract) to provide additional paid vacation time for employees with more years of service. When some (well-entitled) employees are on vacation and others are unexpectedly ill at the same time, the resulting workforce short-staffing can be problematic.

Q2: What type of workplace changes do we need to both improve economic security for workers, especially vulnerable workers, and to succeed and prosper in the 21<sup>st</sup> Century?

Neebing has not experienced issues with economic security for workers, including vulnerable workers.

Q3: As workplaces change, new types of employment relationships emerge, and if the long term decline in union representation continues, are new models of worker representation, including potentially other forms of union representation, needed beyond what is currently provided in the Labour Relations Act?

Neebing does not support additional “models of worker representation”. The existing model needs reform prior to additional models being added or considered.

Q4: (a) Are the following objectives the key objectives, or are there others?

**Efficiency:** Economic performance (competitiveness, productivity, quality)

**Equity:** Fair standards regarding outcomes and treatment

**Voice:** The opportunity for meaningful input into decisions affecting the workplace

A critical element missing here is “**economy**”. It is not adequately covered through the use of “economic performance” under “efficiency” in your list. Within the labour relations balancing act, the **ability of an employer to pay** is not given enough consideration. It is generally over-ridden by those dealing with labour disputes in the public sector on the basis that the public sector can always afford to pay – through its apparent limitless taxation authority. All employers, including public sector employers, have limitations on their abilities to pay for salaries, benefits, training, and the myriad of other things required for safe, effective and efficient workplaces. The workforce costs are only part of the costs of doing business (or undertaking responsible government). When prices increase in one area, they have to “give” in another or the business will fail (or the public sector employer will end up a “ghost town” without any residents being able to afford the high taxes). Labour negotiating does not seem to recognize this very important economic reality.

This ties in well with another issue – and that is a decline in **work ethic** among the general populace, including some (not all) of its work force. There are more and more “entitlements” being pursued by workers and fewer and fewer acknowledgements by workers that receipt of a salary is dependent upon a job well done in a timely and appropriate fashion. Neebing believes that another key objective should be a return to the good, old-fashioned “work ethic” mindset. An employer has an obligation to keep a work place safe, fair and responsive to workers’ (and others’) needs, however, the employee needs to recognize his/her obligation to undertake the work required at a decent quality and within a reasonable time frame. While one cannot “legislate” a work ethic, it seems that the rules in the various pieces of legislation encourage the “entitlement” mentality over a stronger work ethic mentality. Where is the value of a job well done lauded? Language should exist in the legislation that also protects the employer in this regard.

(b) How do we balance these objectives, or others, where they may conflict?

The legislative language must try to strike a balance, but no printed words on a page can address every circumstance that may arise. As an example, it is important to protect a “vulnerable” worker – but some are more “vulnerable” than others and require (and deserve) more protection than others. That cannot be spelled out in a piece of legislation.

The way to balance it is to provide a non-adversarial dispute resolution process so that the circumstances that require a balancing act can achieve that balance.

(c) What are the goals and values regarding work that should guide reform of employment and labour laws?

The goals and values highlighted in part (a), including the ones we added in our comments, are those that should guide reform of employment and labour laws.

(d) What should the goals of this review be?

Long term viability of employment in Ontario within the context of the global economy.

#### Questions Relating to the Employment Standards Act:

Q5: (a) In light of the changes in workplaces, how do you feel about the employment standards that are currently in the ESA?

Neebing feels that the standards are appropriate for its workplace.

(b) Can you recommend any changes to better protect workers?

Neebing has no recommendations in that regard.

(c) Do the particular concerns of part-time, casual and temporary workers need to be addressed, and if so, how?

Neebing provides the appropriate employment standards to its part-time, casual and temporary workers.

Q6: (a) Are changes needed to support businesses in the modern economy?

Some of the standards in the Act are provided as minimums. This inevitably leads to expensive litigation. Neebing would support inclusions of maximums in addition to minimums, particularly in the areas of payment-in-lieu of notice. That will create more certainty and reduce the instances of litigation.

(b) How could the Act be simplified while remaining fair and comprehensive?

A review of the legislation with a view to "plain language" is always helpful.

(c) Are there standards in the ESA that you find too complex? If so, what are they and how could they be simplified?

Neebing does not have issues with the complexity of ESA standards.

Q7: (a) Should the unpaid leave entitlements (up to 10 days per year) in the legislation (listed below) be revised in any way?

A personal illness, injury or medical emergency

Death, illness, injury or medical emergency of certain relatives

Urgent matter that concerns certain relatives

Neebing has not experienced any instances other than the ones listed where employees have sought unpaid leave. The circumstances in the legislation seem to cover the gambit of possible needs for the Municipality.

(b) Should there be a number of job-protected sick days and personal emergency days for every employee?

Neebing is not averse to protected sick days to cover circumstances where an employee is actually sick. The difficulty with providing job-protected sick days/personal emergency days is that it can engender abuse. Some employees have a tendency to treat "sick days" as "vacation days" under a "use it or lose it" philosophy. This relates, again, to the lack of work ethic and the "entitlement" claims of some workers in the modern society.

In modern society, we have a shortage of medical doctors, particularly family physicians. They object to being requested to provide proof that employees are ill. Many employees do not have family doctors, and it may be impossible for them to obtain proof that they are ill. This further complicates an employer's ability to be fair in assessing whether or not an employee is using a sick day for the purpose for which it was provided.

Accordingly, Neebing does not support a legislated number of job-protected sick days or personal emergency days.

(c) Are there other types of leaves that are not addressed that should be?

Neebing is not aware of any other type of leave that is not addressed that should be.

Q8: (a) In the context of the changing nature of employment, what do you think about who is and is not covered by the ESA?

The ESA applies to all of Neebing's employees. The only exceptions are the elected politicians. Neebing does not see any issue in this regard.

(c) Are there changes to definitions of employees and employers or to existing exclusions and exemptions that should be considered?

The existing definitions meet Neebing's requirements.

(d) Are there new exemptions that should be considered?

The existing exemptions meet Neebing's requirements.

Q9: Are there specific employment relationships (i.e. those arising from franchising or subcontracting or agencies) that may require special attention in the ESA?

Neebing is not aware of any specific relationships that require special attention.

Q10: (a) Do the current enforcement provisions of the Act work well?

Neebing has not had experience upon which to draw in this regard, and chooses not to comment.

(b) In your experience, what problems, if any, exist with the current system, and what changes, if any, should be made?

There are conflicts between an employer's obligation to provide a safe workplace and an employee standing upon his or her "rights" to refuse to participate in processes related to worker safety. As a blatant example, the operation of heavy equipment requires clear care and attention to detail. An employee's right to refuse requests for drug/alcohol testing can create an unsafe workplace. This is complicated by employees' use of medical marijuana or other prescription medication. It is also complicated by an employer's obligation to accommodate an employee with a disability.

Changes should be legislated so that drug/alcohol testing can be insisted upon in circumstances where the impairment of a worker (however "justified" it may be, i.e. prescription medication) will put him/her, or others, at risk.

(c) In your experience, what changes could help increase compliance with the ESA?

Neebing has no experience to offer in this regard.

Questions Relating to the Labour Relations Act:

Q11: In the context of the changing nature of employment, what do you think about who is and who is not covered by the LRA? Are there any specific changes you would like to see?

Neebing does not have any issues with the current rules.

Q12: (a) In the context of changing workplaces, are changes required to the manner in which workers choose union representation under the LRA?

Neebing does not have any issues with the current rules.

(b) Are changes needed in the way that bargaining units are defined, both at the time of certification and afterwards?

Neebing does not have any issues with the current rules.

(c) Are broader bargaining structures required, either generally or for certain industries?

Neebing does not feel that broader bargaining structures would be an improvement to the current environment.

(d) Are changes needed in regard to protecting bargaining rights?

Neebing does not see any changes needed in this regard.

Q13: (a) Are changes required to the LRA with regard to the ground rules for collective bargaining?

If the ground rules were set out with better precision, this could eliminate expensive and time-consuming litigation. The rules are written in such a vague manner that they appear to require judicial interpretation and application. This would not be necessary if clarity and simplicity were introduced.

(b) Are new tools needed in the LRA with respect to industrial disputes or how to deal with protracted labour disputes?

Where disputes are protracted, there needs to be better protection to an employer seeking to keep its business running, or, in the case of a service-provider such as a municipality, to keep the required services available to its constituents. Picket line rules are required in this regard. People employed to undertake work during a strike or lock out require protection by legislation from abuse by those opposed to their undertaking the work.

Q14: In light of the changing workplace and the needs of workers and employers in the modern economy, are changes needed regarding the unfair labour practices set out in the LRA, or to the Ontario Labour Relations Board's power to provide remedies in response to unfair labour practices?

As stated earlier, what is and what is not "unfair" needs to be set out with more precision.

Q15: Are there changes that could be made to the LRA that would enable the parties to deal with the challenges of the modern economy?

As pointed out in the comments relating to the Employment Standards Act – the legislation needs to recognize the economic realities of employers in today’s economy. The **ability to pay** as a consideration when bargaining, needs to be explicitly set out in the legislation as something that must be considered – and it cannot be discounted simply because an employer has taxing authority. The residents who have to pay the tax also have an “ability to pay” (or not) that must be taken into consideration.

Q16: (a) Are there any other issues related to this topic that you feel need to be addressed?

Neebing’s concerns are adequately set out in the answers provided.

(b) Are there additional changes, falling within the mandate of this review, that should be considered?

Neebing has no additional comments to add.

The Council trusts that these submissions are self-explanatory, however, if you require clarification or further information, please do not hesitate to contact the office.

Council looks forward to release of the recommendations resulting from the Consultation, and requests a copy of the final document, or notification of its website location/link, if possible.

Yours truly,



Rosalie A. Evans  
Solicitor-Clerk *for Council*