Stability, Flexibility, and Strength for Workers in Ontario

Submissions of UFCW Canada, Local 1000A

for the Changing Workplaces Review

September 10, 2015

UFCW Local 1000A CANADA

ufcw1000a.ca

United Food and Commercial Workers Canada, Local 1000A is one of the largest private sector local unions in Canada with nearly 30,000 members, and has a history that stretches back to 1944. We represent workers from a wide variety of sectors including retail, warehousing, trucking, food processing, eye care, distribution, pharmaceutical, fur, leather and education. Local 1000A members are the people ensuring shelves are stocked with your favorite products, baking your pastries, preparing your meals on the go, filing your prescriptions, assisting with your eye care needs, and ringing you through at the checkout, and they do much more as well. Perhaps more importantly they are your neighbours, friends, and your children or grandchildren's friends… well – you get the picture. Our members, and perhaps particularly our members who work in retail, are very familiar with the new challenges that face service sector employees.

The reality is two-thirds of my members are the face of the future of work for many many Ontarians. We agree that the legislation has to change to reflect this new reality.

Our local was pleased to participate with UFCW Canada and the other UFCW locals in Ontario in the process that led to UFCW Canada's submissions to the Changing Workplace Review. I am proud of the report submitted by UFCW Canada, and I, on behalf of Local 1000A's members, staff and officers, wholeheartedly endorse the recommendations it contains. As President of UFCW Local 1000A, I want to make the following additional submissions to the Changing Workplace Review on behalf of our members, based on their experiences in the workplace.

These submissions will focus particularly on two questions posed, in the Changing Workplaces Review Guide to Consultations: Question 5 – *In light of the changes in workplaces, how do you feel about the employment standards that are currently in the ESA? Can you recommend any changes to better protect workers? Do the particular concerns of part-time, casual and temporary workers need to be addressed, and if so, how?* And

Question 12 – *In the context of changing workplaces, are changes required to the manner in which workers choose union representation under the LRA? Are changes needed in the way that bargaining units are defined, both at the time of certification and afterwards? Are broader bargaining structures required either generally or for certain industries? Are changes needed in regard to protecting bargaining rights?*

In answer to these questions, I submit five proposed changes to the *ESA* and *LRA*:

Employment Standards Act (ESA)

i) Create an "open period" for retail employees to opt-out of agreement to work on Sundays every year after being hired: because as life progresses, circumstances change;

ii) Create a requirement for retail employers to maintain a certain ratio of full-time positions to part-time positions: because as a growth sector, retail could be a real source of good jobs for workers in Ontario;

iii) Eliminate the student minimum wage: because students should not earn less money for doing the same work;

iv) Create rules for reliable scheduling for part-time employees: because workers need a schedule they can count on to plan their lives;

Labour Relations Act (LRA)

v) Implement provisions that allow for unions to apply to combine bargaining units: because broader bargaining units are better for workers.

Changes to Employment Standards Act

As a local union comprised in large part of grocery and retail workers with many more in service sector positions, we have a membership that is very familiar with the challenges of working part-time, and attempting to balance multiple part-time jobs and/or part-time jobs with school. While a part-time labour force gives employers enviable flexibility, actually working part-time often comes with the stress of not knowing week to week when, or for how long, one will be working. This causes significant difficulties with planning one's life, balancing work and school, managing family responsibilities, as well as reliably meeting financial obligations. Ontario's current employment standards regime simply does not address these realities adequately.

An employment standards regime that *does* address the issues faced by part-time employees working retail and other service sectors jobs would have to move away from a one size fits all approach, and begin to consider adaptable solutions for employees in different situations and in different stages of life. Secondly, flexibility for employers cannot be limitless. The employment standards regime must create more options for workers, and full-time positions must not become entirely a thing

of the past. It is with these thoughts in mind that I propose the following changes to the *Employment Standards Act*.

Opt-out of agreement to work on Sundays

The *ESA* currently provides at Section 73 that retail employees have the right to refuse to work on Sunday. However, Section 10(1) of O. Reg. 285/01 states that if an employee agrees to work Sundays at the time of hire, he/she waives the right to refuse work on Sundays (except when an employee does so for religious reasons). The current operation of these provisions does not take into account how a worker's life may change over time. Many people begin a career in retail as students, or in their early 20s. A student or a single young person may feel differently than he/she will in a few years when he/she may have a partner, or be a parent of young children, and different still than in a few more years when he/she may have teenage children who are themselves entering the workforce. There are countless reasons why a person might wish to have a reliable day off every week, and those reasons may come and go as a person's life changes. Agreeing to work Sundays at the time of hire should not be a once and for all decision.

I propose that employees who agree to work Sundays at the time of being hired have an opportunity each year, for a period of two weeks and ending on the anniversary of their hire date, to opt out of that agreement to work Sundays. Such a provision should be accompanied by one that guarantees there will be no reprisal through loss of hours for employees who opt out. Employers will still have the benefit of knowing who can be reliably scheduled on a Sunday, but employees

would no longer be locked in to a one-time decision at time of hire. Instead, each employee would be given an annual opportunity to reconsider the decision to agree to work on Sunday.

Minimum ratio of full-time to part-time positions

It is no wonder that retail employers increasingly choose to hire many part-time employees, a significant number of which receive fewer hours than they would prefer. This often gives them a large pool of individuals willing to work any time at a moment's notice, as this is the only way to receive hours. It can also create a competitive atmosphere that allows an employer to use shifts as rewards. Ultimately, it affords the employer significant stability, and potentially increased control over its workforce. For part-time employees themselves it creates uncertainty, stress, and logistical headaches that naturally accompany trying to juggle two or more jobs, none of which offer a reliable schedule, or manage a budget and family responsibilities such as child care with an unpredictable schedule and income.

The availability of full-time work is important for families, and the lack of it can make life difficult to unmanageable. Similarly, "overhiring" practices (hiring so many part-time employees that many receive very few, if any shifts per week) of employers dilutes the value of a job to an employee, without any corresponding detriment to the employer. Creating a minimum ratio of full-time to part-time positions in the retail sector may be a partial solution to both problems. This would ensure the ongoing existence of at least some full time work for employees, and

would also function to curb overhiring practices as widely hiring part-time employees with no guarantee of sufficient hours would require corresponding creation of full-time positions. This would provide some much needed stability for retail workers by ensuring more reliable full-time work, and likely more available hours for those working part-time. It could be introduced first with a very low minimum ratio of full-time to part-time jobs, and the ratio could be increased over time as employers adapt.

As retail is such a growth sector, I believe it is important that it generate good jobs. A minimum ratio would help achieve that, and would communicate to employers and employees alike that retail workplaces are real workplaces where people work real jobs to support themselves and their families.

Eliminate student minimum wage

Section 5(1) of O. Reg. 285/01 establishes from June 1, 2014 onwards, the minimum wage is as follows:

1. *For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, $10.30 an hour*

Currently under the *ESA* Regulations, an employee who meets the above criteria may be paid 70 cents less than the regular minimum wage of $11 per hour, or what is known as the "Student Minimum Wage." While I acknowledge that the purpose of the Changing Workplaces Review is not to consider minimum wage, the existence of a lower "student minimum wage" is another way in which the current employment

standards regime fails to address the employment realities in Ontario. Those earning student minimum wage are not simply kids doing odd-jobs for pocket money, they are taking on the same responsibilities and workloads of their coworkers, whose work is considered more valuable on the basis of their age. Furthermore, in many cases the earnings of these workers are used as much needed contributions to household expenses.

Create rules for reliable part-time scheduling

A familiar complaint we have heard from part-time workers is that the scheduling practices of employers are so unpredictable that it makes planning one's life next to impossible. Schedules are posted only a few days in advance, often change, and all too often an employee will show up for a shift only to be sent home hours early. This hinders the ability to balance more than one part-time job (a necessity for many part-time workers), the ability to manage a household, and the ability to share a vehicle with a family member to name just a few possible problems caused by unreliable scheduling practices. Furthermore, these practices cause financial hardship by making income unreliable.

I propose two measures as a starting point for creating reliable scheduling. First, our local recently negotiated a scheduling pilot with a large food retailer that includes 10 days advanced notice on work schedules. The feedback from members has been very positive. I propose a minimum standard notice for posting a schedule of hours of work for part-time workers. This would give employees who do not work a regular shift the opportunity to plan their lives ahead of time.

Secondly, I propose that once the schedule is posted, barring serious extenuating circumstances, the schedule can only be changed by consent of the employee. When a schedule is posted, employees make plans, make family commitments, and turn down shifts at other jobs on the basis of that schedule. When employers change the schedule, cancel shifts, or send employees home early, it wastes the time of employees, and costs them money. Additions to the *ESA* allowing changes only with the agreement of the employee would go a long way towards enabling stability in the lives of part-time employees.

Changes to Labour Relations Act

As noted in the submissions of UFCW Canada to the Special Advisors, the current rules with respect to certification and first contract arbitration put unions at a disadvantage, and often allow employers to frustrate the purpose of the *LRA* by intimidating or unduly influencing employees in the pre-vote period (in ways that are difficult to prove in an unfair labour practice complaint) and thwarting attempts to reach a first collective agreement. UFCW Canada's recommendations of adopting card check certification procedures, as well as Manitoba's automatic access model of first-contract arbitration go a distance towards remedying these issues. I strongly recommend the implementation of these two proposals. Likewise, UFCW Canada's submissions touch on the difficulties unions experience in organizing and effectively bargaining for small workplaces with few employees that are a single workplace in a firm with many locations, as is often the case in retail. UFCW Canada's recommendation of extending sectoral bargaining to sectors outside of construction

is an effective means of addressing these challenges that I am also happy to endorse. However, I will focus this section of my submissions on a proposal aimed addressing the same problems that could work hand in hand with sectoral bargaining. In doing so, I will focus particularly on one component of Question 12: *Are changes needed in the way that bargaining units are defined, both at the time of certification and afterwards?*

Our local has been attempting to organize a retail establishment with many locations in Ontario for the past few years. We have been successful in certifying at several locations in the GTA, which has resulted in several bargaining units of approximately 15-20 employees per location. However, negotiating contacts and servicing the members at these locations has been a significant challenge. A decertification application was filed at one location during first contract arbitration. The local filed unfair labour practice complaints in connection with the decertification application. As part of settlement discussions related to these matters, a deal was reached that resulted in counting the votes for the decertification application (the application was successful), and putting a collective agreement to a ratification vote at the other four locations. All four of the remaining bargaining units voted to accept the collective agreement, even though none of the employees at those stores were on the bargaining committee that negotiated the contract. The collective agreement is applied separately at those four stores, and when it comes time to renew each of those collective agreement (even though they are all the same), each will have to be negotiated individually. Two locations

certified after the four locations ratified a collective agreement remain without a first contract – those negotiations continue.

Life has been made difficult, often in subtle ways, for certain employees, and many have chosen to quit or move on. In some cases new employees have been hired that do not support the union. There seems to have been a concerted effort to make conditions worse at the unionized locations than the non-unionized locations. In short, we feel this employer has been taking steps to erode union support, and has dragged its heels in bargaining.

Attempting over and over again to negotiate a first contract with the same employer has been, and will be, a taxing administrative burden on our local. More importantly, the process has been taxing on workers when they are vulnerable, particularly those experiencing a lengthy period of uncertainty from certification to attaining a first collective agreement.

It was our local's determination that the most viable way to organize this employer was one location at a time. Employees are more likely to know and communicate with one another. It is more likely to be easier to conduct an efficient organizing campaign with a greater chance of success, one that minimizes employer knowledge and opportunities to interfere. But these smaller units have less bargaining strength, may have more turnover, and may be relatively more costly to bargain for and service than larger multi-store units. As this example shows, members in such small bargaining units are much more vulnerable than in broad-based bargaining units.

Our proposal to address the problems described above is the implementation of provisions similar to the "Combining Bargaining Units" provisions that were originally introduced to the *LRA* through Bill 40 in 1992, and that were repealed in 1995. For your convenience, I have appended these provisions, formerly s. 7 of Labour Relations Act, RSO 1990, c L.2 as Appendix "A".

The purpose of the Combining Bargaining Unit provisions was to facilitate viable and stable collective bargaining through allowing the creation of broader bargaining units. Its existence acknowledged and addressed the fact that while larger bargaining units are preferable for long-term bargaining, large multi-site bargaining units are very difficult for unions to successfully organize. Section 7 allowed either a trade union or an employer to apply to the Ontario Labour Relations Board to combine a proposed bargaining unit with one or more existing units, combine one or more proposed bargaining units, or combine one or more proposed units and one or more existing units, as long as all proposed and existing bargaining units were proposed or represented by the same union. The Board could consider the factors it deemed appropriate in determining whether to grant the application, but was directed to consider if the combination of bargaining units:

(a) would facilitate viable and stable collective bargaining;

(b) would reduce fragmentation of bargaining units; or

(c) would cause serious labour relations problems.

An important aspect of s. 7 was that the language of s. 7(3) was prospective rather than remedial, and was thus interpreted by the Board in such a way that it

created a low threshold for applicants.[1] The Board applied the following test: *Would the consolidated unit, at least to some extent, facilitate viable and stable collective bargaining, reduce fragmentation, or cause serious labour relations problems?*[2] It was sufficient that consolidation "might" make viable and stable bargaining easier.[3] Applicants did not need to establish "undue fragmentation" or indeed any problem with existing structures.[4] A more comprehensive unit was "presumptively appropriate" unless it was "idiosyncratic or perverse," or would cause serious labour relations problems that "demonstrably overwhelm" the difficulties of fragmentation.[5] As a result, the Board stated that it "may well be unusual" for a section 7 application to be denied.[6]

Section 7(5) gave the Board discretion to amend any certificate or any provision in a collective agreement. This meant that it was possible to have the collective agreement of an existing bargaining unit extended to the members of the new combined bargaining unit, though the Board's practice was to only make such an order when appropriate,[7] and in general to only use its powers under s. 7(5) when the parties had satisfied their statutory duty to bargain.[8]

The implementation of Combining Bargaining Units provisions that include the essential features of the former Section 7 would create new possibilities to

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[1] *IBEW, Local 636 v Mississauga Hydro-Electric Commission*, [1993] OLRB Rep 523 at para 23; *North Bay Newspaper Guild, Local 241 v North Bay Nugget*, [1994] OLRB Rep 1137 ["North Bay"] at paras 67 and 70.
[2] *Mississauga, supra* note 1 at para 28.
[3] *Ibid* at para 24; *North Bay, supra* note 1 at para 71.
[4] *Mississauga, supra* note 1 at paras 23-24; *North Bay, supra* note 1 at para 67.
[5] *OPSEU v Salvation Army in Canada & Bermuda,* [1994] OLRB Rep 85 at para 21.
[6] *CEP, Local 87-M v Spectator (The)*, [1995] OLRB Rep 559 at para 17.
[7] *IAM & AW v Premark Canada Inc,* [1995] OLRB Rep 338.
[8] *Southern Ontario Newspaper Guild, Local 87 and Metroland Printing, Publishing and Distributing Ltd.* (Re), [1994] OLRB Rep 160 at para 24.

address the problems like those with the multi-location employer described above. It would allow our local to incrementally build a broad bargaining unit that would give those members increased bargaining leverage, increased mobility, and would help our local to more efficiently service their needs. It would create the possibility of folding each location into the same (or similar) collective agreements without having to start from scratch for each location. Adopting these provisions would essentially make the clear benefits of large bargaining units attainable for employees of multi-site retail employers.

Conclusion

We wish to thank the Special Advisors for the opportunity to present these submissions on behalf of our nearly 30,000 members of UFCW Canada, Local 1000A. We hope you will take these proposals into due consideration. Due to time restrictions we could not prepare submission on every issue we would have liked to address. For this reason we may make further submissions on other questions in writing.

Presented by Pearl Sawyer, President UFCW Canada Local 1000A

The Sheraton Hotel, 116 King W. St., Hamilton ON

Thursday September 10, 2015, 4:10 p.m.

APPENDIX "A"

Former Section 7 of Labour Relations Act, RSO 1990, c L.2

Combining bargaining units

7. (1) On application by the employer or trade union, the Board may combine two or more bargaining units consisting of employees of an employer into a single bargaining unit if the employees in each of the bargaining units are represented by the same trade union.

Idem, application for certification

(2) On an application under subsection (1) that is considered together with an application for certification, the Board may do the following:

1. Combine the bargaining unit to which the certification application relates with one or more existing bargaining units if the certification application is made by the trade union that represents the employees in those existing bargaining units.
2. Combine the bargaining unit to which the certification application relates with other proposed bargaining units if the certification application is made by the trade union applying for certification for the other proposed bargaining units.
3. Combine the bargaining unit to which the certification application relates with both existing and proposed bargaining units if the certification application is made by the trade union that represents the employees in those existing bargaining units and that has applied for certification for the other proposed bargaining units.

Factors to consider

(3) The Board may take into account such factors as it considers appropriate and shall consider the extent to which combining the bargaining units,

(a) would facilitate viable and stable collective bargaining;
(b) would reduce fragmentation of bargaining units; or
(c) would cause serious labour relations problems.

Manufacturing operations

(4) In the case of manufacturing operations, the Board shall not combine bargaining units of employees at two or more geographically separate places of operations if the Board considers that a combined bargaining unit is inappropriate because the employer has established that combining the units will interfere unduly with,

(a) the employer's ability to continue significantly different methods of operation or production at each of those places; or
(b) the employer's ability to continue to operate those places as viable and independent businesses.

Amendments

(5) In combining bargaining units, the Board may amend any certificate or any provision of a collective agreement and may make such other orders as it considers appropriate in the circumstances.

Non-application

(6) This section does not apply with respect to bargaining units in the construction industry.