

UFCW Canada, Local 1000A Supplementary Submissions on Scheduling

In response to the request of the Special Advisors, these are submissions on the subject of scheduling in addition to those presented on behalf of UFCW Canada, Local 1000A September 10, 2015. Scheduling is a complex issue, and as such, what may work for one sector may not work for all sectors. For this reason the proposals outlined in these submissions will focus on the retail sector. To briefly reiterate the scheduling problems that face retail employees, and particularly those who work part-time, the trends in scheduling practices of employers has created significant uncertainty for employees. Particularly in non-unionized workplaces, employers give no guarantees as to how many hours a part-time employee will receive, give insufficient notice of when shift are scheduled, and make last minute changes to schedules, or cancel shifts either right before they begin, or abbreviate them once the employee has arrived. Even so, employees are expected to show up when scheduled, and often to commit to be available for large portions of the week, with no corresponding guarantee of being scheduled for shifts. Given the competitive nature of the retail sector, without any rules limiting these scheduling practices, employers will be discouraged from committing to any improvements. Our proposals for additions to the *Employment Standards Act* include:

1. The creation of a task-force for the review of scheduling in the retail sector, and investigation of viable scheduling standards
2. Creation of a minimum notice period for posting of schedules
3. A minimum ratio of hours allocated to full-time employees
4. Limitations on availability requirements

Retail Scheduling Task Force

Acknowledging that fair scheduling is an issue that has many layers, and noting that even within the retail sector that finding scheduling standards that are beneficial across the board is a matter that requires careful consideration, a key component of our proposals is the recommendation of the creation of a retail scheduling task force that includes members of government as well as representatives of both unions and employers from the retail sector. The purpose of the task force will be to investigate viable scheduling standards, and make precise recommendations for the implementation of the kinds of measures we will propose below. For instance, our proposal for a minimum notice period for posting schedules, outlined below, has been the subject of various pilot projections aimed at fine-tuning the details. We are thus well positioned to contribute input on this issue, but suggest that other voices should be considered, and systematic research conducted. The task force would research the results of projects such as our scheduling pilot project, but would also research both the practices and minimum standards with respect to scheduling in other jurisdictions, both within Canada and abroad.

Such a task force has been used with great results in the retail/services sector in the past. For instance, a task force was struck to make recommendations with respect to the Tourist Exemption in the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30. A collaboration of law makers and stake holders would be well placed to identify practical issues, and identify workable compromises while working towards rules that provide reliable and fair scheduling practices in the retail sector.

Minimum Notice Period for Posting Schedules

The rationale for a minimum notice period for posting of schedules is simply that for employees whose schedule is not the same week to week, there are additional challenges in planning for one's life. If one's weekly schedule is only posted a day or two before the work week begins, this could (and often does) interfere with one's ability to arrange child care, arrange rides or sharing of a vehicle, schedule a doctor's appointment, or make arrangements regarding the schedule of another part-time job, to name just a few possible difficulties. Simply put, for those who must schedule their lives differently from week to week, advanced notice is of crucial importance.

Our local recently negotiated a pilot scheduling project aimed at addressing the notice issue, with a large food retail employer. We are calling it "two (2) week rolling schedule." Each Thursday the schedule for the work week beginning two (2) Sundays from that date is posted. For instance, on Thursday September 17, 2015, the schedule for the work week beginning Sunday September 27, 2015 is posted. On Sunday September 20, 2015, employees begin the work week for which their schedule would have been posted on Thursday September 10, 2015. Essentially, each employee has at least 10 days' notice of what his/her schedule will be for the week.

This project was not arrived at arbitrarily, but was the culmination of past efforts to fix one component of scheduling with this particular employer. Beginning in spring of 2013, talks and research were conducted by senior labour relations operations and union leadership. In February 2014, we began a "stable scheduling" pilot project that included setting schedules for 12 weeks at a time. This particular project involved setting 4 different successive weekly schedules (a "4 week block"), and having the four week block repeat

three times for a total of 12 weeks. It also involved a “bid” process in which employees could select shifts in accordance with their seniority, and set the schedule they wanted. This “bid” process had many problems, and primarily that it was difficult to match the shifts with the company’s availability requirements. It was dropped in subsequent versions of the project.¹ In September of 2014 a modified version of this project was run using an 8 week schedule (this time the 4 week block repeated twice.) In April of 2015, we piloted 4 different scheduling projects: 2 week rolling scheduling as described above; 2 week block scheduling; 4 week rolling scheduling; and 4 week block scheduling, which was essentially the same as the stable scheduling project, except that the 4 week block did not repeat.

The early feedback suggests to us that we have arrived at method of giving notice for scheduling that works for employer and employee alike in 2 week rolling scheduling. For our members this method of scheduling struck the right balance between advanced notice that helps them plan their lives, and the flexibility afforded them by not having a schedule locked in for too many weeks ahead of time, when the rest of their lives cannot be planned that far in advance. For the purposes of setting a notice period for the Employment Standards Act, the early success of this project would be something we would urge the task force to consider.

We would argue this pilot project described above, taken on by a large food retail employer, is evidence that minimum notice for part-time retail employees is a workable notion. We further note that in February of this year, Walmart announced a pilot project to

¹ Some form of stable scheduling, in which part time employees receive the same shifts each week, subject to the opportunity for the employee to alter the schedule at regular intervals, may be the ideal solution. As the project illustrated, however, getting the details right is a difficult matter. The feedback we received suggested our members felt the rigidity of 12 week stable scheduling outweighed the reliability benefit.

commence in 2016 that would offer *some* employees fixed schedules, as well as schedule posting at least two and a half (2.5) weeks ahead of time.² We highlight this not to applaud Walmart, or to suggest that such reform may occur through employer-led initiatives (the company could just as easily revoke these practices as make them permanent), but simply to note that Walmart, by no means a leader in employment standards or labour relations, is signaling that reliable scheduling is workable. What the *ESA* should provide is a minimum notice for *all* retail employees, and a standard below which no employer may fall.

A necessary component of a minimum notice period for posting schedules is that an employee must be able to count on the schedule once it is posted. Too often employers will change schedules at the last minute, cancel shifts at the last minute, or send employees home in the middle of a scheduled shift. As we explained in the report presented on September 10, 2015, 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 in lost wages and the expense of travelling to work only to be sent home. With the exception of force majeure circumstances, the employer should not be allowed to change the schedule once posted without consent of the affected employees. This aspect of schedule notice is important for ensuring that the notice requirement achieve the objective of providing retail employees with some stability, and increase their ability to effectively plan their lives.

² <http://blog.walmart.com/in-letter-to-associates-walmart-ceo-doug-mcmillon-announces-higher-pay>; <http://cdn.corporate.walmart.com/a1/0e/6fec066e4cf48b9ec4b9f09bcd67/associate-opportunity-fact-sheet.2.pdf>

On September 10, 2015, the Special Advisors asked how a minimum scheduling notice requirement in the ESA would affect collective agreements with existing notice requirements. We envision the notice requirement functioning as a minimum standard, above which parties are free to contract. However, in the absence of a notice requirement, or if there is a lesser requirement in a collective agreement, the ESA notice requirement would prevail. Section 5 of the ESA sets out the rules for when parties can contract out of an employment standard:

5. (1) Subject to subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void.

(2) If one or more provisions in an employment contract or in another Act that directly relate to the same subject matter as an employment standard provide a greater benefit to an employee than the employment standard, the provision or provisions in the contract or Act apply and the employment standard does not apply.

Section 5 lends itself to the desired operation described above. However, it is potentially possible that a scheduling provision in a collective agreement that is organized differently, and that provides less advanced notice than that specified in the *ESA* may be found to provide an overall greater benefit. In such an instance it is possible that the provision in the collective agreement may apply instead of the employment standard. But in no instance should a minimum notice scheduling provision impose a lesser benefit than one negotiated into a collective agreement.

A minimum ratio of hours dedicate to full time employees

Retail is such a growth sector in Ontario, and as retail jobs are not jobs easily displaced or shipped over-seas, retail employers stand to continue to be among the largest in terms of jobs provided. For this reason it is of the utmost importance that the retail sector begin to generate *good* jobs. In our submissions presented on September 10, 2015, we explained the problem of “overhiring” and the resulting lack of sufficient hours for many employees, that we argue are preventing good jobs from being created. For your convenience, we will reiterate these issues.

We found that one of the unintended consequences of the dramatic rise in minimum wage in Ontario, particularly between 2007 and 2010 was that retail employers looked to control their costs by keeping a large workforce of part time employees, none of whom received many shifts.³ For instance, in work places in which wage progressions were tied to hours worked, this prevented employees from working their way up the pay scale as quickly. But there were other advantages gained by employers through these overhiring practices as well. This practice provides employers with 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. The benefits are not shared by employees, however. For part-time

³ We would argue that the problem was not with the increase in minimum wage, but with the over-a-decade long stagnation at \$6.85 that caused such a dramatic increase to be necessary.

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 with an unpredictable schedule and income.

Our proposal aimed at addressing this problem is a guarantee of full time hours to a certain number of employees based on the total hours scheduled in a given workplace. We reproduce the guaranteed hours provisions from the part time scheduling portion of one of our recently negotiated collective agreements:

Hours of work shall be allotted according to seniority on a departmental basis as set out in 2.02 (a) above according to a step down approach to scheduling provided the senior employee(s) has the necessary skill and ability and knowledge to perform the work and is/are available.

Departments of Ten (10) or More Part Time Employees

Within each department of ten (10) or more part time employees:

- the senior-most 25% of part time employees (rounded down to the nearest full number) will be eligible for a guarantee of twenty-eight (28) hours weekly provided that they meet the minimum availability plus one additional day for day employees or plus one additional evening for evening employees or plus one additional night for night employees per week.
- the next senior-most 15% of part time employees directly below the 25% (rounded down to the nearest full number), will be eligible for a guarantee of twenty-four (24) hours weekly provided that they meet the minimum availability;
- the next senior-most 10% of part time employees directly below the 15% (rounded down to the nearest full number), will be eligible for a guarantee of twenty (20) hours weekly provided that they meet the minimum availability.

The Employer shall maintain the responsibility for determining the number, length and configuration of shifts within each department

It is the Company's intention that the guarantee(s) will be met; in cases where the hours are not available within one or more guarantee-eligible employee's skill, ability, knowledge and availability so as to enable the Company to satisfy the **guarantees**, noted above such employee(s) will be given the option of accepting hours outside of his or her declared availability in order to receive the guarantee. Should the employee decline to work outside of his or her stated availability, it is understood that the employee may not receive **the applicable guarantee** that week.

The number of employees eligible for the guarantees shall be calculated weekly based on the number of part time employees to be scheduled **in that week**. The employees so eligible shall be designated as such on the posted schedule.

The **above guarantees** may be reduced by four (4) hours during the week a statutory holiday or eight (8) hours during a week in which there are two statutory holidays, only in cases where the store is closed.

Beyond those employees entitled to a **twenty (20) hour guarantee** the employer commits that it shall limit the step down/gap to a maximum of four (4) hours between employees. *Example: The first employee(s) below the guarantee - eligible employees on the schedule should be scheduled no less than 16 hours (provided such employee has not restricted themselves under (d) or article 7.06, or Letter Of Understanding 59.*

Subject to the guarantees as described above, there shall be no obligation to maximize the hours of individual employees within the department. Nor shall there be any right on the part of employees to select their shifts. The assignment of shifts is at the discretion of the employer.

Departments of Eight (8) to Nine (9) Part Time Employees:

Within each department of eight (8) to nine (9):

- the senior-most 20% of part time employees (rounded down to the nearest full number) will be eligible for a guarantee of twenty-eight (28) hours weekly provided that they meet the minimum availability plus one additional day for day employees or plus one additional evening for evening employees or plus one additional night for night employees per week .
- the next senior-most 15% of part time employees directly below the 20% (rounded down to the nearest full number), will be eligible for a guarantee of twenty-four (24) hours weekly provided that they meet the minimum availability.

The Employer shall maintain the responsibility for determining the number, length and configuration of shifts within each department

It is the Company's intention that the guarantee(s) will be met; in cases where the hours are not available within one or more guarantee-eligible employee's skill, ability, knowledge and availability so as to enable the Company to satisfy the guarantees, such employee(s) will be given the option of accepting hours outside of his or her declared availability in order to receive the guarantee. Should the employee decline to work outside of his or her stated availability, it is understood that the employee may not receive the applicable guarantee that week.

The number of employees eligible for the guarantees shall be calculated weekly based on the number of part time employees to be scheduled in that week. The employees so eligible shall be designated as such on the posted schedule.

The above guarantees may be reduced by four (4) hours during the week a statutory holiday or eight (8) hours during a week in which there are two statutory holidays, only in cases where the store is closed.

Subject to the guarantees as described above, there shall be no obligation to maximize the hours of individual employees within the department. Nor shall there be any right on the part of employees to select their shifts. The assignment of shifts is at the discretion of the employer.

Departments of Less than Eight (8) Part Time Employees

The Employer commits that the senior-most part time employee will be entitled to a guarantee of twenty eight (28) weekly hours provided that he or she meets the minimum availability plus one additional day for day employees or plus one additional evening for evening employees or plus one additional night for night employees per week where practical having regard to the needs of the business. The Employer shall maintain the responsibility for determining the number, length and configuration of shifts within each department.

The twenty-eight (28) hour guarantee may be reduced by four (4) hours during the week of a statutory holiday or eight (8) hours during a week in which there are two statutory holidays, only in cases where the

store is closed.

Subject to the guarantee as described above, there shall be no obligation to maximize the hours of individual employees within the department. Nor shall there be any right on the part of employees to select their shifts. The assignment of shifts is at the discretion of the employer.

Senior officials designated by the Union and the Company shall meet on an as required basis to discuss issues or concerns related to scheduling.

The above clauses guarantee a certain percentage of the senior-most employees a certain amount of hours based on the amount of employees in a given department. A similar provision aimed at providing full time positions in the *ESA* need not apply on the basis of seniority, or based on number of employees, however. We propose that depending on how many total hours an employer schedules per week, a certain percentage of employees must be guaranteed at least 40 hours per week, or be classified as full time. At various thresholds of weekly store-wide hours, that percentage would increase. The thresholds and percentages could increase incrementally after such an employment standard is introduced, to allow employers to adjust to scheduling more full time staff. We argue this adjustment is possible, as the history of the retail sector shows. Scheduling a staff of largely full time workers was the norm for many years in Ontario. The appropriate thresholds and percentages would be an issue we suggest should be examined by the retail scheduling task force.

Guaranteeing full time hours to a certain percentage of employees, based on the amount of hours scheduled each week at the workplace would begin to return reliable full time positions to the retail sector. The intent of creating this employment standard would act to curb, at least to some extent, the overhiring practices described above.

Limitations on availability requirements

Our last proposal is another scheduling standard aimed at addressing the issue of part time employees receiving very few hours, but being expected (and in some cases required) to be available to work any shift scheduled by the employer. In a situation of obvious power imbalance, employees are required to take those hours they can get, when they can get them, without any corresponding commitment on the part of the employer. We propose that there be limitations on the times which an employer can require its employees to accept a shift, and that such limitations be even more strict for those employees who are not guaranteed a minimum amount of hours. I reproduce a portion of the part time availability requirements in the same collective agreement as referenced above:

Minimum availability is one of the following:

“Evening” employees must be available to be scheduled all of the following:

- a. a minimum of one (1) evening between Monday and Thursday
- b. Friday evening
- c. Saturday and Sunday (open to close)

Evening availability shall begin at 5 pm and shall conclude at store closing unless otherwise agreed between the store manager and the individual employee.

Or

“Day” employees must be available to be scheduled all of the following:

- a. a minimum of one (1) day between Monday and Thursday
- b. Friday day
- c. Saturday and Sunday (open to close)

Day availability shall begin at store opening and conclude at 6 pm unless otherwise agreed between the store manager and the individual employee.

Or

“Night” employees must be available to be scheduled all of the following:

- a. a minimum of one (1) night between Sunday and Wednesday
- b. Thursday night
- c. Friday night and Saturday night

Night availability shall be defined as 10 pm to 9 am unless otherwise agreed between the store manager and the individual employee.

These provisions set out the minimum availability options (times when an employee is required to be available for a shift) for part time employees at this workplace. We are currently running a pilot project that reduces these availability requirements further for Day available part timers, and those part time employees who are not guaranteed any hours under the guaranteed hours clauses reproduced above:

Day available Part time Notwithstanding that part time employees must maintain an open to close availability on weekends (Saturday and Sunday), part time employees who have declared a "day" availability shall not be scheduled beyond 6 p.m.

Part time who are not eligible for a Guarantee of Hours or choose to opt out

Employees who are not eligible for a guarantee of hours may choose to limit their availability to Friday Day and Evening/Night and Saturday and Sunday open to close or choose to not be available Monday through Thursday, but must continue to meet the balance of their availability requirements.

We propose that employers be allowed to require a certain level of availability for those employees who they guarantee at least 20 hours per week, and a lesser level of availability for those who they do not make a minimum guarantee of hours. The level of availability would be another issue to investigate for the task force.

This standard would work hand in hand with the minimum ratio of full time employees proposal to provide further stable and reliable jobs, and would help enable part time employees to fit their part time jobs into the rest of their lives.

Conclusion

We would like to thank the Special Advisors for their invitation to make further submissions on the issue of scheduling in the retail sector. We believe that the creation of a retail scheduling task force to work out the implementation of the other three proposals we

have made with respect to scheduling would be a significant step towards improving the working lives of employees in the retail sector, and furthermore would lead to the creation of good jobs employees in Ontario can count on. We remain available to provide supplementary submissions in response to any questions the Special Advisors may have as they arise.

Submitted on behalf of United Food and Commercial Workers Canada, Local 1000A

By Pearl Sawyer, President

70 Creditview Road, Woodbridge, Ontario, L4L 9N4

psawyer@ufcw1000a.ca