

June 16, 2015

Changing Workplaces Review

Good Day. Thank you for allowing me to make a presentation on this important review of The Employment Standards Act, 2000 and the Labour Relations Act, 1995. My name is Joel Smith. I have been an organizer for Unifor Local 222 in Oshawa for the past 11 years.

I wish to focus my thoughts on the Labour Relations Act and naturally, how this relates to organizing workers and the challenges we face doing so.

Temporary Agency Workers Rights

There is an increasing amount of talk about precarious work these days. It is not a new phenomenon. I have seen many workplaces that fully use temporary or agency employees to staff their businesses. This practice takes away the obligation of being an employer from in most cases the true employer. It also acts as a shield for some unscrupulous employers from scrutiny in their labour practices. Make a complaint in the workplace and you don't come back the next day.

The use of temporary workers also acts as a barrier for workers to organize themselves to bargain collectively. It is easy to pick out supporters and send them back to the agency and have them replaced with new compliant workers.

In October of 2006, we were successful in organizing a workplace in Whitby where 100% of the workplace was from temporary agencies. It was an extremely hard campaign as the turnover was excessive. When we did file our application the ballot box was sealed as the employer claimed they has 0 employees on their response. We were ultimately successful and were able to gain recognition that company was

indeed the employer. In 11 years of organizing, this example is the exception, not the rule.

The Labour Relations Act needs to address the issue of temporary and agency work and how it relates to workers organizing unions. Temporary and agency workers right to organize needs to be clarified and protected. It needs to be made clear that the current unfair labour practices contained in sections 72 and 76 apply to them as well. Too often we hear in an organizing campaign that they are not employees and it doesn't involve them.

Card Check Certification

The decline in union density in the private sector is noted in the Guide To Consultation. There has been a marked increase in income inequality, precarious work and wage stagnation that accompanies this decline. Pensions have been top of mind to many Canadians and indeed the lack of workers covered by pensions is an issue troubling governments. In Ontario only about 1/3 of workers are covered by a workplace pension. Unions represent about 75% of those with a workplace pension plan. Lower union density equates to lower participation in workplace pensions. Unions play a constructive role in the economic security of our province.

This brings me to question number 12 in the Guide To Consultations. It is time for the government to restore card check certification beyond the construction sector. In every jurisdiction in North America that has adopted the vote-based system, union density has gone down. The change that the Harris government made when they eliminated card check certification has tilted the balance of labour relations. The lack of card check has created a barrier to workers joining unions.

I know of no other system that claims to be democratic that works in such a manor as the current vote system. It is ridiculous to suggest that a system that worked well since the 1950's suddenly became flawed 40 years later in the 1995. Imagine if to get elected you first had to sign up a minimum of 40% of the population and then apply for a vote. Imagine if our politicians had to secure 50% plus 1 to be a

legitimate government. No other democratic system of choice exists in Canada that allows for someone who does not have the right to decide for me prove my intention in front of them.

Workers are not stupid. When they sign an application for membership card with a union they are joining a union. Why do we second-guess their expression of choice? Why do employers have a week after the application to combat the union certification vote and "ask that the workers vote no"? Does anyone reasonably believe that the opinion of the person that signs my paycheque has no influence? Do I get a week to reconsider my decision for MPP, MP, Mayor or city councilor?

In my experience I have won and lost votes. I have witnessed much abuse of the unfair labour practice sections of the act by employers. It is nearly impossible to take on every breach of the act. The Labour Relations Act, 1995 applies to both employers and unions equally. If labour relations are balanced in the Province of Ontario then ask how many unions have unfair labour practice complaints filed against them with regard to certification drives? How many have been found guilty in the last 20 years? Compare that to the amount filed against employers.

I can think of no valid reason to ask a worker if they really meant to sign that union card. I have not seen any evidence to show unions have been filing bogus certification applications. Why put workers through a pressured vote in the workplace, in front of their employer to prove their "true intent"? It is an unreasonable test. I challenge the notion that this is ever a vote free of intimidation.

Successor Rights For Third Party Workplaces

My last issue that I would like to see remedied is successor rights for third party workplaces. Most workers who are covered by a collective agreement are covered by the sale and transfer provisions of the Act. Third party workers are not. These workers tend to be in lower waged workplaces and are more vulnerable if their employer loses a contract with the customer. In some cases the new employer will take on the existing workforce but not the collective agreement. In other cases the

new employer will cut a voluntary recognition deal with another union; taking away the choice of the workers. The remedy for dealing with this is not easy for workers. Workers in third party workplaces deserve equal protection under section 69.

In summary

The issues I would like to see changed in the Labour relations act are:

- Recognition of the increase of employers using temporary agency employees and removing the barriers for these workers to join unions.
- Return card check certification.
- Amend section 69 to add successor rights for third party workplaces.
- Thank you for your time today.

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