ACCO Brands Canada Inc.
7381 Bramalea Road
Mississauga, ON L5S 1C4
Tel 905.364.2600
Fax 905.364.2653

October 14, 2016

Delivered by e-mail

Hon John C. Murray, Co-Chair
C. Michael Mitchell, Co-Chair
Changing Workplaces Review, ELCPB
400 University Avenue, 12th Floor
Toronto, Ontario M7A 1T7

CWR.SpecialAdvisors@ontario.ca

Dear Sirs:

Submissions – Changing Workplaces Review Interim Report

I am writing you today on behalf of ACCO Brands Canada in response to a request for submissions related to the Ontario Government's Changing Workplaces Review. While we applaud the Ministry of Labour for undertaking this review, there are a number of proposed legislative changes being considered that we believe will have a negative impact on our ability to compete in an ever-increasing global economy.

As background, ACCO Brands Canada is a wholly-owned subsidiary of ACCO Brands Corporation, one of the world's largest designers, marketers and manufacturers of school and office supplies. ACCO Brands Canada is a mid-size business, employing approximately 250 Canadians and operates a 300,000 square-foot manufacturing, distribution and Head Office facility here in Mississauga, Ontario.

We are concerned that changes contemplated to the Employment Standards Act, 2000 ("ESA") and the Labour Relations Act ("LRA") in the Special Advisors' Interim Report will reduce flexibility and drive costs higher resulting in the unintended consequence of making local manufacturers and businesses such as ACCO Brands Canada less competitive in an ever challenging and more demanding global economy.

We need to make sure that Ontario employment legislation balances the needs and rights of workers with the needs of employers to be able to respond quickly and efficiently to changing business circumstances.

We are particularly concerned about options for legislative change with respect to the following issues: under the ESA, Termination, Severance and Just Cause, Hours of Work, Overtime and Scheduling; and under the LRA, Card-Based Certification and Disclosure of Employee Lists. Our submissions focus on these issues.

ACCO Brands Canada Inc.
7381 Bramalea Road
Mississauga, ON L5S 1C4
Tel 905.364.2600
Fax 905.364.2653

Employment Standards Act, 2000

Termination, Severance and Just Cause

Termination and severance issues are of paramount interest to ACCO. While we do not oppose amending the legislation to ensure effective treatment of employees, we are greatly concerned that some of the options for legislative change identified in the Interim Report, if implemented, will create what we define as additional hurdles and hardship to operating in an already challenging economy.

The ESA termination and severance provisions are intended to be minimum entitlements. They do not operate to prevent an employee and employer from negotiating for a greater contractual right or benefit. They do not operate to deny employees the right to common law reasonable notice. If employees feel that they have been inadequately compensated for termination, they may either file a complaint with the Ministry of Labour or sue for reasonable notice in a wrongful dismissal action.

We are even more concerned about revising the ESA to include just cause protection (adjudication) for all employees covered by the ESA. We do not support this option for the following reasons.

Limiting an employer's ability to terminate for anything but just cause could cause significant hardship. To remain competitive, it is occasionally necessary to restructure the organization (which can involve position eliminations) to address changing market conditions and/or the need for new skillsets. This is never an easy decision and one that is only taken after a thorough review and implemented in a manner that treats affected employees in a fair and dignified manner.

Further, the threshold for establishing just cause for dismissal under the ESA and under the common law is extremely high. If the ESA is amended to prevent or even substantially restrict an employer from terminating the employment of unsatisfactory employees on a without cause basis (i.e., with applicable notice and severance pay), then this would undoubtedly lead to fewer job openings and fewer new hires. Individuals who are already having a hard time entering the workforce would likely have an even harder time finding a job.

Finally, adding just cause protection to the ESA would, in our opinion, force employers to consider looking at short-term contractual hires versus permanent ones. This would be counterproductive to what employees are generally seeking, which is benefits and stability.

ACCO Brands Canada Inc.
7381 Bramalea Road
Mississauga, ON L5S 1C4
Tel 905.364.2600
Fax 905.364.2653

In light of the above, ACCO supports the following recommendations with respect to termination, severance and just cause:

- Maintain the status quo.
- Do not change the 8-week cap on individual notice of termination, either up or down.
- Do not eliminate the 5-year condition for entitlement to severance pay.
- Do not eliminate the 26-week cap on severance pay.
- Do not amend the ESA to provide just cause protection for employees.

Hours of Work, Overtime and Scheduling

One of the options listed in the Interim Report is to reduce the weekly overtime pay trigger from 44 to 40 hours. We concur with the views expressed by employers during the consultation process, as described in the Interim Report, that the 44-hour overtime pay trigger should be maintained. To this end, we note that employment standards statutes in half of the provinces have an overtime pay trigger of 44 hours or even higher.

Another of the options listed in the Interim Report is to require employers to get consent from workers in order to add hours or shifts after the initial schedule is posted. We appreciate that many employees prefer to work a predictable schedule. However, employees' interest in predictability must be balanced with the employer's interest in flexibility and productivity. In today's economy, it is more important than ever for employers to be flexible enough to respond to rapidly changing operational and production demands. We believe that the addition of any legislative provision that imposes rigid scheduling requirements on employers, including the requirement to obtain employee consent to change a schedule, will hurt employers' and Ontario's competitiveness.

For these reasons, ACCO supports the following recommendations with respect to hours of work, overtime and scheduling:

- Ensure that the ESA provides employers with the flexibility to respond to changing operational and production demands.
- Maintain the ESA provision for when overtime must be paid (i.e., after 44 hours).
- Do not amend the ESA to include specific provisions around employers' scheduling obligations.

ACCO Brands Canada Inc.
7381 Bramalea Road
Mississauga, ON L5S 1C4
Tel 905.364.2600
Fax 905.364.2653

Labour Relations Act

Card-Based Certification

The options for amending the LRA listed in the Interim Report include returning to a card-based certification process. We urge the special advisors not to recommend this option and instead to maintain the secret ballot vote as part of the union certification process.

We concur with view expressed by employer stakeholders during the consultation process, as described in the Interim Report, that the secret ballot vote process currently in place is more democratic than a card-based process. Moreover, in a card-based certification process, employees have no right to privacy. The Ontario Labour Relations Board ("OLRB"), union officials, and very likely even some co-workers know whether or not an employee has signed a union card. In fact, it is not unreasonable to believe that some employees sign a union card in response to significant union and peer pressure during the certification campaign. In this sense, a secret ballot vote better reflects the true wishes of employees.

For these reasons, ACCO supports maintaining the requirement for a secret ballot vote in the union certification process.

Disclosure of Employee Lists

Currently, it is possible for a union to file an application for certification with less than the required 40% support, only to withdraw the application as soon as it receives the employee list with the employer's response to the application. The union can then use the list to assist in its ongoing efforts to organize the workplace.

Therefore, regarding the proposal that employers might be compelled to provide a union with employee information, as discussed in the Interim Report at pages 74 and 75, we concur with employers who have raised concerns about:

- Employers effectively helping employees to organize;
- The privacy implications for employees;
- The potential for unions to "game" the system in order to gain information that would help them organize;
- The union's obligation to prove it had met a threshold;
- The OLRB's criteria for deciding whether a threshold has been met; and
- The possibility of extensive litigation over these issues.

ACCO Brands Canada Inc.
7381 Bramalea Road
Mississauga, ON L5S 1C4
Tel 905.364.2600
Fax 905.364.2653

We appreciate your consideration of our concerns about the proposed options for changing the Employment Standards Act, 2000 and the Labour Relations Act. It is important that Ontario continue to look for ways to help organizations compete in a fast-paced, ever-changing global economy. We would be happy to provide additional detail or context to our comments if required.

Respectfully,

Robert Hodan
President
ACCO Brands Canada Inc.