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Sent via email: CWR.SpecialAdvisors@ontario.ca

Ontario Ministry of Labour
Changing Workplaces Review, ELCPB
400 University Avenue, 12th Floor
Toronto, Ontario M7A 1T7

RE: Submission on Interim Report of Changing Workplaces Review

Dear Special Advisors,

The Ontario Municipal Human Resources Association (OMHRA) is pleased to have the opportunity to respond to the Changing Workplaces Review – Interim Report. OMHRA continues to be fully engaged in the Changing Workplaces Review process. OMHRA submitted a letter on September 18, 2015 during the public consultation period, which will be referred to in this response and is attached for reference purposes. OMHRA also submitted a letter on August 31, 2016 in relation to the Personal Leave Provisions outlined in the Interim Report.

For the last 50 years, OMHRA has been the premier professional association representing over 400 active human resources, labour relations, and senior management professionals employed within the local public sector in Ontario. Our members are employed in municipalities, local Boards and Commissions and our membership is diverse since our member municipalities vary in size, including very large municipalities and municipalities who employ less than 50 employees. Our members provide timely human resources advice and assistance to their respective Councils, Boards, Management Teams and Commissions.

Within the scope of the Changing Workplaces Review (the "Review'"), we held an open consultation meeting at our recent OMHRA conference in Alliston whereby members shared feedback. Many of the comments we have received are outlined below for consideration/discussion in relation to the Interim Review.

Labour Relations Act

The consensus feedback in relation to the Labour Relations Act options that have been outlined for consideration is that many of the options being tabled are proposing to fix the wrong things in the wrong direction. These proposals greatly impact employers' ability to have a voice, provide any important and timely information at critical points in time for the benefit of the employee, and increase the power of Unions in an already slanted playing field.

We are concerned that several points that were raised in the September 2015 OMHRA submission letter, seem to have not been provided attention, as options surrounding these topics are noticeably absent in the Interim Review. Many of these points that we had raised in

the September 2015 submission, if addressed, would actually empower the employee to have a voice and the right and access to receive balanced and clear information during times when they may feel powerless. By not addressing these key points, it is counter-intuitive to the intent and guiding principles of the Changing Workplaces Review, specifically in the areas of "Decency at Work", "Consistent Enforcement and Compliance and a Level Playing Field", "Stability and Balance" and Creating an Environment Supportive of Business in our Changing Economy."

Many of the options outlined in the Interim Review under the Labour Relations Act considerations will have a negative and detrimental impact on the Employer/Union relationship and work culture moving forward. Likewise, by not addressing some key issues, the result will be an equally negative effect. Some very key issues that have not been addressed, but which were identified in the September 2015 OMHRA letter (as attached), are as follows:

1. No provisions have been provided in the Interim Review for holding Unions accountable for what they say to their members, including false information. This is a significant concern for employers that are responsible for upholding a safe and respectful environment at all times.
2. There should be expanded "Right of Free Speech" and information provisions for employers to provide information during a Union Certification process. This will assist employees in making an informed decision.
3. The interest arbitration process is in need of immediate review and change, and options surrounding this were considerably absent in the Interim Report.
4. Suggested revisions to the Certification process as outlined in the OMHRA letter were not addressed.
5. The Decertification process should be simplified and more accessible with steps outlined in Plain Language for employees to follow. The current process is extremely cumbersome and the steps of how to decertify are not easily accessible on Ministry websites. There should be allowances for the employer to provide information about the Decertification process upon request by employees.
6. Other topics that were raised in the September 2015 OMHRA submission letter that are not reflected in the Interim Review (many of which would provide employees with protection and a stronger voice, which is the intent of the Review) such as: Union's Duty of Fair Representation, Crossing Picket Lines, Unfair Labour Practices, Illegal Strikes, Conciliation Process, Bringing Back Grievance Settlement Officers. and Exclusions for position classifications.

The following sections provide feedback directly in direct response to various options being considered in the Changing Workplaces Review:

4.3.1.2 Electronic Membership Evidence

- There is concern expressed regarding the proposed change that employees should be able to "sign" union membership cards online and not be required to sign paper cards. Specifically, would there be any oversight by the Ministry to ensure validity? At least with a signature on a membership card there is proof provided that an individual signed it. What controls would be in place?

4.3.1.3 Access to Employee Lists

- The protection of employee privacy is key, as in the Municipal sector we are bound by MFIPPA (Municipal Freedom of Information and Protection of Privacy Act); therefore we are concerned about being required to provide a union with access to employee lists

with or without contact information. The option to maintain the status quo would be supported in this regard.

4.3.1.4 Off-site, Telephone and Internet Voting

- The option to "Explicitly provide for alternative voting procedures outside the workplace and/or greater use of off-site, telephone and internet voting" would be a welcome change, as it would ensure a higher representation of members being able to vote and have a voice. We hear many stories that employees who were unable to attend the vote for various reasons such as poor driving conditions due to the weather, personal commitments or having to care for young children at home. Again, oversight would be key to ensure validity and there would need to be strict protocol in place.

4.4.1 Replacement Workers

- The option to maintain the status quo of allowing replacement workers during a strike is fundamental and integral to the functioning of public services and public safety. There are integral public services that are provided by Municipalities such as in Social Services Ontario Works for Income replacement, Housing services for housing placement and rent subsidies, Child Care, Long-term Care, Roads services such as snow plowing, Waterworks for drinking water safety, and more. Not allowing replacement workers during a strike would drastically impact the safety and security of not only vulnerable individuals in our communities but could threaten public safety as a whole. This municipal consideration MUST NOT be overlooked.

4.4.2.1 Application to Return to Work After Six Months From the Beginning of a Legal Strike

- There are examples of strikes in Ontario that have continued well past the six month mark and into several years. By maintaining the six-month time reference in the current LRA section, it serves as a realistic timeframe in which an employer is required to reinstate the employee in the employee's former employment. Removing this six-month time period would be extremely detrimental for employers in Ontario.

4.4.2.2 Refusal of Employers to Reinstate Employees Following a Legal Strike or Lock-out

- Having a safe, respectful and harassment-free workplace should be an expectation of employers and employees at all times, regardless if there is a strike occurring or not. There are many examples of union members feeling unsafe or threatened by other union members during a strike situation. This is unacceptable. It would be fair for an investigation to be conducted in situations of alleged misconduct during a strike situation, but employers must not be deemed in this situation to be prying into Union business or seen as acting in contravention of the Labour Relations Act. Therefore, maintaining the status quo is supported. In a legal strike situation, the employees by nature are not working under a current Collective Agreement due to its expiry, so they should not have access to the grievance and arbitration process.

4.6.2 Employee Voice

- The preferred approach is to maintain the status quo. To mandate an institutional employee voice mechanism has the potential to create a divisive workplace. Also, having this mechanism in place still does not ensure that this voice represents the totality of the employee group as a whole. There are several examples of employees in

workplaces who have formed an “Employee Association”. So the ability to have this employee voice exists under current legislation and should remain as status quo.

Conciliation Boards

- In the review it is identified that conciliation boards are never appointed in practice and this mechanism fell generally into misuse. It would be ideal to simplify and make clear the processes by removing this reference to a procedure that is set out in legislation and not used in practice.

First Contract Arbitration

The preferred approach is to maintain the status quo. Consensus feedback received from our members demonstrate that there is no appetite amongst municipalities, based on their experience with interest arbitration in the emergency services sectors, for the possibility of an increase in the imposition of interest arbitration beyond emergency services and homes for the aged. First contract negotiations are essential to the establishment of a fair and reasonable collective agreement and this should remain within the control of the parties unless and until the current requirements for first contract interest arbitration are met. We also do not believe that the status quo has lead to unfair or an unbalanced outcome to date.

Employment Standards

Consensus feedback received reflected that there are some proposed changes in the Interim Review that would be welcome and would further enhance employment in Ontario for both employers and employees. That said, caution is necessary as some of the stated options would be extremely detrimental to employers in their ability to do business and the financial impact of some of the proposed changes. The financial impact is a large consideration for Municipalities, as any increase in financial obligation results in higher municipal tax rates for residents in Ontario. Some of these changes would be particularly impactful on small, lower tier municipalities in rural Ontario.

Although we were pleased to see some areas that we had identified in our previous submissions were reflected in the Interim Review, there were other areas of concern that are noticeably absent. These areas of concern are

1. The category of “construction employers” should be removed for Municipal employers.
2. The revision of the minimum ‘call-out’ provision
3. Rigid ESA breaks language and provision for “mobile” workplaces with flexibility for mobile workplaces, which falls in line with the changing technological workplace.
4. Development of a new tribunal to remove wrongful terminations from the courts.
5. Revision of the need to provide reasonable notice for the termination of employment to those employees absent from the workplace for over two years.

The following sections provide feedback directly in response to the various options being considered in the Changing Workplaces Review:

5.2.1 Definition of Employees

- The opportunity to increase awareness and knowledge for both employers and employees is ideal. Expanding the education component with respect to rights and obligations, would be a welcome change through enhancing the communication on the Ministry website and the provision of information sheets that could be given to employees or posted on bulletin boards.

5.2.3 Exemptions, Special Rules and General Process

a) The option of amending the definition of Information Technology professionals to try to make its scope clearer would be supported as well as the possible removal of the exemption from hours of work and overtime pay, or creation of some different rule. Many employers struggle to avoid exceeding the minimum standards currently for this group, in relation to lieu time or flexibility of hours, on their own accord. The financial impact on employers would need to be considered for the removal of this category exemption.
b) For the category of Managers and Supervisors, there are many employers who again struggle to avoid exceeding the minimum requirement of hours of work and overtime in this area, or reconcile with time in lieu or flexibility of work schedule, on their own accord. There is concern about having the category defined by looking at the primary purpose of the job, circumstances of work, how many employees the manager oversees, and primary duties. This varies greatly from organization to organization, as well as a lack of standardization of position titles, so the many of the proposed options are problematic. Furthermore, although the same duties between two managers may be the same, the size of the organization would then dictate if the exemption is applicable due to a manager at a smaller organization only having 1 or 2 reports, where a manager at a larger organization may have several. This should remain status quo or needs further discussion and consideration of the financial impact on employers if this exemption is removed.
c) In regards to Residential Building Superintendents, Janitors and Caretakers of residential buildings in which they reside, there would be benefit to reviewing more fully and looking at reforming this current exemption. Many municipalities provide Social Housing services and oversee rent-geared-to-income Housing and apartment buildings, so this is an area of interest. One area to consider is that the rental fees for their units are usually waived and included in the employee's compensation as a taxable benefit, which makes the situation and financial reimbursement of these employees unique.
d) The issue of Minimum Wage Differential for Students Under 18 is an interesting topic as it seems counter-intuitive to compensate differently based on age. Although the intent and rationale of having a lower student minimum wage is to make it more attractive to employers to higher less experienced younger workers compared to older workers, having a different wage rate is becoming harder to justify in this economy where post-secondary education and cost of living is steadily increasing. There is a concern that Ontario is the only province with this lower minimum wage, so it seems this would be an important topic to look at more closely.
e) It is reasonable that it would be considered to remove the Student exemption from the "Three Hour Rule" for fairness and equity purposes, and to provide this protection Students in the workforce.
f) With respect to the Category 2 exemptions set out in the Review, we believe that a current or subsequent review to consider the modification or elimination of these exemptions is not required at this time.
g) It would be a worthwhile exercise to review the ESA Exemptions under a new process, and of particular interest to Municipalities to have the opportunity to provide further feedback in this new process specifically relating to Ambulance-related professions, Firefighters, Road Construction and Road maintenance, Sewer and Water Main Maintenance and other Maintenance, Students employed at Children's camp (Municipal) and Student employees providing instruction or supervision of children (Municipal) and Growing Trees and Shrubs (as in Municipally-run tree nurseries).

5.2.4.1 Interns/Trainees

- Consensus feedback revealed that a considerable volume of valuable work experience obtained from Intern/Trainee opportunities. The Ministry information blitz has been very helpful to employers and well-received. At this time our suggestion would be to remain status quo, with increased mechanisms for reporting to the Ministry when this category is abused by employers, and increased activity in Ministry investigating in this area. There is concern of administrative burden on the employer if plans need to be filed and approved by the Ministry, and the potential to make taking on an Intern/Trainee less attractive for employers. We encourage the Ministry to continue and improve communication in this area for employers and employees to follow.

5.3.1 Hours of Work and Overtime Pay

- Feedback received strongly supports Option 2 to eliminate the requirement for employee written consent to work longer than the daily or weekly maximums and to spell out in the legislation the specific circumstances in which excess daily hours can be refused. This has proven to be a large administrative burden on employers, with seemingly very little Ministry auditing performed on it, so not requiring these signed documents and renewal/approval on a three-year basis would greatly streamline and benefit the process. Another consideration would be to include this right to refuse in the Employment Standards Information sheet that the Ministry mandates is given to each employee and/or for the Ministry to dictate that this information is required to be included in the employers' policies.

5.3.2 Scheduling

- It is reasonable that employers are required to give sufficient notice for scheduling changes and provide appropriate communication in regards to short notice scheduling changes. Concern is expressed over the option under point 4 to require employers to provide part-timers and full-timers equal access to scheduling and time-off requests. Some employers already do this on their own accord, but consideration needs to be made for how this would affect union employees in the terms of their Collective Agreement and bargaining for vacation time off requests which many unions have precise language around. Further concern has been raised about the option suggested requiring employers to offer additional hours of work to existing part-time employees before hiring new employees, as the importance of having a pool of available part-time employees is critical in ensuring the continuation of operations, specifically in times of illness or absence. Lastly, remaining status quo on the "3-hour reporting pay" provision is important.

5.3.3.1 Public Holidays

- Recommendation to remain status quo with the 2-week provision. To increase this would have a significant financial impact on employers. Furthermore, vacation entitlement is a key compensation factor in union bargaining, so concern is raised on how this increase would be reconciled in current existing Collective Agreements.

5.3.5 Paid Sick Days

- Recommendation to remain status quo. The Employment Insurance (EI) program is in place to provide for paid sick leave for employees who are off of work on unpaid sick time. One consideration would be to review the EI sick provision in a separate review for expansion or change and consideration of the allowance of EI payment for scattered days throughout the year. Mandating a paid sick leave that is funded on the backs of

employers would have a detrimental and significant financial impact on employers across Ontario. This is a significant issue in our view and the status quo must be maintained.

5.3.6 Other Leaves of Absence

- There is support for the introduction of the new leaves: Paid Domestic or Sexual Violence Leave and Death of a Child Leave, which represent some of the most difficult and devastating experiences and individual could go through in their lives. The consensus feedback received is that the income replacement for these leaves should be provided through the EI program (not by employers) and that the job-protected element of these leaves is key.
- Concern has been raised over the length of proposed death of a child leave being to a maximum of 52 weeks, since although grieving would be a continuous and lifelong reality, the reintegration into the workforce may be a positive element in healing. Therefore, consideration should be made into looking at the maximum time period, and consideration of 26 weeks as an alternative, which would be consistent with the time provisions for compassionate care leave. Furthermore, a leave of this magnitude could have serious implications for smaller employers in terms of replacing the absent individual.
- Another possible consideration would be incorporating the element of scattered day provisions, both for EI income replacement and job protected leave, specifically for Domestic or Sexual Violence Leave. In these situations, there can be a significant requirement for attending health care appointments as well as legal and police proceedings and absences from the workplace due to this, so having job protection and scattered day provisions for an employee is key.

5.3.7 Part-time and Temporary Work – Wages and Benefits

- Concern is raised about option 2 on requiring part-time, temporary and casual employees to be paid the same as full-time employees. Consideration needs to be made in terms of how Pay Equity legislation and practice intersects with this proposed option.
- Under option 5, it is reasonable for the Ministry to limit the total duration of limited term contracts to avail employees after a period of time to any benefits and pension plan that would be available for full-time permanent employees. Of note, this item is often included in union bargaining, so concern is raised on how this would be reconciled in current existing Collective Agreements, when the status change may dictate full union membership.

5.3.8.1 Termination of Employment

- Concern has been raised about the elimination of the 3-month eligibility requirement. This is a key period of time for employers to quickly assess if the employee has the skills and abilities that were purported during the interview process and required for the position in question. Recommendation to keep this 3-month eligibility period status quo.
- Under option 2, recommendation to leave the 8-week cap on notice of termination status quo. The existing provision provides a fair balance between employer/employee interests – a reasonable period in which an employee can secure alternative employee while still receiving compensation from the employer and a fixed cost that is not prohibitive such that employers cannot afford to make necessary changes within the workplace.

- It is very reasonable that an employee would be required to provide notice of their termination of employment, as currently it is not enforced and can leave employers in a vicarious situation without adequate staff to ensure business continuity.

5.3.8.2 Severance Pay

- Recommendation that the current Severance pay provisions remain status quo, specifically relating to the continuation of the 5-year condition for entitlement and keeping the 26-week cap. Similar rationale to the status quo as with 8-week cap on notice of termination.

5.3.8.3 Just Cause

- Recommendation to maintain the status quo. Terminating an employee for "just cause" should be backed by a burden of proof under best practices provisions. This provision of "just cause" terminations is integral for the employer to be able to remove an employee from the workplace in situations where the employee's behaviour is extreme, the employee's actions are illegal or there is a significant impact on the organization due to employee incompetence. This also currently intersects with EI eligibility, since employees may be ineligible for EI when terminated under "just cause" reasoning.

5.5.4.2 Reprisals

- There is support for option 4, to not allow anonymous complaints, but protect confidentiality of the complainant, with the understanding that the facts of the alleged violation must be disclosed to the employer by an ESO in order to permit an informed response. Knowing the details of the situation are integral in informing a response, allowing the employer to investigate and if the employer finds they have not followed legislation, it allows the employer take preventative measures, incorporate new training or update internal policies and procedures, and take remedial measures.

5.5.5.1 Inspections, Resources, and Implications of Changing Workplaces for Traditional Enforcement Approaches

- It seems reasonable that the Ministry would consider options relating to the enforcement of Employment Standards in workplaces with migrant workers or those workplaces where there have been complaints and previous issues. Furthermore, it seems reasonable that adopting systems that prioritize complaints and investigate accordingly and options for expediting investigation and/or resolution of complaints would be beneficial for employers and employees alike.

OMHRA appreciates the opportunity to table its comments on the Interim Report during the Changing Workplace Review and we thank you in advance for your consideration of our comments and concerns which we have tabled as a precursor to further discussions as appropriate to explain our position. We are available to discuss these concerns and explore solutions to the problems that we have outlined at your convenience.

Yours truly,

Louise Ann S. Riddell

Louise Ann S. Riddell
President, OMHRA

cc
Board Director Members
AMO
ESSC

Enclosures: September 18, 2015 OMHRA letter on Changing Workplaces Review