



Treetop Children's Centre

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October 5, 2016

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

VIA EMAIL: CWR.SpecialAdvisors@ontario.ca

Re: Comments on the Ontario Ministry of Labour Special Advisors' Report (July 2016)

To Whom It May Concern,

We are writing to you as a committee of the volunteer Board of Directors of Treetop Children's Centre, a not-for-profit licensed child care centre founded in 1983 by a group of parents in conjunction with the Toronto District School Board. We operate on the premises of a junior public school and provide before and after school care for almost 100 families in central Toronto. We operate in a unionized environment and have 14 full time and part time professional staff.

We note several proposals under the Special Advisors Report (July 2016) to the Ministry which cause us concern. It should be noted that we are not lawyers, and have no budget to hire one to read and provide an expert legal opinion on the 312-page report, so what follows is our layperson's understanding. We hope you will be forgiving if we have missed some subtle legalities in our review of the proposals in the interim report.

1. S. 4.4.1 Replacement Workers (pg 89)

The proposal #2 under consideration, is, if we may paraphrase, to eliminate the ability of an employer to continue to operate and provide its stakeholders with services during a strike.

The use of the term "employer" in our situation may have legal grounding, but it is really just an impersonal way of saying the collection of 157 parents in the nearly 100 families who have banded together to use their collective resources to provide professional care for their kids before and after school such that they can hold down a regular job. The premise of the proposal is that the union needs a method of forcing the capitulation of the parents (which is

the substance of who the employer is) irrespective of the merit of union demands during bargaining. We see two main inequities with this proposal:

- a. As it relates to an organization like ours, it is our observation that the current *status quo* already tilts the relative negotiating power in the union's favour. Single parent families or families with two working parents are collectively the overwhelming norms for users of child care services. Most simply can't forego child care services for very long without one parent leaving the work force. They may be able to use vacation days or other very short-term leaves of absences to cover a few days to, at most, a few weeks of labour disruption, but once their vacation entitlements have run out they need to find a childcare solution for the non-school hours while the parents are at work. There is no option for parents not to have a replacement service. In this latter instance, the viability of the organization to continue post-settlement of a strike could be seriously compromised. This is already known to the union and they successfully play upon these fears during bargaining (as any objective review of the wage grid at our centre would show). The only real counterbalance that forces the union side to be reasonable in collective bargaining is the knowledge that, if we had to, we could use temporary workers during a strike in order to ensure we keep the parents from changing service providers (and thus maintain viability of the centre) until a reasonable settlement can be reached. If the Proposal #2 is adopted it will, in our view, encourage excessive demands from the union in the short term, and in the longer term as the cumulative impact of those demands can no longer be sustained, risk the unwinding of this little organization that serves the needs of so many hard working parents in the neighbourhood.
- b. While the proposal of preventing the use of temporary employees during a strike results, for a service organization like ours, in the employer not being able to generate any revenue during a strike, we note the lack of a counterbalance prohibiting striking employees from doing any paid work while a strike is in progress. It seems, therefore, that there is a presumption by the Special Advisors that the parents are always unreasonable in not accepting whatever the union has demanded and must therefore be subject to legislation to force them always to have to make the choice between closing the centre or acquiescing to the union's demands. It is inherent in the unevenness of the Special Advisors's proposal that there is a presumption that the union is always reasonable and that the parents need no legislative protection to force the employees to face financial hardship to temper their demands, as employees may simply take up alternative paid work while they wait out the strike.

There is mention in option #3 under consideration of a carve-out to the general application of proposal #2 above, i.e. an employer may hire temporary replacement workers during a strike unless it is used "for the purpose of undermining a trade union's representational capacity". For all practical purposes, this is the very same option as what is presented as #2 ("Reintroduce a general prohibition on the use of replacement workers"). Consider:

- a. Like many child care centres, an increasing percentage of our parent clients cannot afford the price of our service, and as such, the payment of the fees for their children are made by the City of Toronto. As the City of Toronto is the largest single payor for our services, the Centre must comply with rules established by the City for our annual budgeting process. Notably:
- “Organizations are encouraged to accumulate a surplus not exceeding three months of average operating expenses in order to meet unforeseen contingencies.”
https://www1.toronto.ca/city_of_toronto/childrens_services/files/pdf/budgetguide_childcare.pdf
 - “Excess surplus in a given year may result in a recovery” [i.e. a requirement to surrender to the City some or all of the fees they pay to the child care centre on behalf of lower income families or possibly other grants administered by the city].
- b. We cannot, therefore, accumulate cash reserves greater than three months of operating expenses without risking the loss of revenue provided by the City up to an amount that would eliminate the “excess” surplus. (i.e. we generally can’t accumulate a larger surplus even if we try);
- c. The union has the right to our financial statements during any bargaining process and knows what that cash reserve amount is;
- d. Our union particularly, but this would apply to almost any large union, has considerably more financial resources than the above maximum allowable three months operating reserves of a small 14 person not-for-profit child care centre;
- e. As it relates to Proposal #3, it seems that whether we as a group of parents, as the employer, would ultimately be successful in demonstrating our view (that the use of temporary staff during a strike in order to keep the organization afloat was not “for the purpose of undermining a trade union’s representational capacity”) is completely moot. The union would easily know it could simply tie us up in court and in a relatively short time exhaust the maximum three months of cash reserves we might possess. In so doing it knows the parents would be forced to capitulate to the union’s positions, no matter how unreasonable or off-market their demands might be, or else close our doors.

In light of the above, we urge the Ministry to adopt Proposal #1 to maintain the *staus quo* with respect to the ability of an employer to hire temporary workers during a strike to maintain its viability.

2. S.4.3.4 Consolidation of Bargaining Rights (p. 85) & S.4.6.1 Broader-based Bargaining Structures (p.113)

There are so many variants under consideration here, it is hard to succinctly address all of them. However, we have several concerns about some of the proposals found in the above two sections, notably:

- a. Concern #1: the idea that government would take over some elements of negotiating with unions on behalf of a group of unrelated employers with potentially different operating considerations (despite sharing a common industry). It is our considered view that it would be difficult for the government (and its negotiator employees) to fairly negotiate on behalf of any employer, much less multiple unrelated employers simultaneously, when (i) the government employees charged with negotiation bear none of the cost (monetary or otherwise) to agreeing to any particular union proposal and (ii) the government would potentially be the object of public dis-satisfaction during a prolonged strike that affects many employers (and thus their stakeholders) simultaneously. These both create motivations for the government (and its negotiator employees) not to be particularly disciplined in denying demands brought forward by the union during bargaining and would, therefore, be prone to leading to unbalanced outcomes during any specific negotiation process, and potentially much greater accumulated unbalanced outcomes over a longer period after multiple negotiations; and
- b. Concern #2: within the variants put forward related to sectoral bargaining, the idea that the government will simply impose working conditions and/or monetary elements of employment for whole geographically proximate sectors, while completely ignoring the ability of such industry or sector's customers/users/constituents to pay for whatever the government imposes. The Special Advisors observe that there is not a naturally occurring increase in the number of unionized workers in the Ontario private sector, so seem intent on creating such increase artificailly. But an objective person would have to conclude that the reason that union representation in governments remains high, is that governments have the ability to force most of its citizens to pay for all of the promises it makes to its unionized employees, backed up by the power of imprisonment, fines or property seizure if a citizen fails to pay. The reason that unionization in private sector entities is decreasing, is that non-government entities don't possess such powers and thus when the demands of its employees become too great relative to their customers' willingness and/or ability to pay for the goods/service being provided by the entity, the private sector entity closes its doors and the union disappears.

As it pertains to Toronto child care centres, where the industry can't be serviced from entities located outside of the province, any scheme aimed at increasing the costs of operating the centres blindly across the entire sector without an accompanying integrated plan of government funding to cover the actual cost increases is likely to cause serious difficulties for parents and the child care centres they rely on. Very few

fees”, whose top of the range is the maximum amount the City will pay to a child care centre on behalf of lower income families who can not afford to pay their own fees for childcare. These “maximum reasonable fees” are currently lower than what we have to charge parents in order to break even. If all of our parents were recipients of City of Toronto subsidies (as opposed to paying the higher fee charged directly to parents covering their own fees) it is a mathematical fact that we could not meet the current obligations of the union contract we have in place. As mentioned above, the more we raise fees to cover increased costs, the higher the percentage of parents who can’t afford the service and therefore have to rely on the City to pay for their child care fees at the lower rate. Thus there is not a one-for-one increase in revenues resulting from any fee increase we might make, and each time a family falls behind and needs to switch to the city paying for the service on their behalf , *de facto* the other parents have to endure even greater fee hikes to make up the shortfall of revenues. At the moment, we are fortunate with respect to the number of parents still able to pay the posted fee, but the rate of increase in families no longer able to do so over the past few years is cause for alarm. We do not believe that our centre is unique in this regard. We have grave concerns about governments taking over sector-wide responsibility for all of, or elements of, our industry’s employee negotiations when there is no integrated funding plan to support whatever operating cost increases might result. Absent a firm commitment on funding all increases in costs that a government-lead sector-wide bargaining process might produce, it is best left for each individual child care centre to deal within its own unique situation such that the delicate balancing act between enhancing employees’ compensation packages , keeping flexible work rules that work for each entity’s particular operating environment, and charging fees to parents that they can afford to pay, is done at the local level where the constituents have a better chance of understanding the range of workable parameters; and

- c. Concern #3: the supposition that society would be better off by adopting sectoral bargaining. Giving the government the power to amalgamate all unionized workers in a common industry into a single union, or oligopoly of unions working in concert, with a single potential strike process (depending on which variant is pursued it could actually be two possible strike processes for each contract renewal: one with the government for certain contract elements and another one with the actual employer for other contract elements), simply brings us closer to what is common in many European countries, where whole swaths of their economies can be paralyzed simultaneously by a sector-wide strike. How would it ever be possible, with that much power sitting in the hands of a single union (or an oligopoly of unions working together), to have reasonable and balanced outcomes in collective bargaining negotiations?
- d. The Special Advisors seem to be motivated to try to increase the number of unionized workers in Ontario, but as it relates to our industry, it seems that the only logical outcome of any proposals that do not also cover non-unionized child care centres is the opposite. We have already articulated above that parents don’t have the option to not have childcare during working hours if they are to continue to hold onto their own jobs. In a scenario where all unionized child care centres in Toronto are simultaneously on strike (an outcome that needs to be contemplated if we move to

sectoral bargaining under some variants of the proposals under consideration), the only possible conclusion is that in such a situation, the parents will have to take their children to childcare workers who are not on strike, i.e. non-unionized childcare workers.


For the above reasons, we respectfully urge the Ministry to maintain the status quo with respect to the proposals under both S.4.3.4 and S.4.6.1 of the interim report.

In conclusion, we appreciate the opportunity to share our thoughts with you on the above proposals that we feel, if adopted, could have significant negative and unintended consequences for our modest not-for-profit organization, and for many other Ontario business more generally. We hope you will give them due consideration.

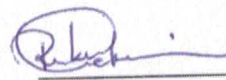
Sincerely,



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