

Submission to the Changing Workplaces Review

Fixing Labour Law and Employment Standards is a Vital Step to Tackling Income Inequality

In this second decade of the 21st century, inequality continues to grow in greater Toronto and across Ontario. Workers who once believed that they had a secure future are either suffering setbacks or see them looming. Young people are experiencing mounting student debt and shrinking employment opportunities. The combined impacts of cuts to public services, unemployment, precarious work and declining rates of unionization leave growing sections of the workforce in poverty – especially in racialized communities.

Employers are using aggressive tactics to reverse the gains of generations of workers. Two-tier wage rates exist in far too many places. Where workers don't have unions, wages have stagnated and in many cases barely rise above the poverty line. It is widely believed that this will be the first generation of Canadians that will be worse off than their parents. This is not the kind of future that any of us should accept.

History shows that trade unions play an essential role in raising incomes and living standards in any society. Before the mass organizing drives in basic industry – steel, auto, electric, rubber, paper etc., those jobs were poverty jobs. Before immigrant workers rose up to win unions in residential construction in Toronto in the 1960's, those jobs were poverty jobs. And for years those on the frontline of healthcare and social services earned low wages and few benefits until collective bargaining raised standards.

In today's changing economy, it is harder than ever for non-union workers to organize and win a collective agreement in a workplace. Fear and intimidation are the order of the day during an organizing drive, while the shift to precarious, contract and temp agency work means fewer people have a stable relationship with their real employer.

Workers need government on their side

How can our province reverse the direction of growing income inequality and worse jobs? Only by restoring balance in the workplace. Working people need more rights to exercise collective representation – the power to do the job themselves. Those rights will only come about by fixing labour laws and employment standards, and then enforcing those laws consistently.

In November 2004 the McGuinty government introduced Bill 144 to reform the Ontario Labour Relations Act. At the time, the Toronto & York Region Labour Council, in conjunction with a number of community organizations, sponsored forums to highlight the treatment of non-union workers in workplaces. We heard from a wide variety of speakers about their anger and frustration dealing with employers who seemed to be able to violate the law with few consequences. People who had been fired for organizing or speaking out, people owed thousands of dollars in wages or benefits, people working in locations where the notion of employment standards didn't exist.

We published some of these stories in a "Book of Shame". While the reforms helped alleviate some of these issues it highlighted, far too many people are still being left behind. In fact, with economic restructuring and globalization very little has really improved since then. A snapshot of the changes in people's income is shown by the startling map of Toronto created by Professor David Hulchanski of the University of Toronto. Seeing the dramatic expansion of poverty across suburban neighbourhoods should cause any decent person to want to act.

Organizing Without Fear

Intimidation and reprisal are the most potent weapons used by companies to deny their employees the right to join a union. There are many stories to be told of threats made and carried out to impose a chill on the workplace. The most devastating of these is outright firing of union organizers or supporters. The law now gives some right to expedited hearings at the Labour Board, although seldom is a company adequately penalized for breaking the law.

But often it is the changing of conditions – reducing hours or changing assignments – that make it clear to everyone else in the workplace that union supporters will be punished. Firings and changing conditions should be illegal, especially as more people are working in part-time or precarious jobs.

The Workplace is Never Neutral

Labour Council believes that forcing workers to vote in a biased system will always be an abrogation of their rights. Canadians give up almost all their civil rights when they walk through the workplace door. The right to free speech, freedom of assembly, or free written expression are all curtailed by their employer. With working conditions, wages, benefits and promotional opportunities set unilaterally by the company, it is difficult to accurately judge workers' real desires in such an unequal setting.

The most important issue is the need to restore card-check certification as the standard method in which workers attain a bargaining agent of their choice. This system of certification was in place for almost half a century in Ontario, and Bill 144 re-instated it for the construction sector.

Every person applying to be represented by a union signs a legal document to that effect, in the same manner that our signature, properly witnessed, can assign a lawyer or executor to represent our interests. Nobody demands that we undergo a trial by fire for five days to determine if those signatures are valid. Corporate lobbyists ask what is wrong with a vote. The answer is simple - without freedom of association and freedom of speech at the workplace, there is no such thing as a free and democratic vote.

Compare what happens to a general election to holding a vote in a workplace. Only one party (management) has access to all voters, where the other cannot get either the names or addresses of the full voters list. The canvassers for the other party are forced to distribute material or canvass in secret. Only the governing party can hold meetings or approach voters in the workplace. It can even bring individual voters into one-on-one captive audience hearings to threaten them with dire consequences if they vote the wrong way.

*Canvassers of the other party routinely face reprisals or firings which act as a warning to rest of the electorate. And finally, the vote is held in the building of the governing party, with its supervisors eyeing every voter before they cast their ballot. **Whose definition of democracy is this?***

This is what workers face in most instances when they try to exercise their so-called democratic right to join a union and enter into a collective bargaining relationship with their employer. The ballot question is seldom viewed simply as "Do you want a union?" – but has been changed in the most cases to "Do you want to keep your job?"

Along with card-check certification, there are other steps that would help make things slightly more neutral. Certainly the right to know who the company says is actually in the bargaining unit is fundamental, particularly with the spread of agency workers into nearly every sector. If there are votes, moving the votes to a neutral location instead of the company premises should be an option if workers feel that it will reduce the innate bias of power they experience.

Successor Rights in the Contract Sector

Labour Council has been extensively involved in recent years in the fight for justice and dignity for cleaners and food service workers in Toronto. The reality is that contract work is driven by a dog-eat-dog bidding system, with most contracts going simply to the low bidder. Despite years of concerted effort by cleaners to win unions, even unionized companies are drawn down to the lowest common denominator for pricing, and therefore wages. Outside of Class A buildings in the downtown core, wage standards for unionized firms are far lower than they should be, because every time workers try to raise standards the floor gets pulled out from underneath them by another low bidder. We have recently seen the same dynamics at work at Pearson Airport for customer service staff and fuellers. Although under the Federal jurisdiction, the results are a similar downward spiral in wages, benefits and conditions.

For a brief period of time in the 1990's, contract workers like cleaners, security guards and food service workers had successor rights. They kept their union agreement and their seniority if the building contract changed hands, so they could actually build on their success instead of having to start all over again. The government should restore those rights, and include homecare providers whose lives are now dominated by a similar tendering system.

These measures won't solve all the problems in the system. We should be looking to creating recognized sectoral bargaining structures; such are featured in Quebec's decree system or the accreditation process in construction. Construction is the original precarious work – few people work for one employer through their entire career. But the building trades have developed a strong framework for hiring, skills training and apprenticeship that provides a uniquely competitive workforce for greater Toronto and Ontario. The flexibility contained within the construction industry – by geographic area and sub-sector – provides a significant body of experience to apply to other sectors of precarious work. These would provide a real and substantial tool for new Canadians to help better themselves and their communities.

The Right to a First Contract

With the raw power of multinational companies being exercised in a more blatant form every day, governments need to assure ordinary people that if they do choose to join a union; they can also expect that a first contract will be freely and honourably negotiated. That means strengthening the current language covering first contract arbitration, so that the employer community recognizes its obligation to build a respectful relationship with newly unionized employees.

The Right to Keep a Job

The recent 22-month strike at Crown Holdings illustrates the outrageous imbalance between multinational corporations and Ontario workers. The main reason for the strike was the refusal of the members of United Steelworkers Local 9176 to betray the next generation of workers with a two-tier settlement. For that disobedience, they were forced to stand on a picket line through two freezing winters while strike-breakers took their jobs. It is clear that Crown Holdings had every intent to bust their union, as it had done to employees in Ghana and Turkey.

The experience of Crown is a clarion call for banning replacement workers in Ontario. Allowing companies to hire strike-breakers creates an atmosphere of tension and frustration. This places no useful role in labour relations, but sets the stage for further conflict. Crown also illustrated the pressing need to fix the issue of return to work protocol at the end of a labour dispute. The current six-month deadline for workers to maintain their employment should be abolished and all striking or locked out employees should have precedent for return to work over any others.

There has been intense discussion about binding arbitration after disputes have gone on for a certain period of time. Given the record of a number of multi-national companies creating a toxic bargaining climate, workers should be allowed to apply for binding arbitration after six months of a dispute in which a settlement seems not to be achievable by normal mediation. This remedy should only apply to collective bargaining in the private sector – there is too much history of governments trying to undermine the right to strike in the public sector.

Providing Balance to Precarity

If all the measures we are suggesting were adopted for labour law, it would be a significant gain for hard-working women and men in this province. But more needs to be done to provide balance in our economy to make up for the immense power of corporations who are driving incomes into either stagnation or a downward spiral. Today, there are people working two or three jobs to make ends meet. Temp agencies have replaced direct hiring for a growing section of the workforce. And there are hundreds of thousands working in the service sector where current Employment Standards are dramatically failing.

The following steps need to be taken for that to change:

- All work by temp agencies should be paid at the same rate and benefits as permanent work. The European Union has adopted policy directives that can start to accomplish this goal.
- Make client companies responsible for WSIB coverage, working conditions and wage theft by agencies or sub-contractors
- Require employers to favour full-time permanent work over precarious jobs. There should be a regulation that allows workers to advance into full-time positions based on seniority, with a Tribunal for appeal to if companies refuse.
- Enforce an end to misclassification of workers as “independent contractors”, utilising the policies of the WSIB and Labour Relations Act
- Require employers to give five days’ notice of schedule changes
- Other specific changes being proposed by the Fight for \$15+Fairness community coalition

A Fair Wage Policy

The Government of Ontario has a Fair Wage policy for contracted work that has not been updated in many years. Its scope is primarily construction, but also includes schedules for cleaning and security services. The Government should update the Fair Wage schedule for construction, cleaning and security, and add food services to its coverage. While the general approach to construction has been to mirror the prevailing trade rate for a region; for the other service sector work this would continue to re-inforce poverty wages that are predominant due to the under-cutting of bids referred to earlier. Therefore for this work, the province should adopt a Living Wage schedule based a local calculation.

Going From Here

Anyone who believes that the prosperity of this society will be shared fairly without a substantial shift in power dynamics fails to fully appreciate the current reality of work. Globalization, technological change and racialization of poverty have all tilted the playing field in a way that weakens the bargaining power of both new Canadians and the next generation of school graduates. Workers need a fair deal, a chance to raise standards once again, and most of all – they need governments to be on their side in the years to come.