Labour Legislation in Saskatchewan

A submission by
Grain and General Services Union (ILWU • Canada) ("GSU")
to the Ministry of Labour Relations and Workplace Safety

RE: Consultations on the Renewal of Labour Legislation in Saskatchewan

July 30, 2012

Grain and General Services Union (GSU) represents working people who are engaged in agribusiness, grain handling, feed milling, fish farming, livestock handling, metal working and fabricating, newspaper publishing, oat milling, and printing. GSU members are employed in Saskatchewan, British Columbia, Alberta, Manitoba, and Ontario.

Currently the majority of GSU members work under the jurisdiction of the Canada Labour Code. However, a significant percentage of GSU members work under Saskatchewan's labour legislation and their ranks are poised to grow in the aftermath of the takeover of Viterra Inc. by Glencore PLC if, and when, Ag products sales operations are spun off to Agrium Inc.

Regardless of jurisdiction, GSU is vitally connected to and concerned about the socio-economic welfare of Saskatchewan working people. All GSU members work in the private sectors of the economy.

GSU affiliated with the International Longshore and Warehouse Workers Union - Canada on May 1, 1995, and became part of a larger union organization comprising more than 17,000 working people who provide essential labour in Canada's import/export supply chain, small manufacturers, the retail, wholesale, and service sectors of British Columbia and Saskatchewan.

In 2011 GSU celebrated its 75th anniversary. Founded in the midst of the Great Depression, GSU is a grass roots democratic workers organization founded by Saskatchewan working people. Our history is intertwined with the struggles and welfare of workers, farmers and Saskatchewan communities.

Considering our ties to agricultural production and small communities, we speak with experience in relation to tenuous economic circumstances, contingent employment and the welter of challenges facing wage earners and farmers seeking to make a living and a life for their families and themselves.

For those who participate, the good economic times in Saskatchewan are a welcome. That being said, the current sense of prosperity has not translated to all in our society and it has not diminished GSU's commitment to community, decency and socio-economic justice. What we have for ourselves we want for all others. These are values we endorse as steadfastly today as when the union was founded.

Statement of Labour Legislation Principles – A Historical Review

There are few areas of public policy that seem to be as fraught with controversy and misinformation as labour legislation. Accordingly, it is GSU's respectful submission to the Honourable Minister of Labour Relations and Workplace Safety that reviews of the foundational elements of labour legislation should be conducted in a fully transparent manner that allows ample time for informative and thoughtful input by the public and stakeholders.

GSU submits that all proceedings devoted to reviewing labour legislation, or any other legislation for that matter, should be conducted on the record in an open public dialogue before legislation is drafted and presented to the Legislative Assembly.

When the Trade Union Act of Saskatchewan (TUA) was fully reviewed in 1992/1993 the provincial government appointed a nine-person committee of review chaired by respected arbitrator/adjudicator Professor Daniel Ish. Business and organized labour were equally represented on the committee of review which conducted extensive public hearings and gave all interested parties an opportunity to provide submissions.

The 1992/1993 TUA committee of review process began with the appointment of the chairperson on March 13, 1992, and concluded with the submission of three distinct written reports and recommendations to the Minister of Labour in July 1993.

The competing recommendations emanating from the 1992/1993 committee of review generated considerable controversy. The provincial government of the day responded by announcing it would only legislate changes to the TUA where there was consensus between business and organized labour.

In an effort to bridge the divisions and conflicting positions flowing out of the 1992/1993 committee of review, a second committee was struck by the provincial government. This three-person committee, chaired by respected arbitrator, the late L. Ted Priel, Q.C., was appointed by the provincial government to review recommended changes to the TUA and to find consensus between business and organized labour with regard to amendments to legislation.

The Priel committee issued its report to the Minister of Labour on December 15, 1993, and said the following in the introduction of the report:

> *"…Both business and labour recognize that stable labour management relations will be enhanced by avoiding radical changes to labour legislation depending upon the particular political philosophy of the Government of the day. Such changes produce a pendulum effect which is not conducive to stable labour relations…"*

In 1994 the provincial government amended the TUA, after reflection on the considerable deliberations, debate and the measure of consensus that was achieved via the review processes. Despite some subsequent tweaking, the 1994 version of the TUA functioned as a reliable legislation for the parties who depend on it for guidance until it was amended in 2008 over the opposition of organized labour.

The 2008 amendments to the TUA and their companion, the Public Services Essential Services Act, are currently being litigated in the courts with reference to Canada's Charter of Rights and Freedoms. The litigations arising out of the 2008 legislation should be instructive to all concerned; not for the fine legal arguments (of which there are many), but for the distractive and corrosive effects of unilateralism in public policy.

There are other examples of thoughtful deliberation in relation to the foundations of labour legislation for all to draw on.

In October 2004 the Minister of Labour for Canada appointed renowned arbitrator Dr. Harry Arthurs as a one-person commissioner to review federal labour standards legislation as set out in Part III of the Canada labour Code.

Dr. Arthurs' review of federal labour standards legislation was equipped with the resources to retain an advisory contingent of labour and social policy experts as well as a consultative panel of business and labour advisors. GSU was represented on the panel of business and labour advisors.

Dr. Arthurs consulted extensively and publicly across Canada with respect to Part III of the Canada Labour Code. He reported to the federal Minister in October 2006. His report is titled *"Fairness at Work: Federal Labour Standards for the 21st Century"*.

In his review of federal labour standards legislation, Dr. Arthurs authored a report that is 266 pages long, not including appendices. His report is an excellent recapitulation of the issues considered, the positions taken or advocated, and the intricacies of human realities in the workplace. Furthermore, Dr. Arthurs presented a series of creative solutions to complex problems for business and labour as well as innovative ways to address the solutions/problems.

Unfortunately, in the nearly six years since their release, the federal government has not acted on Dr. Arthurs' recommendations with respect to Part III of the Canada Labour Code, indicating, perhaps, that the partisan politics pervading the federal political scene tends to drive simplistic reactions to complex issues instead of careful, meaningful and progressive change when it comes to the welfare of working people. Let's not make a similar mistake in Saskatchewan.

There is one other example of thoughtful and deliberate consideration of labour legislation GSU wishes to cite. Specifically, it is the work and recommendations of the Commission on Improving Work Opportunities for Saskatchewan Residents appointed by the Government of Saskatchewan in February 2005.

This Commission, chaired by V. Lynne Pearson, was appointed amidst the furore and reaction of Saskatchewan's business community after the then Minister of Labour announced her intention to proceed with proclamation of long dormant (1994) amendments to the Labour Standards Act regarding most available hours legislation for part-time workers.

The reaction to the Minister of Labour's November 2004 announcement on the part of the business community was immediate and vitriolic. After some time on the political hot seat, the provincial government of the day elected to pursue consultation instead of proclamation and appointed the aforementioned commission.

While business and organized labour were clearly at opposite polls with regard to the "most available hours" concept, neither was opposed to a thoughtful, inclusive, and transparent review of labour standards legislation and barriers to meaningful employment.

The "Pearson Commission" held public hearings and conducted its work within the full view of Saskatchewan citizens and reported to the provincial government in February 2006.

More recently, the Occupational Health and Safety Act (OH&S Act) and the Workers' Compensation Act (WC Act) were subject to separate and extensive reviews as mandated in their legislation. Public hearings were conducted and significant public input was obtained.

The reviews of the OH&S Act and the WC Act were carried out over a much longer period of time than allowed in the herein review and produced significant consensus support from business and organized labour for changes to the respective Acts.

Considering the above references to prior reviews of labour legislation, it is GSU's respectful submission that the process initiated by the Government of Saskatchewan on May 2, 2012, does not do justice to the 15 pieces legislation being reviewed, nor to the worthy tradition of thoughtful consensus building reviews of labour legislation.

It is GSU's submission that the process embarked upon on May 2 is flawed in comparison to previous reviews in Saskatchewan and the political-economic culture of our province.

The 90 days allowed for reviewing and commenting on 15 separate Acts covering some 900 pages; all bound together with a "Consultation Paper" asking some 117 open-ended questions is simply inadequate.

GSU urges the Honourable Minister to reorient and re-cast the review process into segments devoted to specific Acts over a considerably longer period of time. GSU also urges the Government of Saskatchewan to disclose whether potential legislation has already been drafted; and, if so, to lay its cards on the table.

The fact that the Minister has appointed an Advisory Committee on Labour Relations and Workplace Safety is encouraging. However, it is GSU's submission that the advisory committee's mandate is too narrow and too brief. We urge broadening of the Committee's mandate to include public hearings and a public recording of the committee's deliberations.

Secondly, we propose that stakeholder groups affected by particular Acts or areas of legislation be given an opportunity to meet with the Minister's advisory committee to present and elaborate on how they view the potential for change and what the change(s) should be.

In specific areas such as essential services legislation, GSU urges a separate track of consultation between organized labour and the Government as proposed by the major healthcare unions to the Minister in the aftermath of the February 2012 Court of Queen's Bench decision striking down the Public Services Essential Services Act (2008).

In addition, GSU submits that the Government should only proceed to legislate changes to the various Acts where there is agreement to changes by the business and labour representatives on the Minister's Advisory Committee. In this way the "pendulum effect" referred to by the 1993 Priel Committee will be avoided.

With the foregoing said, GSU makes this submission on a without prejudice basis in relation to our criticisms of the present "consultative" process as well the legal challenges underway in front of the Saskatchewan Court of Appeal in connection with the Public Services Essential Services Act (Bill 5 – 2008) the amendments to the Trade Union Act (Bill 6 – 2008).

The Labour Standards Act of Saskatchewan

It is GSU's submission that just and progressive minimum labour standards legislation are essential ingredients in a modern society with democratic socio-economic values.

The principles of decency and the right to dignity at work should be the foundation of our labour legislation. Our shared goal should be a society where the rights of people at work and through their work reflect the common wealth of our society.

A second tenet of this submission is that coverage by Saskatchewan's Labour Standards Act (LSA) should be universal, within the province's jurisdiction. In other words, there should be no exclusion from coverage or access based on scope of job classification, type of occupation, type of industry, geographic location, rank or title.

In our view, universality in labour standards is an essential precondition to awareness, improving opportunities, improving standards, acceptance of the law, and compliance with the law.

A third ingredient of modern labour legislation is consistent coverage and administration of the laws and regulations governing working conditions.

In GSU's view, exemptions, variations, relaxation or modification of labour standards should only be permitted following careful and transparent consultation between and with the parties affected, impact analysis, and democratic approval, via secret ballot, by a majority of 75 per cent of the working people affected whether or not they are unionized.

Where workplaces are unionized, variations of labour standards and trade-offs to facilitate continuous operations or otherwise adjust, but uphold, standards to meet particular needs are more efficiently managed. In non-union workplaces where ten or more workers are employed the LSA should mandate Workplace Consultation Committees (WCC), much the same as joint occupational health and safety committees are mandated by the OH&S Act.

In non-union workplaces employing fewer than ten employees, variations of labour standards should only be permitted for very specific and limited periods of time when there is an express written request by the worker or workers affected and a separate written agreement setting out the terms, conditions, and duration of the variation.

Finally, effective administration and enforcement of labour law requires commitment of sufficient resources by government. The abundance of available research suggests enforcement of labour standards rights, regardless of jurisdiction is problematic for many, and perhaps the majority, of non-unionized workers, particularly the most vulnerable.

It is our respectful submission that the Ministry's review of labour legislation will come to no useful end for working people if there is not an effectively designed, properly equipped, assertively administered, and thoroughly communicated strategy for effectuating the spirit and intent of modern labour laws.

To this end, GSU advocates replenishing and upgrading of all facets of the Saskatchewan Ministry of Labour Relations and Workplace Safety to provide employers and employees with readily accessible resources to inform and advise with regard to the LSA and its application to the workplace.

Vulnerable Workers

There are those who rail against identification of the socio-economic problems confronting vulnerable workers or even the idea that there are vulnerable workers in our society.

Arguments against addressing the problems facing vulnerable workers fly in the face of the unimpeachable research and findings conducted on behalf of such reputable organizations as the Canadian Policy Research Networks Inc. (now defunct as a result of discontinued funding by the Government of Canada), the Canadian Labour Congress, the Law Commission of Canada (now defunct as a result of discontinued funding by the Government of Canada), and Statistics Canada (still in business, but winding down important research and statistical work as a result of Government of Canada budget cuts).

GSU urges the Honourable Minister to give no weight to submissions made by organizations and individuals who contribute little more than bluster while seeking to roll back the relatively few legislative supports and programs that exist to aid working people in realizing their right to full and gainful participation in our society.

To support of the work of the Government of Saskatchewan in its review of labour legislation, GSU references and commends the following sampling of thoughtful and insightful research still available on the subject of vulnerable workers. First and foremost, however, we make the following submission with regard to the factors that render worker vulnerability.

In our view, the following conditions, separately and in combination, cause workers to experience socio-economic vulnerability:

- Wages/incomes below the Low Income Cut-off (LIC) which is equivalent to at least $10.52 per hour for a single worker.

- Lack of access to non-wage benefits, such as: extended health and prescription drug insurance, disability and life insurance, pension plan coverage, paid sick leave, and paid family leave.

- Stalled or declining union density, particularly in the private sector.

- Lack of access to collective or institutional representation in relation to working conditions or rights violations.

- Non-standard employment as typified by non-voluntary part-time work, temporary or seasonal work, and own account employment.

- Lack of access to benefits and programs, public and private, is a predominant characteristic of non-standard employment as documented by the research on the subject of vulnerable workers.

- A dearth of equitable employment recruitment programs, particularly in relation to Aboriginal peoples, immigrants, visible minorities, people with disabilities, young people, and women.

- High barriers to employment insurance benefits and reductions in benefits, when available, as a result of successive rollbacks enacted by the federal government.

- Barriers to affordable post-secondary education, training, and skills development.

- The inadequate supply of affordable public housing in both urban and rural settings.

- Inadequate childcare resources.

- Lack of political/economic leverage.

In support of the foregoing observations we cite the findings and observations of the following studies as well as the experience of GSU representatives engaged in efforts to unionize vulnerable workers.

Ron Saunders, (November, 2003) *Defining Vulnerability in the Labour Market*, Canadian Policy Research Networks, Ottawa.

Kerry Rittich, (January, 2004) *Vulnerability at Work: Legal and Policy Issues in the New Economy*, Law Commission of Canada.

Law Commission of Canada, (December, 2004) *Is Work Working?* "Work Laws that Do a Better Job."

Rene Morissette and Anick Johnson, (January, 2005) *Are Good Jobs Disappearing in Canada*, Statistics Canada, Ottawa.

Richard P. Chaykowski, (March, 2005) *Non-standard Work and Economic Vulnerability*, Canadian Policy Research Networks, Ottawa.

Ron Saunders, (May, 2005) *Does a Rising Tide Lift All Boats? Low Paid Workers in Canada*, Canadian Policy Research Networks, Ottawa.

Ron Saunders, (June, 2005) *Lifting the Boats: Policies to Make Work Pay*, Canadian Policy Research Networks, Ottawa.

Canadian Labour Congress Submission to the Commission Reviewing Part III of the Canada Labour Code, (June, 2005).

Canadian Labour Congress, (March, 2003) *Falling Unemployment Insurance Protection for Canada's Unemployed*.

Canadian Labour Congress, (September, 2005) *Submission to the House of Commons Standing Committee on Finance Regarding the 2006-07 Federal Budget*.

To further illustrate the persistence and breadth of the vulnerable worker issue, which increasingly includes migrant and so-called guest workers in Canada and Saskatchewan, we cite the observations of Richard P. Chaykowski in his March 2005 research paper, "Non-standard Work and Economic Vulnerability", (CPRN Vulnerable Worker Series - No./3, pages iv and v):

> *"The proportion of all individuals with some paid employment in 2000 that had low earnings (below the Low-Income Cutoff) was 34 per cent. On average, the low-earnings group fell 18 percent below the LICO threshold …. The findings suggest that a segment of the labour force that may be characterized as economically vulnerable is sizeable – about a third of all individuals who do paid work over the course of a year; about 11 per cent of those who are employed on a full-time basis throughout the year. In addition, based upon a review of broader indicators, the labour force segment that is vulnerable appears not to be declining in size. In particular, the proportion of jobs paying under $10 per hour (in 2001 dollars) has remained the same between 1986 and 2004."*

The following quotation from the Canadian Labour Congress submission regarding the 2006-07 Federal Budget (page 19) speaks to the impact of adverse amendments to Canada's Employment Insurance Program, unfortunately conditions have not improved:

> *"Today, only 38 per cent of unemployed workers are in receipt of Employment Insurance benefits compared to 75 per cent who qualified prior to 1990. This is because the hours of work needed to qualify have increased greatly, particularly for part-time workers. The length of the benefit period is roughly half of what it was 15 years ago…. The current system discriminates against women, part-time, casual and recent immigrant workers who form an increasing percentage of our workforce. The existing level of benefits paid is inadequate to support families and children. The government has built up a $47 billion Employment Insurance (EI) surplus, and has been using it as general revenue, while denying benefits to many unemployed workers."*

GSU makes the following recommendations to improve the situation of vulnerable workers.

1. The minimum wage should be a living wage sufficient to provide sustenance to the worker(s) and their families. In addition, GSU recommends that the principle of equal pay for work of equal value should be clearly and distinctly enshrined in the LSA.

2. We propose raising the minimum wage by progressive steps to 75 per cent of the average wage in the province and/or designing a minimum compensation package that reflects the cost of providing non-wage benefits such as healthcare, drug plan, disability, and life insurance together with paid sick leave and pension coverage.

3. We also propose indexing the minimum wage to increases in the average wage.

4. We acknowledge that increases to the minimum wage generate considerable debate and suggestions that jobs will be eliminated. However, there is no credible evidence to support the contention that employment declines in response to minimum wage hikes.

5. Nonetheless, if there are concerns with respect to young adult/student employment, it is GSU's submission that these issues can, and should, be addressed through better bursary and education assistance programs. Furthermore, the overall impact of shoring up the economic circumstances of the lowest paid 70 per cent of minimum wage workers will generate greater economic activity that will long survive the gyrations of the commodity and resource cycles.

6. We are not unmindful of the adjustment issues for small business associated with the measures GSU advocates in relation to our minimum wage/compensation package proposals. Accordingly, we suggest consideration be given to reforms to the taxation system as it pertains to small business to provide relief in the form of tax credits and other tax expenditures linked to the provision of higher than minimum wages and paid benefits packages.

7. In addition to recognizing the economic obstacles confronting low wage workers and their employers in relation to access to employment benefits, we propose establishing sectoral or universal group insurance benefits.

8. GSU also endorses and urges the Government of Saskatchewan to sign on and support doubling of Canada Pension Plan benefits as advocated by the Canadian Labour Congress.

9. To facilitate participation by part-time workers we propose that eligibility be made available under the Labour Standards Act following completion of 300 hours of employment.

10. In relation to the problems encountered by non-standard workers in own account employment situations, we propose an examination of the ways and means to eliminate barriers to participation in statutory and other mandated program. For example, employment contracts with reasonable effort provisions and status of the artist regulations should be considered.

11. Although Employment Insurance (EI) does not fall within provincial jurisdiction, it is GSU's submission that the Commission can play an influential role in advocating replenishment of the EI program along the following lines.

    - Reducing the number of qualifying hours for all EI benefits to a uniform 360.

    - Increasing the level of weekly benefits to a uniform level of 66.67 per cent of the best 12 weeks of earnings.

- Extending the benefit payments period to 52 weeks and eliminating the two-week waiting period.

- Removing the waiting period applied in relation to receipt of severance pay.

- Extending benefit entitlements to cover work related training and educational leave in a manner similar to the principles governing job loss, illness, parental leave, pregnancy, and compassionate care.

As our brief suggests, in the list of vulnerable worker indicators and scarcity of equitable recruitment and employment programs in the public and private sectors is a major challenge facing vulnerable workers—particularly Aboriginal people, young people, immigrant workers, migrant workers, "guest workers", people with disabilities, visible minorities, and women. These problems are looming large in the current labour market and need to be addressed.

Affordable housing and childcare supports are key to enabling all workers to gain the economic traction they need to move to a more stable economic/employment situation.

We recommend, therefore, that a public roundtable be established to give thorough consideration to the means by which an adequate proportion of the province's growing resource revenues can be devoted to accomplishing these ends.

Economic fortunes do change. And, when the changes are adverse, workers are usually the first to bear the brunt; they become vulnerable workers.

At a time of business interruption, reorganization, merger/acquisition, technological change or plant closure, equitable adjustment for workers should be a guiding principle in our labour market. In this regard, we propose the LSA be amended to provide the following:

- 120 days' advance notice, or pay in lieu, of impending job elimination and lay off. And, at least two weeks of severance pay for each year of service, prorated for partial years.

Labour Standards Act Administration

Bearing in mind the statement of labour standards principles set out at the beginning of this brief, GSU recommends implementation of the following administrative and policy measures to enhance worker access to the promises inherent in labour standards laws and regulations.

- Permitting third-party complaints by unions and/or publicly funded worker advocates to augment the Ministry's mandate.

- Printing legislation and regulations in easy to understand conversational languages(s) and making guides to labour standards easily accessible in hard copies, on-line, and through social media.

- Requiring employers to distribute labour standards guide books to all workers in their enterprise.

- Promoting labour standards requirements via the various media and school-based education programs.

- Requiring employers to provide labour standards orientation to new workers and biennial refresher sessions for longer-term workers.

- Implementing a fiduciary responsibility for employers in relation to compliance with labour standards legislation and regulations.

- Establishing a benefit-of-the-doubt principle for workers in relation to labour standards complainants.

- Establishing substantial financial penalties for repeat violators of labour standards laws and for employers who discipline complainants.

- Amending the Saskatchewan Labour Relations Board mandate and equipping the Board with the resources and wherewithal to include adjudication of labour standards complaints/disputes.

Above all else, we urge the Government of Saskatchewan not to take any steps that would reduce or diminish the minimum standards now in place, including LSA application and administration.

In addition, GSU advocates that all workers in the province be treated equally under the law and customs of the province without regard to their place of origin, immigration status, and temporary or permanent residency status.

In order to avoid abuse, usury, exploitation, and human trafficking we urge that it be made illegal to charge another person a fee for "finding" them a job.

The Trade Union Act of Saskatchewan

The second major component of the Ministry of Labour and Workplace Safety's review of labour legislation pertains to labour relations in the form of the Trade Union Act of Saskatchewan (TUA) and other Acts specific to particular sectors.

The balance of this submission will focus on the TUA and related issues. However, it is GSU's view that current statutes governing collective bargaining and other aspects of labour relations in the construction industry, fire fighting, healthcare, police services and teaching at the elementary and secondary school levels should not be amended or incorporated with other Acts unless the employers' and workers' representative organizations agree.

It is GSU's submission that if anything is to be changed in the TUA, it should be the repeal of the amendments made pursuant to Bill 6 (2008).

It is also our respectful submission that amalgamation of labour legislation into a single employment code is not a prescription or panacea for simplicity, transparency or ease of use. Only education supported by significant public resources will serve those purposes.

Federally there is the Canada labour Code divided into three parts governing labour relations (Part I), occupational health and safety (Part II) and labour standards (Part III). Each part of the "Code" is administered by distinct and separate agencies of the federal government.

In GSU's experience, the existence of one labour code within federal jurisdiction has not resulted in more clarity, transparency or ease of use for employers, employees, or unions. In fact, federal employment and employment legislation is comprised of 12 separate Acts in addition to the three parts of the Canada Labour Code.

It is GSU's submission that each Act of legislation addresses particular needs of society. As a result, we oppose any suggestion to combine legislation that would diminish, remove or weaken the historical and societal purposes of the legislation under review.

The purpose of the TUA since its proclamation in 1945 is to foster the free choice of working people to organize, form, and/or join a union of their choice.

The purposes of the TUA have been upheld and supported affirmatively by the Supreme Court of Canada when examining cases brought forward under Canada's Charter of Rights and Freedoms.

It is noteworthy that in the 1993 Priel Committee report (Ibid) said the following about the selection of the Chair and Vice-Chair of the Saskatchewan Labour Relations Board (SLRB) and thereby endorsed the purposes of the TUA.

> *"With respect to the Chair and Vice-Chair, the parties agree that those positions should be filled by experienced neutral people who accept that the philosophy of The Trade Union Act is to promote the ability of workers to freely choose to join a trade union, to promote the ability of workers to bargain collectively, and to promote industrial peace…"*

GSU proposes that the Trade Union Act of Saskatchewan be maintained as distinct legislation fostering the ability and strengthening the right of working people to join and/or form unions of their choosing.

The Union Advantage

It is GSU's submission that it is natural that the TUA should promote and support unionization where the workers employed in an enterprise choose to join or form a union.

According to Statistics Canada, union density in the private sector is around 18 per cent of the wage-earning labour force in Saskatchewan and 35.5 per cent of the overall wage earning workforce in the province. (*Perspectives on Labour and Income* – Statistics Canada: Winter 2011 Vo.23, No.4)

GSU submits that this statistic identifies a problem. If there was a bias as intended in the operation of the TUA, it would be reasonable to expect that union density in Saskatchewan's private sector would be something more like the overall labour force norm of 35.5 per cent.

The advantages accruing to workers who are unionized (in terms of wage rates, benefits, working conditions, and representation) are well documented. According to Statistics Canada (Ibid), in the first half of 2011, union density in Canada stood at just under 30 per cent of wage/salary earners. Currently, 4.3 million workers are represented by unions.

The union advantage is clear, as Statistics Canada's comparative figures on wage rates demonstrate. According to the "Perspectives" publication, in 2010 a unionized, full-time worker was paid an average hourly rate of $26.72 per hour for her/his labour versus $22.71 per hour for a non-union counterpart. For part-time workers, the union advantage is even more dramatic – $22.09 per hour versus $14.02 per hour.

As a society we should be celebrating the accomplishments of workers who have decided to join or form a union. The socio-economic benefits are clear and unimpeachable.

Employer Communication

Employers who object to being unionized or the prospect of being unionized often claim that the TUA prohibits or interferes with their ability to communicate with the workers they employ.

This claim is false. Employers have always had the ability to communicate with employees about the operation of the business, day-to-day workplace issues and so forth.

On the subject of unionization, employers also have the ability to communicate with employees to correct or respond to false claims. However, since workers' rights to freedom of association is a foundational principle of the TUA, it is passing strange that some employers and lobby groups want to bend the idea of free speech into an ability to use an employer's position of power over employees to campaign against the unfettered exercise of the right of workers to choose to form or join a union of their choosing.

Imagine the objections fair-minded people would raise if employers used their workplace pulpit to tell employees how to vote in federal, provincial or municipal elections.

It seems perverse that employers and their lobbyists who oppose unionization and only seem to want to communicate with workers about their rights, when the subject of unionizing is on the agenda.

In December 1993 the business and labour representatives on the Priel Committee unanimously supported an amendment to section 11 (1) (a) of the TUA (employer unfair labour practices) that read as follows:

> *"(a) in any manner including by communication to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act."*

GSU proposes that the TUA should be amended as agreed in 1993 and should continue to stand for the encouragement and facilitation of worker choice, free from employer interference or intimidation, including employer communication of so called facts and opinions.

Definition of Employee

It is GSU's respectful submission that there is no need to change the current definition of employee as set out in section 2 (f) of the TUA.

The Saskatchewan Labour Relations Board (SLRB) is the best-placed panel of experts charged with determining the scope and description of proposed or amended bargaining units based on the evidence and facts brought for consideration by the parties involved.

In making its decisions the SLRB is obliged to provide careful deference to the purposes of the TUA and balance that with the evidentiary realities of a workplace or enterprise.

There is a wealth of decisions on inclusion, exclusion, and appropriate bargaining units assembled by panels of the SLRB that serve to guide parties to a collective bargaining relationship.

Attempting to re-write the definition an employee under the TUA, when there is no body of compelling evidence that the current definition is a problem, will destabilize the labour relations environment, open the process to potential abuse through the manipulation of job titles, and run the risk of disenfranchising working people from the exercise of their rights under the Act and the Charter of Right and Freedoms.

It is essential that the bar for excluding employees from exercising of their rights to join or form unions of their choosing and to participate in free collective bargaining be set at least as high as it is now.

Where there are legitimate bona fide concerns about community of interest or potential conflicts of interest involving employees in a bargaining unit or a proposed bargaining unit, the opportunity is present under the TUA, as it stands, for a concerned party(s) to bring an application or reply to an application to the SLRB and make their case.

Open Periods

Currently sections 5 and 6 of the TUA set out the processes and time frames for the making of applications for certification, amending certification orders, and rescinding certification orders. It is GSU's respectful submission that the rules and procedures with regard to the "open periods" for making applications were well established until the aftermath of Bill 6.

GSU also submits that the SLRB (with adequate resources) is best placed to provide neutral information to parties when they are unsure about procedures and open periods. In this regard see section 23.2 of the TUA.

Furthermore, following full consultation with labour relations practitioners, unions and unionized employers, the SLRB should establish a consistent series of practice notes available to any interested party. This step would better fulfil the requirements of section 23.2 of the TUA.

Providing more open periods beyond the current generous annual option for rescission applications or non-consensual amendments to certification orders would be unduly disruptive, mischievous, and destructive to the purposes of the TUA—let alone the prospects for labour relations stability and harmony.

By comparison, Part I of the Canada Labour Code allows for rescission applications within the last 90 days of a collective agreement where the collective agreement operates for a term of not longer than three years; and thereafter, in longer duration agreements, in the last 90 days of each subsequent year of duration; or where a collective agreement has expired until a new collective agreement is bargained and ratified by the parties.

The open period provisions of the TUA compare exceptionally well to present laws governing federal, provincial and municipal elections and/or the recall of elected representatives.

Determining Employee Support and SLRB Remedial Powers

GSU submits that the provisions of section 6 of the current version TUA should be amended to restore the ability of the SLRB to certify a union as the bargaining agent of a unit of workers where the applicant union has tendered evidence of majority support in the form of signed union membership cards.

There was and is no compelling evidence to suggest that the "card check" system (in place from 1945 to 2008 in Saskatchewan and still in place under the Canada Labour Code), was ineffective or suspect for the purpose of determining the express wishes of employees who choose to be unionized.

The mandatory representation vote process in the current (2008) version of the TUA has resulted in considerable procedural anomalies and issues of timeliness. The mandatory

representation vote process has opened the door to employer interference, procedural delays and produced a suspect pre-vote verification process.

GSU also urges that the TUA be amended to specifically enable the SLRB to issue remedial certification orders where an employer has been found to have committed an unfair labour practice during a union organizing drive or application for certification.

Notice to Bargain

GSU proposes that consideration be given to amending section 38(4) of the TUA to enable either party to a collective agreement to give notice to bargain within the last 120 days of the collective agreement's duration.

Rights of the Parties After Expiry of a Collective Agreement

There is broad public support for the idea of free collective bargaining. At the same time, the public might not always like how it is carried out. This truth speaks to all parties involved.

Accordingly, it is GSU's submission that the rights of the parties after the expiry of a collective agreement as set out in section 34(1) of the TUA could be usefully clarified following full consultation with and consensus by unionized employers and unions. GSU offers the following for consideration.

1. Where a collective agreement has expired and a bargaining dispute/impasse occurs, the union in question should be required to obtain authorization of strike action by a secret ballot vote.

2. There should continue to be the current 48 hours' notice of impending strike action. Where strike action occurs, its operation should be limited to pressing the unresolved issues at the moment of dispute/impasse as presented to the employer by the union; all other provisions of the expired collective agreement would remain in force.

3. If an employer decides to declare a lock out, the employer—subject to 48 hours' lock out notice—should be required to lock out all of the employees in the bargaining unit and should be limited to pressing the unresolved issues at the moment of dispute/impasse as presented to the union by the employer; all other provisions of the expired collective agreement would remain in force.

4. If an employer decides to implement the terms of a final offer presented to the union, but not to actually lock out the employees in the bargaining unit, the employer's ability to implement should be limited to the unresolved issues at the moment of dispute/impasse; all other provisions of the expired collective agreement would remain in force.

5. In addition to the foregoing, if there was a more robust examination and utilization of the provisions of section 23.1 of the TUA regarding the appointment of special mediators disputes, including essential services issues, could be addressed without recourse to other legislation.

Replacement Workers

GSU proposes that the TUA be amended to prohibit the hiring of replacement workers during a lockout, including employees in the bargaining unit, when the employer has issued notice of lock out and effectuated an actual lock out in a collective bargaining dispute.

Union Dues, Union Security and Union Accountability

Since the middle of the last century, a fundamental of labour relations legislation in Canada, as affirmed by our Supreme Court, is the universal payment and collection of union dues via payroll deduction of from all employees in a union's bargaining unit, save and except for the very few who choose to prove conscientious religious exemption.

The above principles have been found by the Supreme Court of our nation to be consistent with Canadian values respecting majority rule and the Charter of Rights and Freedoms. There are no reasons that GSU is aware of, except ignorant prejudice, to disrupt the balance achieved after the many years of struggle and industrial relations disharmony leading up to World War II.

Prior generations of Canadian workers have paid with their blood, their sweat, and their tears to accomplish the workplace rights and balance that we have today regarding the recognition of unions chosen or formed under the laws of our land, including the collection and payment of union dues.

Accordingly, it is GSU's submission that there are no sound reasons suggesting or compelling the Government of Saskatchewan to depart from the Canadian universality inherent in sections 32 or 36 or 36.1 of the TUA.

The TUA, as it now stands, upholds the principles of equal access and representation. Introduction of additional "opting out" or other "free rider or free loader" amendments for that matter or alien concepts such as the so-called "open shop" will do a disservice to our community, our province, and our nation.

Unions are democratic representative organizations of working people with by-laws and constitutions adopted by their members. Unions have regular meetings and annual meetings to report on the business conducted on behalf of the workers represented, including audited financial statements and reports on expenditures.

GSU, for example, presents regular reports on the use of union dues to meetings of members and elected representatives, including audited annual financial statements. GSU posts its audited financial statements on its web site. Every person who pays union dues to GSU is invited and encouraged question the union's finances.

We take exception to any suggestion that more stringent prescribed government mandated "accountability" legislation or regulation is required with regard to the operation of unions.

It is GSU's submission that it is the business of the working people who pay dues to their union, and they alone, to ask about how their money is administered or spent.

It is not the business of government or business organizations to hold working people and their unions to a level of public disclosure they themselves do not practice.

Furthermore, we wish to point out that there is absolutely no credible suggestion of union malfeasance or of laws being broken or of criminal activity by the anti-union bodies that call for penurious so-called union accountability legislation.

Some people think that union dues should not be spent beyond the narrow confines of collective bargaining and union representation. It is their right to express their point of view. However, as far as GSU is concerned, this subject is a matter for the people who pay union dues to decide through the democratic processes of their unions.

The overwhelming proportion of union dues is spent on collective bargaining and the representation of employees represented by unions. Some resources are directed to public policy advocacy and these expenditures have been acknowledged by the Supreme Court of Canada as a legitimate component of the right to bargain collectively.

Strangely and contradictory, if the people arguing for legislation barring expenditure of even a portion of union dues for public advocacy had their way, GSU would not have been able to make this submission.

Union dues are income tax deductible for workers who pay union dues and by rhetorical fiat, some anti-union campaigners suggest that since union dues are a "tax benefit" for the worker, the recipient union should be required to provide a detailed public accounting to government.

This accounting would include all contracts for services provided by third parties (auditors, contractors, service providers, lawyers and other suppliers etc.) above a $5,000 amount; and a detailed accounting of any and all expenditures on public and political advocacy.

First and foremost, GSU points out that any tax benefit derived from the payment on union dues belongs to the individual worker, not their union. Unions are non-profit organizations.

Those who call for stringent and resource consuming public accountability legislation applicable to unions and unions alone (Merit Contractors, Labour Watch, and other anti-union advocates) should explain why the legislation they propose for unions should not also apply to themselves and any individual tax payer, business or other organization that derives a real or perceived "tax benefit" from any expenditure under the tax laws.

They should explain why, if they had their way, all Canadians would be exposed to providing a detailed explanation to government of all their expenditures, and by extension for public consumption large.

Perhaps it should be explained to Canadians how such laws or regulations will ultimately affect their individual right to privacy in the event they benefit from a tax credit or other break under income tax laws.

Some unions—just as individual citizens, businesses and other organizations—engage in partisan political activity. These activities have also been acknowledged to be legitimate union activities in a genuinely pluralistic society by the Supreme Court of Canada.

Some unions do and some unions don't. GSU is among the unions who don't and this is the decision of GSU members. GSU respectfully submits that the decision to involve a union in partisan political activity is the business of the workers who pay dues to their union and no one else. Is there a problem?

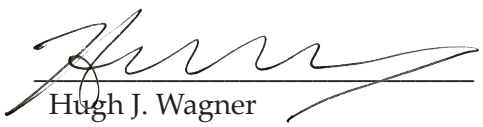
GSU acknowledges that there are aspects of labour legislation raised in the Ministry's Consultation Paper and Review that this submission has not addressed. It would be our preference to do so, however, the time allowed by the review and the resources of the union members' organization have to be balanced between many priorities.

It is our respectful submission that open informed public dialogue and thoughtful consideration are the key ingredients that should apply to legislation, as opposed to populist or opportunistic impulses.

We hope we have contributed to supporting a dialogue for the purpose of enabling an accepting society that continues to include unions

Once again, we urge the Government of Saskatchewan, if it does nothing else, to repeal Bills 5 and 6 (2008) in favour of shoring up the good ship Saskatchewan for all of the people.

All of which is respectfully submitted on behalf of the members of
Grain and General Services Union (ILWU • Canada),



Hugh J. Wagner
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