Supporting positive change for working people in Ontario

A submission to the Government of Ontario's Changing Workplaces Review: comments on the Interim Report of the Special Advisors

October 5, 2016

Ontario Public Service Employees Union, 100 Lesmill Road, Toronto, Ontario M3B 3P8
www.opseu.org

Introduction and overview

The Ontario Public Service Employees Union (OPSEU) represents 130,000 public sector workers across the province of Ontario, including workers employed by private contractors delivering services on behalf of public sector entities. OPSEU members work directly for the provincial government, in the Ontario Public Service, and for municipal governments. They work across the health care field, in both hospital and community settings. They work in the education sector, at Ontario's community colleges, universities and school boards. They provide social services to children, youth and families across the province. They work at important agencies like the Liquor Control Board of Ontario and the Municipal Property Assessment Corporation. OPSEU members are proud to deliver the services Ontarians depend on, and their union is proud to represent both their interests and, as part of the broader labour movement, the interests of working people generally.

OPSEU is equally proud to offer its submissions on the Changing Workplaces Review Special Advisors' Interim Report. Like many in the labour movement, OPSEU has welcomed the review of the *Ontario Labour Relations Act* (OLRA*)* and the *Employment Standards Act* (ESA*).* We are hopeful and, indeed, optimistic that it will result in tangible, positive changes to the lives of working people, both by removing barriers to unionization and by putting in place legal mechanisms to strengthen the rights of all workers to decent work whether they are unionized or not.

To achieve these ends, we support the following changes to the OLRA and the ESA.

OLRA changes:

- a return to the Bill 40 model for card-based certification;
- early access to employee lists in organizing drives;
- admissibility of electronic membership evidence (e.g., union cards signed online);
- the use of alternative voting procedures such as off-site, telephone and Internet voting;
- increased use of remedial certification;
- automatic just cause protection for employees after certification and up to ratification of the first collective agreement;
- the creation of a Director of Enforcement to improve enforcement of both the OLRA and the ESA;
- automatic access to first contract arbitration;
- successor rights for contract workers;

- elimination of the six-month period for allowing striking employees to apply to return to work;
- automatic access to arbitration in all rounds of bargaining where a strike or lockout has lasted six months or more;
- a ban on the use of replacement workers; and
- broader-based bargaining structures (e.g., sectoral bargaining).

ESA changes:

- a more inclusive definition of "employee";
- the elimination of exemptions and special rules;
- equal pay for equal work regardless of employment status (full-time, part-time, casual, temporary, temporary agency); and
- increasing vacation entitlements to three weeks for all employees.

We recognize that the mandate of the Review with respect to labour relations relates specifically to the OLRA. However, we respectfully reiterate our position that the improvements listed here should apply to all workers in Ontario, including those covered by legislation other than the OLRA, such as the *Colleges Collective Bargaining Act* and the *Crown Employees Collective Bargaining Act.*

The following sections detail OPSEU's submission and recommendations on the Changing Workplaces Review's Special Advisors' Interim Report.

Proposed changes to the *Ontario Labour Relations Act* (OLRA)

Changing Workplaces Review Interim Report Article 4.3.1.1 - Card–Based Certification and 4.3.1.2 - Electronic Membership Evidence

Options:

1. Maintain the status quo.
2. Return to the card-based system in place from 1950 to 1993, possibly adjusting thresholds (e.g., to 65 per cent from 55 per cent).
3. Return to the Bill 40 and current construction industry model.
4. Permit some form of electronic membership evidence.

OPSEU supports option 3: "return to the Bill 40 and current construction industry model"

OPSEU strongly supports a certification process that allows workers to join a union without fear of intimidation by their employers. In practical terms, this is best facilitated by a return to card-based certification.

Card-based certification effectively serves to limit employer attempts to unduly influence and intimidate workers who want to unionize, making it the best way to ensure that the Charter-protected right to freedom of association (as it relates to unionization) is respected. Moreover, facilitating easier access to unionization and collective bargaining rights is the best way to empower workers to achieve improved wages and working conditions at the workplace level. There is no more powerful tool to combat precarious work than unionization.

The reintroduction of the Bill 40 model would be a welcome improvement to the OLRA. OPSEU supports maintaining the 55 per cent threshold to trigger certification that existed under that legislation from 1993 to 1995. Any increase to this threshold would unfairly tip the balance in favour of employers.

Since the introduction of the mandatory vote model in 1995, employers have enjoyed a clear advantage due to their ability to delay and interfere with the organizing and certification process. This has created a barrier to unionization and led to a decline in union organizing successes – and overall union density – over the last 20 years. In this environment, it is not

surprising that wages have stagnated or fallen while precarious work has become increasingly commonplace.

Trade unionists have long observed that, in the modern economy, a worker's signature is all that is required to take on the legal obligations (and take advantage of the opportunities) related to buying or selling a house or a car, getting married or divorced, or changing one's name. The notion that a vote is required to confirm that the act of signing a union application card truly reflects the will of the worker signing it is absurd.

OPSEU wants to see an OLRA that actively supports worker success in organizing and collective bargaining. A decade ago, the Liberal government of Premier Dalton McGuinty recognized the value of card-based certification, reintroducing the Bill 40 model for the construction sector in 2005. OPSEU submits that card-based certification for all workers in all sectors in Ontario is long overdue.

OPSEU supports option 4: "permit some form of electronic membership evidence."

The use of electronic membership evidence would serve to modernize the certification process and permit unions to more effectively organize workers divided across multiple worksites and/or geographical regions. The current vision of organizing in the OLRA is based on an idea of the workplace in which hundreds or even thousands of workers gather regularly in the same location. While these workplaces still exist, obviously, other forms are supplanting them as workplaces become increasingly fissured, to use David Weil's term.

Permitting workers to sign union application cards online would enhance all unions' ability to organize workers in today's increasingly fragmented workplaces. In today's economy, many workers find themselves more and more physically isolated in relation to their co-workers. At the same time, many are working fewer hours per week and/or for shorter periods of time with a given employer. Online card-signing would give workers an easier and faster way to achieve certification.

Technology has evolved sufficiently to securely facilitate the signing of membership cards online. The Ontario Labour Relations Board (OLRB) currently permits the submission of mailed membership cards provided that the union follows up with the individual that signed and mailed the card. With appropriate safeguards, perhaps similar to mailed membership, OPSEU is certain that electronic card-signing can be done in a way that ensures the integrity and legitimacy of the certification process.

4.3.1.3 – Access to Employee Lists

Options:

1. Maintain the status quo.
2. Subject to certain thresholds or triggers, provide a union with access to employee lists with or without contact information (the use of the lists could be subject to rules, conditions and limitations). A right to access employee lists could also be provided with respect to applications for decertification.

OPSEU supports option 2: "subject to certain thresholds or triggers, provide a union with access to employee lists with or without contact information (the use of the lists could be subject to rules, conditions and limitations). A right to access employee lists could also be provided with respect to applications for decertification."

For a union to effectively communicate with potential members, it must be able to identify all employees that would comprise a proposed bargaining unit. It follows, therefore, that when a union is engaged in a bona fide organizing drive, it should be entitled to employee lists at an early stage in the process.

For example, the disclosure of employee lists could occur when a union has signed up 20 per cent of the proposed bargaining unit. This would be particularly helpful where workers are spread out geographically or have only a loose connection to the workplace. It would also prevent employers from intimidating or threatening employees with discipline if they provide information to the union.

Under the current legislation, unions are only entitled to an employee list after they file an application with the OLRB and have signed up 40 per cent of the prospective bargaining unit. As such, unions file applications based on the best information they have been able to collect during the organizing process. If unions were given early access to employee lists, applications for certification would be filed with a greater degree of certainty. This could speed up the certification process and conserve the resources of the OLRB by helping to eliminate disputes that impede certification such as those relating to composition of the bargaining unit, whether the union has sufficient support, and so on.

It cannot be overstated that all changes to the OLRA recommended by the Changing Workplaces Review should aim to make gaining access to collective bargaining rights easier, not harder.

4.3.1.4 – Off-site, Telephone and Internet Voting

Options:

1. Maintain the status quo.
2. Explicitly provide for alternative voting procedures outside the workplace and/or greater use of off-site, telephone and Internet voting.

OPSEU supports option 2: "explicitly provide for alternative voting procedures outside the workplace and/or greater use of off-site, telephone and Internet voting."

As noted above, OPSEU supports card-check certification for all bargaining units in Ontario. However, we do feel it necessary to comment on how certification votes could be better managed.

As with electronic membership evidence, OPSEU believes that the use of off-site, telephone and Internet voting would serve to modernize the certification process.

The intent of the OLRA with respect to certification votes should be to encourage as many employees as possible to cast their vote, and to make it easy for them to do so. But under the current model, which requires votes to be held on the employer's premises in all but unusual circumstances, many employees do not feel comfortable enough to vote without fear of reprisal.

Holding votes at a neutral, off-site location would help to ensure that workers feel free from employer intimidation.

Additionally, in today's changing economy, more workers work in fragmented and non-traditional work environments. For example, community health-care workers travel to patients' homes to provide care. Some part-time college support workers work for short periods of time between attending classes, while part-time college professors may appear only briefly on campus to teach but do preparation and evaluation work at home. Many workers "telecommute," spending the majority or all of their working hours at home. This can make participation in certification challenging and inconvenient. It can also present resource challenges for the OLRB in ensuring that an officer is available to attend votes at multiple locations and worksites.

By permitting alternative voting procedures outside the workplace through off-site, telephone and Internet voting, workers that do not have a formal workplace or work in non-traditional work environments would be provided with an effective and convenient means to cast a vote during the certification process. Moreover, this could serve to alleviate resource challenges for the OLRB in scheduling certification votes across multiple worksites.

4.3.1.5 – Remedial Certification

Options:

1. Maintain the status quo.
2. Make remedial certification more likely to be invoked by removing the requirement to consider whether a second vote is likely to reflect the true wishes of the employees.
3. Remove the requirement to consider whether the union has adequate membership support for bargaining.

OPSEU supports option 2: "make remedial certification more likely to be invoked by removing the requirement to consider whether a second vote is likely to reflect the true wishes of the employees."

To ensure that employees are free from employer coercion or intimidation, there needs to be a real deterrent that makes employers think twice about their behavior during organizing drives. Remedial certification can act as that deterrent and serve to prevent employer unfair labour practices that are detrimental to unions building support. Unfortunately, as the Special Advisors' report clearly states, "the OLRB does not often exercise its discretion to award remedial certification."

Under the current model, the OLRB is most likely to order a second vote. However, if an employer has engaged in significant coercion or intimidation during the organizing process, a second vote will do little to undo the damage that has already been caused.

OPSEU strongly believes that the OLRA should be a vehicle that supports workers' rights to organize and establish a collective voice. Indeed, we believe that one of the goals of the OLRA should be the larger societal goal of raising union density in general. With this in mind, there must be a steep penalty for employers that act unfairly and unlawfully to stifle workers' rights to union representation.

OPSEU supports option 3: "remove the requirement to consider whether the union has adequate membership support for bargaining."

Quite simply, if an employer engages in significant unlawful behavior during an organizing drive, it can serve to prevent the union from building adequate support because employees do not feel comfortable or emboldened to freely express their desire to join the union. This could result in failed certification votes that do not accurately reflect the true feelings of the employees.

When considering remedial certification, the test to determine if it is the appropriate remedy cannot rest on whether a union has "adequate membership support." This tips the balance in the employer's favour. Coercion and intimidation during the organizing process could prove significant enough to stifle a union's ability to build adequate membership support, making the penalty of remedial certification inaccessible.

4.3.2 - First Contract Arbitration

Options:

1. Maintain the status quo.
2. Provide for "automatic" access to first contract arbitration upon the application of a party to the OLRB, after a defined time period (e.g., thirty days), in which the parties have been in a legal strike or lock-out position, has elapsed.
3. Provide for first contract arbitration on either an automatic or discretionary basis in circumstances where the OLRB has ordered remedial certification without a vote.
4. Introduce a "mediation-intensive" model similar to that utilized in British Columbia.
5. Not permit decertification or displacement applications while an application for first contract arbitration is pending.

OPSEU supports option 2: "automatic access to first contract arbitration"

OPSEU strongly supports automatic (i.e., mandatory) access to first contract arbitration upon application of either party to the OLRB.

As the Interim Report notes, automatic arbitration exists in Manitoba. Under the Manitoba model, either party (the union or the employer) can apply to the Manitoba Labour Board to gain access to first contract arbitration. This process is automatic, provided that the conciliation process has been completed and a certain period of time has elapsed since the certification of the bargaining unit. In the event of a strike or lockout, an application to settle a first collective

agreement results in the termination of the strike or lockout and a return to work for employees "either on the basis of a reinstatement agreement between the union and the employer or on a seniority basis."[1]

In 2015, OPSEU members delivering home care services at CarePartners in Niagara Region endured a punishing and disruptive strike for eight months, only to negotiate a first contract arbitration process which ultimately resolved all of the issues in dispute. Our members, their clients and the employer would have been better served if first contract arbitration had been an option at the outset.

Automatic first contract arbitration existed in Ontario prior to the Harris government. It should be reinstated.

4.3.3 - Successor Rights

Options:

1. Maintain the status quo.
2. Expand coverage of the successor rights provision, similar to the law in place between 1993 and 1995, to apply, for example, to:

   a) building services (e.g., security, cleaning and food services);
   b) home care (e.g., housekeeping, personal support services); and
   c) other services, possibly by a regulation-making authority.

3. Impose other requirements or prohibitions on the successor employer in a contract for service situation (e.g., provisions to maintain employment, employee remuneration, benefits and/or other terms of employment; a requirement that the union representing the employees under the former employer be provided with automatic access to the new employee list or other information).

OPSEU supports Option 2: "expand coverage of the successor rights provision, similar to the law in place between 1993 and 1995, to apply, for example, to:

a) building services (e.g., security, cleaning and food services);
b) home care (e.g., housekeeping, personal support services); and
c) other services, possibly by a regulation-making authority."

In OPSEU's view, employees should be able to follow their work no matter who has received the successor contract. It makes no sense whatsoever for employees to lose their jobs, rights and benefits when contractors change. Moreover, successor employers should not be able to choose who to hire nor be allowed to reduce wages and benefits. An employer who accepts a service contract should be required to take on all of the workers of the predecessor employer, along with their existing collective agreement.

Under the current structure, the upheaval for employees and unions is unnecessary and extremely disruptive. Furthermore, the impacts on the public can be disruptive. For example, in the home care sector, the impact on clients can be extremely negative when service providers change.

OPSEU supports Option 3: "impose other requirements or prohibitions on the successor employer in a contract for service situation (e.g., provisions to maintain employment, employee remuneration, benefits and/or other terms of employment; a requirement that the union representing the employees under the former employer be provided with automatic access to the new employee list or other information)."

OPSEU's position is that employees should not suffer adverse employment effects as a result of a change in the contractor providing the service. An important part of this is maintaining their union representation. This option should, therefore, include carrying a union's bargaining rights over to the successor employer for it to be meaningful and enforceable. Furthermore, a union and its members should not be forced to go through a recertification process as a result of a change in the contractor. Currently, if a cleaning contract changes hands at a community college, the union must re-organize the workers and negotiate a new collective agreement when the only change is on the employer side. This is unnecessary and unreasonable.

4.3.4 - Consolidation of Bargaining Units

Options:

1. Maintain the status quo.
2. Reintroduce a consolidation provision from the previous OLRA where only one union is involved.
3. Introduce a consolidation provision with a narrow test (e.g., allowing it only in cases where the existing bargaining unit structure has been demonstrated to be no longer appropriate).
4. Introduce a consolidation provision with a test that is less restrictive than proving that the existing bargaining unit is no longer appropriate. This provision could be broad enough to

allow for the federal labour relations board's previous practice under the *Canada Labour Code*, as it was prior to the incorporation of the amendments recommended by the Sims Task Force in Chapter 6 of "Seeking a Balance: *Canada Labour Code*, Part I" with respect to bargaining unit reviews.[71]

5. Amend section 114 of the LRA to provide the OLRB with the explicit general power to alter a bargaining unit in a certificate or in a collective agreement.

OPSEU strongly opposes the forced consolidation of bargaining units.

OPSEU only supports the consolidation of bargaining units on a voluntary basis. We do not support the imposition of consolidation on bargaining units by the OLRB.

4.4.1 - Replacement Workers

Options:

1. Maintain the status quo.
2. Reintroduce a general prohibition on the use of replacement workers.
3. Adopt an approach similar to the *Canada Labour Code*, whereby the use of replacement workers would not be prohibited except if used for the "purpose of undermining a trade union's representational capacity."

OPSEU supports option 2: "reintroduce a general prohibition on the use of replacement workers."

Such a prohibition will:

1) encourage real collective bargaining by banning the use of scabs during strikes and lockouts;
2) eliminate worker-on-worker conflict;
3) reduce the length of labour stoppages;
4) allow the parties to focus on resolving disputes rather than fighting over disrupted workplace operations; and
5) help to preserve the working relationship between the employer and the union.

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

Options:

1. Maintain the status quo.
2. Remove the six-month time reference in the current LRA section but leave the provision otherwise the same.

OPSEU supports a modified option 2: "Remove the six-month time reference in the current LRA section but leave the provision otherwise the same."

OPSEU is of the strong opinion that the six-month provision in the OLRA gives employers an incentive to lengthen strikes; therefore, we support removing the six-month reference with regard to employees applying to return to work. However, we would add a provision allowing either party to apply for automatic arbitration to settle the outstanding matters in dispute at the six-month mark. This would have the effect of treating a six-month-old strike or lockout as a first contract for arbitration purposes, similar to what OPSEU proposes with respect to Article 4.3.2, above.

4.5.2. – Just Cause Protection

Options:

1. Maintain the status quo.
2. Provide for protection against unjust dismissal for bargaining unit employees after certification but before the effective date of the first contract.

OPSEU supports option 2: "provide for protection against unjust dismissal for bargaining unit employees after certification but before the effective date of the first contract."

Employees who are active in the pursuit of unionization should not live in fear of reprisal for participating in activities that are both lawful and just. It cannot be overstated that the OLRA should remove barriers to unionization and collective bargaining rights, and one of those barriers is the lack of protection afforded to employees after certification.

As noted in the Special Advisors' Interim Report, after certification and up to the ratification of the first collective agreement, employees have "no protection against unjust termination by the employer unless the termination is motivated in whole or in part by the employee's exercise of rights under the LRA."

OPSEU submits that employees should have just cause protection under the OLRA immediately upon certification, not merely after a first collective agreement is ratified. Extending the protection to certification would eliminate the current loophole, which effectively creates an incentive for employers to fire employees, including union organizers, before a first contract is reached. The appropriate forum to address disputes concerning just cause would be grievance arbitration under section 48 of the OLRA, just as during the life of a collective agreement.

4.5.3 – Prosecutions and Penalties

OPSEU represents law enforcement staff in many ministries of the Ontario government. In the Ontario Ministry of Labour, we represent Occupational Health and Safety Officers, Employment Standards Auditors, and workers in related classifications. We have a keen interest not only in the content of legislation on paper, but also its successful application in reality.

All legislation is enacted with the expectation that it will be enforced. However, as the Interim Report has pointed out, enforcement of both the OLRA and the ESA has often fallen short.

Options:

1. Maintain the status quo.
2. Increase the penalties under the LRA.
3. Eliminate the requirement for consent to prosecute and allow private prosecutions for breaches of the LRA in the courts.
4. Eliminate the requirement for consent to prosecute and do not permit private prosecutions for breaches of the LRA, but only prosecution by the state.
5. Eliminate prosecutions in the court and give the OLRB the authority to impose administrative penalties as per the model of the Ontario Securities Commission.
6. Create a position of Director of Enforcement, situated in the Ministry of Labour, or in the Ministry of the Attorney General.

OPSEU supports option 6: "Create a position of Director of Enforcement, situated in the Ministry of Labour, or in the Ministry of the Attorney General."

Numerous scholars have documented the province's shortcomings in the enforcement of labour laws and employment standards, even going so far as to say we are "on the edge of a

crisis." OPSEU members believe the situation is far worse than that: the crisis is now upon us. "Coupled with an outmoded complaint-based system," author and York University professor Leah F. Vosko wrote in 2013, "the dearth of support for [employment standards] enforcement is cultivating a situation in which an unprecedented number of workers are bearers of rights without genuine opportunities for redress."[2]

OPSEU believes that enforcement of the OLRA and the ESA needs not only more attention, but a higher profile as well. The creation of a new Director of Enforcement position, as outlined in the Interim Report, would be a positive step in the right direction.

While OPSEU recognizes that the Changing Workplaces Review is a review of legislation, not budgets, we hope that the Special Advisors will see fit to use their current position to encourage the government to make significant new investments in not only the office of the Director of Enforcement, but also the administration and enforcement of both the OLRA and the ESA more generally.

4.6.1 - Broader-based Bargaining Structures

Options:

1. Maintain the status quo.
2. Adopt a model that allows for certain standards to be negotiated and is then extended to all workplaces within a sector and within a particular geographic region, etc. This could be some form of the ISA model or variations on this approach that have been proposed in a very detailed way (as discussed above).
3. Adopt a model that would allow for certification of a unit or units of franchise operations of a single parent franchisor with accompanying franchisees; units could be initially single sites with accretions so that subsequent sites could be brought under the initial agreement automatically, or by some other mechanism.
4. Adopt a model that would allow for certification at a sectoral level, defined by industry and geography, and for the negotiation of a single multi-employer master agreement, allowing newly organized sites to attach to the sectoral agreement so that, over time, collective bargaining could expand within the sector, along the lines of the model proposed in British Columbia.
5. Adopt a model that would allow for multi-employer certification and bargaining in an entire appropriate sector and geographic area, as defined by the OLRB (e.g., all hotels in Windsor or all fast-food restaurants in North Bay).The model would be a master collective agreement that applied to each employer's separate place of business, like the British

Columbia proposal, but organizing, voting, and bargaining would take place on a sectoral, multi-employer basis. Like the British Columbia proposal, this might perhaps apply only in industries where unionization has been historically difficult, for whatever reason, or where there are a large number of locations or a large number of small employers, and, perhaps only with the consent of the OLRB.

6. Create an accreditation model that would allow for employer bargaining agencies in sectors and geographic areas defined by the OLRB (e.g., in industries like hospitals, grocery stores, hotels, or nursing homes), either province-wide, if appropriate, or in smaller geographic areas. This model is intended for industries where unionization is now more widespread, but bargaining is fragmented. Employers could compel a union to bargain a master collective agreement on a sectoral basis through an employers' organization, and be certified by an accreditation-type of model, similar to the construction industry accreditation model. This might be desirable for employers in industries where unions decline to bargain on a sectoral basis, and where the union could otherwise take advantage of its size, vis-à-vis smaller or fragmented employers, to "whipsaw" and "leapfrog."
7. Create specific and unique models of bargaining for specific industries where the *Wagner Act* model is unlikely to be effective or appropriate because of the structure or history of the industry, (e.g., home care, domestic, agriculture, or horticulture workers, if these industries were included in the LRA).
8. Create a model of bargaining for freelancers, and/or dependent contractors, and/or artists based on the *Status of the Artist Act* model.
9. Apply the provisions of the LRA to the media industry as special provisions affecting artists and performers.

OPSEU supports <u>in principle</u> a "broader-based bargaining" approach.

A broader-based bargaining approach is necessary in Ontario, particularly where small employers abound, fragmented sectors exist and precarious work is the norm.

OPSEU supports a sectoral bargaining model.

Bargaining involving more than one employer and more than one bargaining unit has existed in Ontario for decades. In the hospital sector, groups of employers and employees have come together to bargain centrally. OPSEU participates in central bargaining for hospital professionals. The Ontario Nurses' Association (ONA), the Canadian Union of Public Employees (CUPE), and the Service Employees International Union (SEIU) also engage in central hospital bargaining for nurses and office/clerical/service workers. This bargaining is open to hospitals and bargaining units across Ontario. These central agreements set basic standards for all similar

employees in a sector while at the same time allowing for local bargaining to occur on certain specific local conditions. OPSEU would like to see more central bargaining.

Alternatively, larger sectoral agreements, negotiated between councils of employers and councils of unions in a sector, could work as well. However, OPSEU does not want this model forced upon unions as it was in the education sector. Rather, we would prefer the model to be a voluntary process entered into between the parties as was done with the Community Care Access Centres (CCACs). That being said, if there is an employer organization in a sector and a union with multiple bargaining units requests a table, there should be a mechanism in place to make this happen. In these instances, there should be some onus on the government as funding agent to ensure agencies participate.

Finally, OPSEU is of the strong opinion that the democratic rights of employees to choose their union must be paramount. We therefore oppose certification by sector that could prevent unions from organizing in specific sectors.

Proposed changes to the *Employment Standards Act* (ESA)

5.2.1 – Definition of Employee

OPSEU supports the introduction of a more inclusive definition of "employee" and measures that prevent the misclassification of employees.

As noted in the Special Advisors' Interim Report, there is a problem with the misclassification of employees as independent contractors. This prevents workers from gaining access to benefit coverage as well as vacation pay, public holiday pay, severance, overtime, and termination pay and premiums for Employment Insurance and CPP.

OPSEU agrees that the best way to combat misclassification is to adopt a more inclusive definition of "employee" and include provisions in the ESA that presumes any worker engaged by an employer to be an employee unless the employer has proven otherwise.

5.2.3 – Exemptions, Special Rules and General Process

OPSEU supports the elimination of exemptions from the ESA.

The intent of the ESA is to provide the minimum standards for employment in the province. By permitting a series of exemptions to reduce these minimum standards for certain workers, the ESA is currently failing to ensure fairness for all workers.

5.3.3.2 – Paid Vacation

OPSEU supports increasing vacation entitlement to three weeks for all employees.

The interim report notes that Ontario has the least generous vacation provisions in Canada. This must change.

In today's changing and precarious work environments, many employees are not staying with the same employer long enough to earn higher vacation entitlements. They can find themselves regularly changing employers and therefore never achieving more than two weeks' vacation.

5.3.7 – Part-time and Temporary Work – Wages and Benefits

OPSEU supports changes to the ESA that require employers to provide the same wages and benefits to part-time, temporary and casual employees as are provided to full-time employees.

Currently, the ESA only bars employers from paying workers less (for the same work) on the basis of gender. It does not bar discrimination on the basis of employment status (e.g. part-time, temporary and casual).

Across the province, more and more workers are working alongside other workers doing the same work but receiving less pay. For example, in our community colleges, we are seeing part-time faculty and support staff who earn much less than their full-time colleagues doing the same work. At the LCBO, a corporation that earns $2 billion a year in profits for the province has created a multi-tier wage system in which workers performing the same work are paid substantially different hourly wages depending on their status as fixed-term contract, casual, or full-time permanent workers. This is discriminatory.

In Ontario, it is illegal to discriminate against any worker on the basis of race, sex, sexual orientation, or any of the other prohibited grounds in the Ontario Human Rights Code. Yet at present, it is perfectly legal to discriminate against workers on the basis of criteria their employer controls, e.g., the number of hours they work, or the duration (or permanency) of their employment contract.

This is wrong. The ESA should not assist employers in creating classes of workers with fewer rights.

OPSEU believes an amendment to the ESA that made “equal pay for equal work” the law of the land would have broad public support. For workers facing workplace discrimination on the basis of job status, it would be a game-changer.

5.3.9. – Temporary Help Agencies

OPSEU supports equal wages, benefits and working conditions for temporary agency workers performing the same work as permanent employees.

It is no secret that precarious work is a growing problem in today's economy. The Special Advisors' Interim Report notes quite clearly that temporary work has grown over the past 10 years. OPSEU submits that the ESA should not serve as a driver of precarious work. As such, the ESA should not allow loopholes that help employers achieve an unearned economic windfall by providing substandard wages and working conditions to temporary agency workers.

Conclusion

OPSEU has welcomed the opportunity to provide submissions and recommendations on the *Changing Workplaces Review* Special Advisors' Interim Report. Our members remain optimistic that this process will result in real changes to the OLRA and the ESA that protect workers' rights and make work in Ontario significantly, and noticeably, less precarious.

Authorized for distribution by Warren (Smokey) Thomas, President.

Notes

[1] *Guide to the Labour Relations Act*, p. 37. http://www.gov.mb.ca/labour/labbrd/pdf/lra_guide.pdf
[2] Vosko, Leah F. (2013). "Rights without Remedies: Enforcing Employment Standards in Ontario by Maximizing Voice among Workers in Precarious Jobs." *Osgoode Hall Law Journal*, Volume 50, Issue 4, Article 4.