

DECEMBER 7, 2005

**BRANDON AND DISTRICT LABOUR COUNCIL PRESENTATION  
TO EMPLOYMENT STANDARDS CODE REVIEW**

Thank you, Mr. Weirer. My name is Jan Chaboyer. I am President of the Brandon and District Labour Council (BDLC) and I will be speaking on behalf of the Labour Council and affiliated unions. I would advise you also that, because we believe in the principle that an injury to one worker is an injury to all workers, we speak for all working people in Brandon and the surrounding area when we address issues that affect the lives of working people in their workplaces and communities.

At the outset, I would like to thank you and your staff for having a session in Brandon so that individuals and organizations in this part of the province can share with you their concerns about needed reforms to the provisions of the employment standards code and also the way in which these provisions are administered and enforced.

We believe this review is long overdue and much too rushed to give working people an opportunity to prepare themselves to appear at the hearings and share with us their stories about how they are affected by employment standards and what should be done to improve these standards. Nevertheless, this is the review that we have and we know that you and your staff will provide recommendations that will contribute to improvements in the conditions of working people in this province.

From time to time, the Labour Council runs advertisements in the newspaper encouraging individuals to call and tell about concerns relating to their working lives. We get a lot of calls from workers who believe they are being treated unfairly by Workers Compensation and also from workers who want to know how they can form a union. But most of our calls are from young people and women wanting to know their rights under employment standards code.

- How many hours do I have to work before I'm entitled to overtime pay?
- My employer wants me to agree to have him bank my overtime hours and then pay me at straight time when things get slow. Do I have to do this? If I get another job does the employer have to pay me for the time I have banked?
- I work 15 hours a week? Am I entitled to the same benefits as full-time workers?
- I just got laid off after 10 years in the job. Do I get severance pay?

- I work for a salary in a hog barn. Am I entitled to the same rights and benefits as other workers?
- I got fired last week after six years with my employer. I wasn't told why I was fired. I was just given two weeks pay and told not come back. I have friends in unions who told me that, if they were fired, they could file a grievance and might get reinstated with back pay and benefits. Is there anyway I can do this?
- I sell furniture on commission. Right now, things are slow and I'm living close to the bone. Aren't employers required to pay a minimum salary when your commissions fall short of the minimum wage?
- I've tried to get hold of the department of labour people to tell them about my problem, but all I get is a message in Winnipeg that lists things and gives numbers. If you are concerned about minimum wage, punch 1; if pay for holidays, punch 2, etc. Why don't we have an office in Brandon where you can go to get your questions answered?

I could give you more examples, but I expect you will be hearing more detailed statements on many of these issues in other submissions. In what follows, I want to focus on four main issues:

- (i) extension of employment standards coverage to paid workers in agriculture and other resource industries, commission salespersons, independent contractors and domestic workers;
- (ii) provision of pro-rated benefits and the establishment of rights for part-time, casual and other persons in contingent employment;
- (iii) establishment of grievance-arbitration procedures for all workers who believe they have been treated unfairly or unjustly disciplined or fired by their employers (including workers in bargaining units who do not have this protection under their collective agreements); and
- (iv) service, compliance and enforcement.

### **The Purpose of Employment Standards Code**

The role of Employment Standards Legislation is two-fold. First, the legislation establishes fair and equitable arrangements relating to the terms and conditions of employment for workers, including wages, hours, benefits, rights, etc. As it relates to workers, the legislation is intended to ensure that working people in Manitoba are treated justly and with dignity and share in the gains of economic progress.

Second, the legislation places all employers on the same footing and takes the basic wages and terms and conditions of employment defined in the employment standards code out of competition.

We believe these principles should be taken into account as you try and figure out what we need to do to improve the legislation so that it better serves the working people of this province.

1. **Extension of Coverage to Agricultural Workers, Commission Salespersons, Independent Contractors and Domestic Workers.**

**Agricultural Workers.** For some reason or other, paid agricultural workers in Manitoba are not covered by labour legislation that protects workers in other most other types of employment. They are not covered by employment standards or minimum wage laws. They are not covered by Workers Compensation legislation (unless their employers have voluntarily sought coverage) and the province only just recently (2000-01) started monitoring air quality in large hog barns.

The failure of governments to provide protection to these workers is no doubt a throwback to the days – 1940 and 1950s – when small family farms were the main form of agriculture. Agriculture is much different now. Farms are much, much larger than they once were. Also a lot of livestock now is raised in large, specialized units that employ paid workers to operate the barn or feedlot. This is especially evident in the case of pork production.

Manitoba Agriculture reports that pig production in the province “has increased from 870,000 in 1975 to 7.3 million currently.” It is also reported that the pig industry currently employs 16,000 to 17,000 workers. The report does not give a breakdown of employment between direct hog production in the barns and the other stages of production including the processing of hogs in manufacturing plants.

However, we do know that the number of workers in pig barns is in the thousands. These workers are not now covered by employment standards legislation.

According to Manitoba Agriculture, hog production is getting more and more concentrated in factory barns with thousands of hogs. In sow production in 2003, for example, 80% sows were in 188 barns with 500 or more hogs, while 56% were in 75 barns with 1000 plus sows. The pattern is similar for most hog-barn operations.

On the processing side, Maple Leaf Foods has a state of the art plant in Brandon that can kill and process 45,000 hogs per week. At present, Maple Leaf is operating a single shift, but plans to add a second shift which would increase the numbers processed to 90,000 hogs a week. Recently, it was announced that a second 90,000 per week hog-plant will be built in Winnipeg by a Quebec-based consortium. This means we will soon have the potential in Manitoba to process and kill 135,000 additional hogs per week, 7,020,000 hogs per year. An increase in production of this magnitude will add approximately 3,400 workers to the manufacturing work force in the pig industry. But this is just the tip of the iceberg.

Where will the additional hogs come from to supply these additional demands from the processing plants? Well, some existing hog farms will be expanded and new hog farms will be brought on stream. And this growth in hog farms will require many new workers in the barns.

Workers in the processing plants are protected by Employment Standards Legislation and Workers Compensation, etc. And many of these workers will be able to increase wages, and improve their benefits through their membership in unions and their collective agreements.

Workers in the hog barns are not covered by Employment Standards Legislation and Workers Compensation. And since this industry is not unionized they will not have any of the rights and benefits provided under collective agreements.

That this discriminatory situation is allowed to persist is shameful and does not show the Manitoba government and employers in hog barns, in a very favourable light.

It is time for the government to end the situation and bring these workers under all legislation that applies to workers in other industries. Let me add that I think also that we need to do more as a labour movement to improve conditions in this sector.

### **Indentured labour**

As an aside, the BDLC also has concerns about the fact that many of the workers employed in the so-called “pig industry” are recruited off shore to work in both the barns and the pork processing plants. These workers are brought here as indentured labourers and required to work in a particular industry and for a particular employer for up to two years, when they become eligible for landed immigrant status. The BDLC raised questions about this practice and was told that it had to be done this way; otherwise employees would go to other jobs at the first opportunity. This tells us that if the industry is serious about reducing turnover and building a stable workforce they must do much more than they’ve done to date to improve conditions in the industry.

### **Other Excluded Workers**

Much of what we’ve said about agricultural workers also applies to other excluded workers, including workers in the fur and fish industries, horticultural establishments and market gardens, domestic workers, and commission salespersons and independent contractors.

Our position is that the wages, benefits and rights of all workers in Manitoba should be protected by the floors established by minimum wage legislation and the employment standards code. It tells us also that indentured workers should be provided with the same protection under employment and labour laws as all other workers in Manitoba.

## **2. Pro-Rated Benefits and Rights for Part-time, Casual, Temporary and Other Workers not employed in traditional full-time jobs.**

We don't have all of the numbers on these different categories of employment for Manitoba. However, according to Statistics Canada, as of November 2005, 19.0% of workers in Manitoba were working part-time (as compared to 18% for the country as a whole). Women account for almost 70% of total part-time workers, while young workers account for 45% of the total.

The latest statistics we have on temporary employees for Canada show that 12.5% of employees in 2003 were temporary (contract, seasonal, casual, supplied by a temporary help agency). High proportions of temporary workers are part-time, women and youth.

Our point is that a lot of workers – probably 25 to 30% - are in non-traditional jobs.

The Just Income Coalition recently reported (Paid to be Poor) that people working short hours – part-time, sporadic, casual, etc. get low wages. These workers also get little in the way of benefits and have few rights under existing laws and in many cases even in situations where workers are unionized and covered by collective agreements.

We believe that workers in non-traditional jobs should receive on a pro-rated basis, the same benefits received by permanent, full-time workers in the same work places.

If there are advantages to the employer of hiring workers on a part-time, temporary and casual basis, those advantages should not be based on an ability to exploit the workers by denying them benefits and rights that accrue to full-time employees.

In addition to providing pro-rated benefits, we also need action to provide regularity/predictability for workers who do not have routine work schedules – 9 to 5 or 1-5 Monday – Friday, for example. Many workers are employed on a just-in-time basis and must sit by the phone waiting for a phone all telling them they can get a few hours work for that day. Work should be scheduled for everyone and employers should bear the burden of scheduling more workers than are needed for a work day.

## **3. Protecting Workers from Unfair/Unjust Treatment in the Workplace**

We get calls from individuals who are devastated because they believe they have been unjustly treated by their employer. Often these situations deal with denial of opportunities for training or promotion and individuals claim either that the employer has shown favouritism that benefits another employee at their expense or discriminated against them. At present, employees in these situations have to go either the human rights commission or the courts (and for most workers, going to court is not really an option available to them). We're not sure how this problem can be rectified, but we would like you to try and figure out how individuals in these situations can seek redress when they feel they have been wronged.

We also get complaints from individuals who believe they have been unfairly or unjustly disciplined, even fired. Those of us who are fortunate to be in trade unions and covered by a collective agreement can deal with these events by invoking the grievance procedure and getting the matter settled by arbitration.

We would recommend that we include in the Employment Standards Legislation a similar process for non-unionized workers to access if they believe they have been unjustly fired.

The process could be a simple one. Employers must be required to provide workers who are dismissed with a letter stating the grounds for dismissal. Workers who believe that their dismissal is unjust would be able to appeal their dismissal to single arbitrator who would be selected from a roster of arbitrators established and maintained by the Manitoba Labour Board. The arbitrator would be required to hear the case within 30 days of the filing of an appeal and the hearing would be scheduled for a time that would be best for the complainant. There is some urgency to fast track these cases, because the workers affected usually don't have resources to tide them and their families over while they wait to have their cases heard.

We would further recommend that all employees – permanent, probationary, etc. – have access to this procedure in the event of a perceived unfair/unjust dismissal.

This provision would establish a standard for the rest of Canada in dealing with these issues.

#### **4. Service, Compliance and Enforcement**

##### **Service**

In recent years we have been getting more and more complaints from individual workers who are frustrated by the difficulties they experience in trying to get their concerns heard by someone from the Department of Labour in the local office.

It used to be that when individuals from Brandon and the surrounding area had complaints against their employers, they would either phone or visit the local office of the Department of Labour to talk to a compliance officer or other staff member, explain their problem and seek guidance as to what they should do to get the matter resolved.

Now, as we understand the process, all telephone calls are handled through Winnipeg and the individual is discouraged from accessing the local office unless directed to by the person taking calls in Winnipeg.

We would suggest that the government needs to put more resources into providing services at the local level where an individual can get quick access to a person with the knowledge and skills required to provide him or her with the help they need to figure out what their options are and determine what might be the best course of action.

In brief, we need a service that is more user friendly for workers who rely on the employment standards code to provide them with basic benefits and rights. To get this result we need to have more people in local offices and perhaps more local offices throughout the province.

## **Compliance and Enforcement**

In our admittedly limited experience of working with individuals with problems relating to employment standards, we have learned that a lot of workers don't understand their rights and a lot of employers don't understand their obligations.

This problem – essentially a problem of ignorance – could be partially resolved by providing employers with a handbook which explains to them their obligations under the legislation and requiring employers to post in prominent places readily accessible to workers (lunch rooms, plant, etc.) a poster that summarizes the entitlements of workers under the code.

We should also end the practice of permitting employers to induce workers to sign forms waiving their right to proper advance notice should be terminated. There should be no opt-out provisions that allow employers to evade their responsibilities under the legislation. The existence of such provisions simply creates uncertainty regarding rights and obligations under the code.

Finally, we believe that more resources should be committed to providing proper monitoring of employers to ensure that there is employer compliance with the legislation that affects the lives of workers in the workplace and in all other aspects of their lives. In addition to providing resources for ongoing monitoring we also need more resources for the proper investigation of complaints and assisting workers to achieve due process in the processing of their complaints.

## **Conclusion**

In conclusion we would say that review and reform of the Employment Standards Code is long overdue. In the roughly 30 years since the legislation was last changed we believe that administrative practices have deteriorated because of lack of a clear mandate and a lack of resources. As a result, many workplaces in the province have become less and less worker friendly. We need to reverse this situation and recognize the important contribution that workers dependent on the employment standards code make to the economy and the quality of life in this province. The recommendations we have made are intended to improve the benefits and rights of workers whose terms and conditions of employment have been allowed to deteriorate in recent decades. We encourage you in your capacity as a commissioner to recommend changes and innovations that will improve the workplaces and work lives of all workers in Manitoba.