Enhancing Worker Democracy
Proposals for Ontario Labour Law Reform
July 2000

The following proposals stem from the theme of enhancing worker democracy in Ontario labour law. The first proposal for a Workers' Bill of Rights would provide all workers, union and non-union, with better information about their rights. Proposals 2-6 would provide workers with greater rights in the process of choosing whether or not they wish to be represented by a union. Proposals 7-11 deal specifically with freedom of choice and competitiveness problems in the construction industry. Proposals 12-13 deal with corresponding human rights and employment standards issues.

1. Adoption and Posting of Worker Bill of Rights

Problem:

Most employees are unaware of their rights under the *Labour Relations Act (LRA)* and the processes for certifying, decertifying, or changing unions. This leaves them vulnerable to misinformation from either union or management representatives. Because of the charged atmosphere and divided opinions that often accompanies worker representation campaigns, objective information is not easily attained.

Solution:

The *LRA* should contain a *Bill of Rights for Employees* guaranteeing them access to information about the processes involving unionization, in order to assist them in exercising a true and meaningful freedom of choice to belong to or not to belong to a union. This notice must be posted in every workplace, regardless of union status so that all workers have access to information about their rights. (See Sample in Appendix A). This should be supplemented with a useful workers' information service within the Ministry of Labour, which could inform employees how their rights can be exercised.

Considerations:

The focus on providing *workers* with information about the process goes to the heart of worker democracy. Information about certifying a union will protect workers in a non-union setting, while information about the process for decertifying or changing unions will protect workers in a union setting. Putting this information in the hands of workers will make unions and employers more accountable for their actions.

2. Employee Authorization for Union Dues

Problem:

Section 47 of the LRA requires that if a union requests, the contract must contain a clause requiring the employer to deduct and remit union dues, or an amount equal to union dues, regardless of whether employees have become members of the union. This provision removes some of the direct accountability for unions, as neither the employees nor the employer can refuse to have dues deducted and remitted, regardless of the quality of the unions' representation. In addition, some unions use some of these funds for non-representational activities, such as political or social causes, without the consent or support of members.

Solution (Option A):

Insert a provision similar to Section 76.1 of the Manitoba Code, which states:

> **Every union shall develop and implement a process for consulting each employee who is in a unit that is governed by a collective agreement between the union and the employer of the employees about whether they wish their union dues to be used for political purposes.**

Considerations:

This provision will make it more difficult for unions to pursue political or social agendas without the support of their membership. Gallup data from April 1999 indicates that voluntary contributions to such "non-union activities" have the support of 77% of Ontarians, and 78% of union members. Unions will argue against these changes suggesting that the current law simply provides unions the same opportunity and freedom as companies for political and social involvement.

Solution (Option B):

Delete Section 47 from the LRA, making the deduction of dues an issue to be negotiated between the employer and union in the first collective agreement. The section might be replaced with a provision that any such collective agreement dues check-off provision agreed to between an employer and a union is subject to authorization in writing by each affected employee.

Considerations:

Union will argue against these changes suggesting that the issue of union dues is properly a matter involving the union and its members, and the employer is merely a collection vehicle.

3. Abandonment of Bargaining Rights

Problem:

Labour Board decisions have provided for the continuance of union bargaining rights even when there have been no employees in the unit for many years. The rationale has been to prevent employers from temporarily closing a business in order to escape bargaining rights, but has been interpreted in a manner that retains bargaining rights for a union, even when the connection to the employees is obscure and indirect.

Solution:

Add a provision to the LRA stating that if there are no employees in a bargaining unit for a certain defined period, the union that holds bargaining rights for the unit will lose them after that period expires.

Considerations:

This is consistent with workplace democracy principles in that it ties bargaining rights more closely to the choices of workers who seek those rights. By placing this amendment under the general provisions of the *Act,* it will apply to both industrial and construction settings where this is an issue. In construction, this together with Proposals 9-10 enable unionized contractors to regain a competitive position.

4. <u>Voluntary Recognitions</u>

Problem:

Voluntary recognition agreements, while possible under Section 7(3) of the LRA, are rare in Ontario, except in the construction industry. This is because of the provision that any employee can challenge a voluntary recognition during the first year [Section 66(1)]. By providing every employee with an effective veto, the risks in establishing a voluntary recognition agreement outweigh the potential benefits. Conversely, however, in the construction industry voluntary recognition agreements are often entered into without any form of approval by affected employees.

While the provision rightly seeks to protect workers from employer-union collusion that is not in their best interests, the Ontario legislation goes further that any other Canadian jurisdiction. In so doing, the benefits of voluntary recognition, which include it's non-adversarial character, increased flexibility in defining the bargaining unit, and cost and time efficiencies are not taken advantage of. A balance must be achieved which allows for the advantages of

the voluntary recognition process while protecting the democratic right of employees to decide whether they wish to be represented by a union.

Solution:

Section 66(1) of the LRA should be replaced with a protection for workers similar to other jurisdictions. In BC, for example, the Code allows a union to enter into a collective agreement covering employees for which they are not certified [Sec.18(4)]. The jurisprudence requires that the agreement must be endorsed through a "reasonable ratification procedure." A process that meets this test is to require a secret ballot vote of all employees on both (a) whether they wish to be represented by the union and (b) whether or not they wish to ratify the collective agreement.

Consideration:

The practical consequences of the current LRA provisions are that unions can only organize under adversarial circumstances. Improving the opportunities for cooperative labour relations is consistent with the purposes of the Labour Relations Act.

5. <u>Protection for Religion/Moral Objectors</u>

Problem:

The protection for religious/moral objectors provided in Section 52 of the Act is limited by
Subsection (2) to only those employees who are employees who are employed when a union comes into a workplace and applies only during the life of the first collective agreement.

Solution:

Delete Section 52(2) of the LRA

Considerations:

The current provisions needlessly restrict the application of this protection to a narrow time window. The deletion of the time limitations puts the Ontario law in similar terms to that of British Columbia, Alberta, and Manitoba.

6. <u>Union Certification Rules</u>

Problem:

There is no effective deterrent for unions in under-stating the size of the bargaining unit, using inappropriate bargaining unit descriptions, or submitting fraudulent membership evidence in seeking a vote. Current Labour Board practices show an inclination to not seal the ballot box, but rather to count the ballots and deal with allegations only after the ballots are counted. The rules also allow unions to time representation votes when they have the best chance of success, not necessarily when employees will have the best opportunity to vote.

Solution:

- **Amend Section 8.1 to make it clear that the Labour Board should decide on the appropriate bargaining unit before counting ballots cast in a representation vote. Introduce an expanded "fraud/misrepresentation" provision that provision in the LRA. That provision should indicate that if a union knowingly provides false information to the OLRB in support of an application for certification, serious penalties might be levied in addition to the rescission of any bargaining rights obtained through such misrepresentation.**

- **Otherwise, Section 8.1 might be amended to clarify that where the parties disagree as to the description of or the number of employees in the bargaining unit the union seeks to represent, the OLRB must determine the issues (at least in all material respects) before ballots are to be counted.**

- **The requirement that representation votes normally be held within 5 days might be changed to provide for a longer period of time, or to provide that extensions will be readily provided upon request.**

Considerations:

It is critical to the protection and enhancement of workers' rights to freely choose whether or not they wish to be represented by a union that the representation vote process conducted by the Ontario Labour Relations Board be operated as fairly and impartially as possible. Everything possible should be done to protect the democratic rights of workers.

3. Union Financial Disclosure

Problem:

The law now requires that a union furnish audited financial statements to any member who requests them (see Section 91 of LRA). However few members are aware of this right. In reality, there are widely varying practices among unions in respect of the disclosure of financial information to their members. Many union members have very little knowledge about their union's financial dealings.

Solution:

Add to the Act a requirement that every union inform its members at reasonable intervals about their right to obtain copies of financial statements. Add to the Act additional disclosure requirements describing the nature of the financial disclosure that unions should provide to all members each year.

4. Ensuring Meaningful Union Choice for Construction Workers

Problem:

The provisions of the LRA's Construction Industry Provisions assume the craft model of labour organizations. This model includes monopolistic assumptions whereby one craft union has exclusive jurisdiction over certain work. Besides its inherently uncompetitive character, this system results in expensive disputes regarding union jurisdictions. It denies construction workers any meaningful choice regarding union representation through a series of restrictive work access provisions.

Solution:

Amend Section 5 of the LRA to read:

- **Number 5 - Every person is free to join a trade union of the person's own choice and to participate in its lawful activities. No one shall interfere with that choice, seek to limit the effect of that choice, nor the person's right to work, except as expressly permitted in this act.**

To put different trade union model choices on equal legislative footing, Section 73(2) of the LRA will be amended to read:

- **73(2) - Where trade union has obtained bargaining rights for employees, or has entered into a collective agreement with an employer pursuant to the provisions of this act, no other trade union, council of trade unions or person acting on behalf of trade union or council of trade unions shall:**

i. Bargain or enter into a collective agreement or other agreement with the employer of such employees; or

ii. Engage in any acts, which in any way, interfere with or limit the bargaining rights of the trade union, the rights of the trade union's members under this act, or the operation and enforcement of the trade union's collective agreement. This subsection shall not be construed so as to prohibit a trade union, a council of trade unions or a person acting on behalf of a trade union from persuading employees, in a manner permitted by this act, to exercise their right to become members of a trade union or from making an application for certification pursuant to the provisions of this act.

Section 130 of the LRA will be expanded, (with the current section 130 becoming Subsection 1);

2. Any agreement (including any provision of a collective agreement) between a trade union, a council of trade unions or a person acting on behalf of a trade union and any other person or persons including an employer or employer's organization, shall be void if it requires that work be performed by specific trade union members, unless at the time the agreement was made, the specified trade union held bargaining rights for the employees of the employer specified;

3. Any agreement or document, whether a collective agreement or not, that would extend a union's bargaining rights to workers, it is not specifically authorized by this act to represent or bargain for, shall be null and void;

4. Any agreement or document, whether a collective agreement or not, that would extend a union's jurisdiction over work not specifically obtained by that union by virtue of certification or voluntary recognition of an employer's defined bargaining unit, shall be null and void.

5. Any agreement, whether a collective agreement or not, that contains non-affiliation provisions allowing a union's members to refuse to work along side another union's members, shall be null and void; and

The Project Agreement provision of Bill 31 will be amended so that employers whose employees belong to union other than the Building Trade Council (BTC) unions can bid on work under a project agreement entered into by a project owner. Any provision of a project agreement, which assigns work jurisdiction beyond the immediate construction project, would be null and void.

Considerations:

By providing the legislative space for alternative union model to compete for the support of construction workers on an equal footing, workers are provided with a choice between competing models of trade unionism, or not to be represented by a union at all. Being forced to compete for the loyalty and support of members will require all unions to provide better service to members and the elimination of the craft monopoly will promote an increased sensitivity to market concerns, with a corresponding positive impact on investment.

9. <u>Terminating Bargaining Rights</u>

Problem:

Whereas the proposals contained in the previous section "fix" some of the provisions that give rise to the current industry problems, it does not help construction workers and their employers who are caught by the existing regime. It is necessary to address existing circumstances whereby the bargaining representative has not been properly established as the "freely chosen representative of the employees."

Solution:

Add a clause that allows an employer to seek a declaration from the Labour Board that a trade union no longer holds bargaining rights and its collective agreement no longer binds the employer if on the date of application, there are no employees in the bargaining unit and if there is no evidence of that the union had the support of a majority of employees in the bargaining unit at the time it acquired those bargaining rights. Such support would have had to be evidenced either through an outright certification based on membership cards, certification based on a Labour Board vote, or evidence of the notification of a voluntary recognition agreement by a secret ballot vote of employees in the bargaining unit in question.

Consideration:

These provisions allow for a "retroactive" application of worker democracy for those who are otherwise caught by bargaining rights that were obtained without appropriate evidence of worker support.

10. <u>Enabling Competition With Non-Union Contractors</u>

Problem:

The current regime of construction labour laws makes it almost impossible for Building Trades unionized contractors to compete effectively on price with non-union contractors. Province-wide collective agreements often prove to be too rigid. This has led to a decline in the unionized sector of the industry in certain parts of the province.

Solution:

The following provisions would enable contractors to acquire or start new non-union business where it is necessary to do so in order to be able to compete. They would not be able to transfer work or employees from their unionized divisions. In addition, knowledgeable businessmen in the industry would be given more opportunity to start up their own business, without being restricted by their prior employer's obligations.

Add a new section to the construction industry provisions of the Act to provide as follows:

> **128.l(1) Despite any other provision of this Act, where more than one corporation, individual firm, syndicate or association or any combination thereof, carry on associated or related activities or businesses under common control or direction then, provided that there is,**
>
> **(a) no interchange of on-site employees, and**
> **(b) no transfer of work and**
> **(c) no transfer of contracts**
>
> **the Board shall not treat the corporations, individuals, firms, syndicates or associations, or any combination thereof as one employer for the purpose of this Act or grant any relief by declaration or otherwise.**
>
> **128.1(2) An individual's experience, expertise or background in a business does not constitute the business or a part thereof and shall not be considered in determining whether or not a sale of a business or a part thereof has occurred or whether or not the Board should treat one or more corporations' individuals, firms, syndicates or associations, or any combination thereof as one employer for the purposes of this Act.**
>
> **128.1(3) Where the Board does treat one or more corporations, individuals, firms, syndicates or associations, or any combination thereof as one employer for the purposes of this Act, no relief shall take effect prior to the date the Board renders its decisions.**

128.1(4) This section also applies to an employer and its employees who are performing maintenance work under a collective agreement with a trade union.

128.1(5) No provision of this Act, a collective agreement or the constitution and bylaws of a trade union shall restrict the rights contained in this section.

11. <u>Construction Definition</u>

There is also concern about the definition of construction as it applies to in-shop fabrication of sheet metal, ready-mix drivers and possibly other trades.

12. <u>Duty to Accommodate - *Human Rights Code*</u>

Problem:
The *Human Rights Code* as well as the *Workplace Safety and Insurance Act* and certain other legislation requires that disabled employees (which is defined very broadly) must be accommodated unless this cannot be done "without undue hardship" (see Section 10 of the *Human Rights Code*). There has been a great deal of difficulty interpreting and applying these provisions, as the definitions are unclear.

Solution:

Replace "undue hardship" with "reasonable efforts to accommodate."

Consideration:

The Human Rights Commission is currently engaged in a formal consultation on undue hardship standard and voluntary assumption of risk.

13. <u>Employment Standards Act</u>

Problem:

Hours of work and overtime laws were drafted during the industrial revolution and contemplate an industrial environment that no longer exists. They include a complex and difficult-to-comprehend permit system that is more honoured in the breach than in the observance. Statutory provisions for termination and severance pay are super-imposed on common law notice obligations or those contained in collective agreements. Together, these laws are very difficult to interpret and apply.

Solution:

Simplify the overtime and hours of work laws in the *Employer Standards Act,* getting rid of the overtime permit system and encouraging more flexible working arrangements. Simplify notice of termination and severance pay laws, and displace common law obligations with more readily enforced statutory obligations, or perhaps allow employees to choose between the two regimes.

Other Consideration:

Unions might welcome the severance/notice changes. They could also welcome the hours of work changes if managed properly.

Appendix A - Worker Bill of Rights
For posting in every workplace

WORKPLACE DEMOCRACY AND EMPLOYEE RIGHTS
In Ontario

The Labour Relations Act and other labour laws were created for you, the worker. They provide you with rights in the matter of union representation. They protect workers' rights to collectively decide to join a union, change to another union, or to work non-union.

Neither your employer nor a trade union, nor someone representing them, nor a co-worker, can bully, coerce or threaten you into joining a union, or another union than the one presently in your workplace, or to work toward "decertifying" your present union.

Union representation is your and your co-workers' choice, *by a democratic majority decision*. Others may provide information to you, but labour law gives workers the freedom to choose.

These choices for groups of workers include:

1. **Choosing to work without union representation.**
2. **Choosing to bring in (certify) a union for your workplace.**
3. **Choosing to change to another union than the one you have during your collective agreement's "open season" period, normally the last two months of the collective agreement's duration.**
4. **Choose to become nonunion by "decertifying" your union during the collective agreement's "open season" period, normally the last two months of the collective agreement's duration.**

Notes:

a) **Choices 2 and 3 above require 40% of the workers in the "bargaining unit" signing a card with the applicant union, followed by a Labour Board supervised secret ballot vote in which a simple majority decides the issue.**

b) **Choice 4 above requires 40% support for an employee-originated or circulated application, which the employer does not participate in initiating. This must be sent to the Labour Board, followed by a Board supervised vote in which a simple majority decides the issue.**

c) **For more details, assistance and information on the exercise of your free choice, and reporting illegal interference by anyone in the freedom of choice, you may contact the Ministry of Labour, the union of your choice, or your employer.**

The Ministry of Labour provides information or is available for advice at:

Ministry of Labour
400 University Avenue
Toronto, Ontario M7A 1T7
Telephone: (416) 326-7160