Submission to the House of Commons Standing Committee on Finance Regarding Bill C-4, Budget Implementation Bill

Submission by Unifor
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Introduction

Unifor is Canada's largest private sector union, with more than 300,000 members across the country, working in every major sector of the Canadian economy.

Unifor also represents public service employees in many jurisdictions. In the federal public sector, Unifor represents the following employees governed by the Public Sevice Labour Relations Act:

- Coast Guard Radio Operations employees;
- Printing Services Group Non-Supervisory employees; and
- Transport Canada Air Traffic Control employees.

Unifor also represents the following employees governed by the Parliamentary Employees Staff Relations Act:

- House of Commons Technical Group.

Unifor brings a modern approach to unionism: adopting new tools, involving and engaging our members, and always looking for new ways to develop the role and approach of our union to meet the demands of the 21st century.

Part I - An omnibus budget bill is not the way to amend labour relations legislation

Unifor objects to the amendment of important labour relations legislation without full consultation with stakeholders by way of an omnibus budget bill.

Budget bills

We feel it is important to register our concerns regarding the process through which federal budget legislation has been implemented in recent years.

Bill C-4, like omnibus budget bills in previous years, amends dozens of different pieces of legislation. It affects numerous important policies and regulations. Many of them have no obvious connection to an annual budget.

Naturally, we have a special concern with measures which affect collective bargaining legislation (in this case the *Public Service Labour Relations Act*), and changes in very important

health and safety regulations and practices defined under multiple pieces of legislation (including the *Canada Labour Code*).

In our view it is entirely inappropriate to implement important policy changes on matters such as these through a composite budget implementation bill, without full research, consideration, and fine-tuning, and with debate frequently ended through invoking closure.

So we must start by expressing our concern about this fundamental and ongoing misuse of the budget process. It does not serve the interest that all Canadians have in careful policy-making and democratic governance.

Labour relations legislation

In the case of collective bargaining legislation, it is particularly important to ensure that changes to legislation are based on thorough research and, ideally, consensus.

When the collective bargaining parts of the *Canada Labour Code* were last amended in 1998, the amendments were preceded by careful study by a task force which consulted widely with labour and management. The "Sims Task Force" reported its findings to the Minister of Labour in 1996[1]. The consultations carried out by that task force produced widespread concern about excessive experimentation in labour relations legislation. One of the concerns was that "undue politicization of our labour laws" introduced an element of political confrontation into collective bargaining relationships which undermines the ability of workplace parties to communicate frankly and directly with each other (p. 39).

In consideration of those and other concerns, the Task Force adopted a number of premises on which any recommendations would be based. Those premises included the need for consensus between the parties (i.e. labour and employers) as the best basis for advocating change (p. 40). Any reform therefore would be required to be based on criteria that included the existence of that kind of consensus (p. 41).

In the case of the *Public Service Labour Relations Act*, its enactment in 2003 as part of the *Public Service Modernization Act* ("the PSMA")[2] followed extensive consideration and consultation beginning in 2000[3]. The *PSLRA then* featured a mandatory five-year review. That five-year review resulted in the *Report of the Review of the Public Service Modernization Act, 2003*

[1] Sims, Andrew C.L., Seeking a Balance, Canada Labour Code Part 1 Review (Ottawa, 1995).
[2] The PSLRA was proclaimed in force in April 2005.
[3] See Chapter 2 of Treasury Board, Review of the Public Service Modernization Act, 2003 (Ottawa, 2011).

released in 2011. That report followed appropriate consultation by a Review Team. The Review Team emphasized that the PSLRA is adequate and provides an appropriate framework for "people management" in the federal public service (p. 2). It concluded its Chapter 8 titled "Collaborative Labour-Management Relations" by saying that the legislation adequately supports collaborative labour-management relations (p. 126).

The Review Team recommended only minor amendments to the PSLRA in the areas of collective bargaining dispute resolution mechanisms, the exclusion of managerial employees and essential services.

Notably, the amendments to the PSLRA now set out in Bill C-4 are <u>not</u> (with some very minor exceptions) amendments that were recommended by the Review Team after consultations with stakeholders and careful review of the *PSLRA*. The amendments now set out in Bill C-4 are not ones that are the product of any other consultative process.

The example of the Canada Labour Code review in the mid-1990s and the more recent *Report of the Review of the Public Service Modernization Act* point to the value of consultation and consensus when changes to labour relations legislation are contemplated. These examples suggest that it is risky to undertake *ad hoc* changes for partisan or ideological reasons. Doing so risks serious and long-lasting damage to labour-management relations in the federal public service.

<u>Part II – Comments on proposed PSLRA amendments</u>

Essential services - generally

Section 294 of Bill C-4 would amend the PSLRA by deleting the existing definition of "essential service" as a service, facility or activity of the Government of Canada that is or will be, at any time, necessary for the safety or security of the public or a segment of the public. It would replace that definition with one which describes an essential service as anything that the government in its "exclusive right" determines is or will be necessary for the safety or security of the public or a segment of the public.

Section 305 of Bill C-4 would amend sections 119 to 134 of the PSLRA to provide that the employer will unilaterally determine what is an essential service and what level of essential services will be supplied during a labour dispute. The caselaw of the Public Service Labour Relations Board ("PSLRB") suggests that the employer's determinations of what is an essential

service will be reviewable only on narrow administrative law grounds[4]. These amendments would remove the process in the current PSLRA which requires in the first instance the employer and bargaining agent reach an essential services agreement.

Nothing in the history of the essential services provisions of the PSLRA appears to justify the radical reassignment of the identification of what is an essential service from the workplace parties (or failing that the Board) to the employer. This was not an amendment recommended or even considered by the Review Team in the *Report of the Review of the Public Service Modernization Act.*

The existing essential services provisions in the PSLRA were intended to improve cooperation between employers and bargaining agents. The granting to the employer of an exclusive right to determine all matters concerning essential services will undermine that cooperation.

The very small number of applications that reach the PSLRB about essential services suggest that the amendments are "a solution in search of a problem". In its 2011-2012 Annual Report[5], the Board reported that it received only two applications relating to essential services and issued a single decision. This suggests that workplace parties are able to resolve differences about essential services and the radical amendment proposed in Bill C-4 is unnecessary.

Unifor and other bargaining agents can have no confidence that the unilateral power that Bill C-4 would grant to the government to determine what is an essential service will not be abused. Instead of a cooperative effort to identify real essential services that ought to continue during a labour dispute, assisted where necessary by the PSLRB, bargaining agents will naturally be distrustful of unilateral determinations by the employer that may assist the employer's bargaining position in collective bargaining while weakening the position of bargaining agents.

Collective Bargaining Disputes Resolution

The proposed amendment to section 103 of the PSLRA will eliminate interest arbitration as one of the two methods that a bargaining agent may, as of right, select as the process for the resolution of collective bargaining disputes. Instead, all disputes will by default proceed on the conciliation and strike/lockout process absent an agreement between the bargaining agent and the employer to use arbitration as the process.

4 PSAC v. Treasury Board, 2010 PSLRB 88

5 2011-2012 Annual Report of PSLRB (http://pslrb-crtfp.gc.ca/reports/1112/AR_PSLRB12_e.asp)

Where arbitration is used as the collective bargaining dispute resolution process, the list of factors in section 148 that a board of arbitration may consider when deciding a dispute about compensation and other terms and conditions would be narrowed by the amendments to a consideration only of retention and the government's ability to pay. Arbitrators will no longer be able to make awards of fair compensation and reasonable terms and conditions of employment.

Unifor is troubled by amendments that will erode the independence of interest boards of arbitration. Section 310 of Bill C-4 proposes to add a new s. 158.1 which directs the Chair of the PSLRB to review arbitration awards to determine their compliance with the listed criteria in s. 148 and permits the Chair to direct the board of arbitration to review its decision and to provide further justification or a new decision.

Such a power of review in the Chair of the PSLRB would raise real concerns about the independence of the arbitration process as a legitimate process for the resolution of collective bargaining disputes, and real concerns about the fairness of proceedings in which parties may be deprived of an opportunity to be heard before an award is reviewed and/or amended.

The 2011 *Report of the Review of the Public Service Modernization Act* recorded that few collective bargaining disputes had gone to interest arbitration since 2005 (p. 119). The Review Team made recommendations only about time limits and about the qualifications of members of boards of arbitration. The Review Team made no recommendations that support the proposed amendments to the arbitration system the PSLRA. This again suggests that Bill C-4 is a solution in search of a problem.

Other matters

Unifor does not support the elimination of the compensation analysis and research services. Such services are amongst the Board's current mandate (PSLRA, section 13 and 16) and would be eliminated by section 295 and 296 of Bill C-4.

Unifor opposes the restriction on union policy grievances that could be the subject of an individual grievance (section 331 of Bill C-4, amending s. 220 of PSLRA). This appears to be a measure which could force bargaining agents to file multiple individual grievances in circumstances where a policy grievance could achieve the same objective.

Conclusion

Unifor is pleased to provide these comments but we remind the Committee of the view expressed in Part I of this submission. A budget bill is not the place for amendments to sensitive labour relations legislation.

Labour relations legislation ought to be amended only after careful consideration and consultation with stakeholders. No urgency exists which justifies a departure from that fact.

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