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Tuesday 30 November 2004

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Mardi 30 novembre 2004

Standing committee on social policy

Comité permanent de la politique sociale

Employment Standards Amendment Act (Hours of Work and Other Matters), 2004

Loi de 2004 modifiant la Loi sur les normes d'emploi (heures de travail et autres questions)

Chair: Jeff Leal
Clerk: Anne Stokes

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 30 November 2004

Mardi 30 novembre 2004

The committee met at 1532 in committee room 1.

EMPLOYMENT STANDARDS AMENDMENT ACT (HOURS OF WORK AND OTHER MATTERS), 2004

LOI DE 2004 MODIFIANT LA LOI SUR LES NORMES D'EMPLOI (HEURES DE TRAVAIL ET AUTRES QUESTIONS)

Consideration of Bill 63, An Act to amend the Employment Standards Act, 2000 with respect to hours of work and certain other matters / Projet de loi 63, Loi modifiant la Loi de 2000 sur les normes d'emploi en ce qui concerne les heures de travail et d'autres questions.

The Chair (Mr Jeff Leal): We'll bring this meeting of the standing committee on social policy to order.

The committee today will begin clause-by-clause consideration of Bill 63, which is An Act to amend the Employment Standards Act, 2000 with respect to hours of work and certain other matters.

First of all, members of the committee, we have two amendments that have been proposed by the New Democratic Party. They did come in a bit late, but I would ask unanimous consent that they be considered.

Mr Peter Kormos (Niagara Centre): On a point of order, Mr Chair: I think you'll recall that the subcommittee report was advisory and not mandatory. It was "should," not "must," and that was a very specific distinction that was made by the subcommittee.

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Actually, Mr Chairman, I have no objection to dealing with the amendments, but neither "should" nor "must" were words used in that report.

The Chair: We'll just deal with it. If I could get unanimous approval for that.

Mrs Elizabeth Witmer (Kitchener-Waterloo): Deal with what?

The Chair: The NDP amendments. All in favour?

Mr McMeekin: Agreed.

The Chair: Good. Thank you.

We'll now start with section 1. There are no amendments to section 1, section 2, section 3.

Mr Kormos: Section 1, please.

The Chair: Sure, Mr Kormos.

Mr Kormos: I'll not be doing this with every section but to note that New Democrats are in substantial agreement with the amendment contained in section 1. I do, however, question subsection (4) of the proposed section 2, which talks about the majority language of a workplace being something other than English. That in and of itself suggests that if the other language is not a majority language in the workplace, then people who are in those minority language groups who are not English will find themselves in the dark, and that's of some concern.

I'm not going to do this with every section. We're ready to deal with this bill clause-by-clause this afternoon. Don't worry about that. But I'm wondering if the parliamentary assistant has any comment in that regard, anything that can reassure us. You understand the point I'm making?

Mr Kevin Daniel Flynn (Oakville): Yes, I can understand the point that is being made here. Certainly the intent is to try to get as much information out to as many people as not. You have recognized some language may prevent that or may allow somebody to get out of that obligation. I'd be quite happy to hear from the staff who are here from the Ministry of Labour as to how they may address that or how they're interpreting that, and if that concern still exists, then we'll deal with it.

Mr Kormos: I'd appreciate some comment from the bureaucrats, and I don't say "bureaucrat" disparagingly.

The Chair: If we could ask members from the ministry to identify themselves for Hansard, please.

Mr John Hill: I'm John Hill, general counsel with the Ministry of Labour.

Ms Marcelle Crouse: Marcelle Crouse, manager, employment and labour policy branch.

The Chair: Thank you for being with us today.

Ms Crouse: Thank you. John, did you want to start?

Mr Hill: From a legal perspective, there's nothing in subsection (4) which prevents posting a poster that's available in other languages. Even if the majority language in the workplace is English, there's nothing that prevents that. I believe, however, that the ministry has some initiatives underway that are aimed at distributing information about the act in other languages otherwise than through the poster requirement.

Ms Crouse: If I could speak to that briefly as well. Subsection (4) just deals with the requirement to post the poster. The ministry is having the poster and other information translated into about 21 different languages.

To reply to Mr Kormos's point, we didn't maybe want to create an obligation for employers to have to post in every language in the workplace.

Mr Kormos: I understand. I also understand that the first two subsections deal with the minister and "appropriate," so there's very broad discretion. But subsection (4) imposes a duty on the employer, on the boss, and the duty is to inquire of the ministry as to whether there is an advisory poster in that second language, but the duty extends only to that second language if it's a majority language in the workplace, as I understand it.

I'm prepared to—as "considers appropriate" in subsection (1)—rely upon the goodwill of you as civil servants in the ministry. I have no hesitation there, but the deal here is about employers; right? Again, the concern is about the non-compliant employers. We don't have to worry about good employers. They work within the statute. We're worried about the ones who are not quite so good, perhaps at the very least negligent about their duties under the statute.

My concern here is that the statutory duty is only to make that inquiry if it's a majority. So if there are three people speaking Farsi out of a group of 35 and they don't constitute the majority language, those people are SOL in the total scheme of things.

Interjection.

Mr Kormos: SOL. Write that down there, Ted. They are SOL.

That causes me concern because obviously if it's a bad boss, the boss is less—because this applies to all of the Employment Standards Act; right? It doesn't just apply to these amendments. It applies to all of the rights, obligations and duties under the ESA. That's what I find troublesome, that three Farsi-speaking people would be SOL.

Ms Crouse: I understand your point about the poster. I should say that the other information—for example, Bill 63 would require employers, if they're getting written agreements with people, to hand them out an information sheet. That will certainly be in the languages.

Mr Kormos: Quite right.

Ms Crouse: And also a number of other information materials that the ministry would prepare will be in those languages. So there will be some available. I see your point about the poster.

Mr Kormos: Thank you, folks.

Mr Flynn: Is that fine?

Mr Kormos: No, it's not fine.

Mr Flynn: The option would be to post in all 18 languages in each workplace.

Mr Kormos: If we're serious about workers' rights, including their right to work safely, then we're talking about every worker having access to that right, which means being informed of that right. I would say if only one person speaks a language other than English, that person, in the kind of society we think we believe in, should be entitled to know.

I hear your response. I just raise that as a concern. We're ready to move on.

The Chair: Any further questions on section 1?

Mr Kormos: No, sir, thank you kindly.

1540

The Chair: Mr Arnott or Mrs Witmer, any questions on section 1?

Shall section 1 carry? All in favour? Opposed? It's carried.

Questions on section 2?

Mr Kormos: No questions. Recorded vote.

The Chair: Mrs Witmer or Mr Arnott, any questions on section 2?

Shall section 2 carry? Recorded vote.

Ayes

Flynn, McMeekin, Ramal, Wynne.

Nays

Arnott, Kormos, Witmer.

The Chair: It's carried.

Section 3: Any questions on section 3?

Mr Kormos: I'll be asking for a recorded vote when you call the vote, please.

The Chair: OK. Mrs Witmer or Mr Arnott, any questions on section 3?

Shall section 3 carry? A recorded vote.

Ayes

Craitor, Flynn, McMeekin, Ramal, Wynne.

Nays

Kormos.

The Chair: It's carried.

We will now deal with section 4. Mr Kormos, your amendment, please.

Mr Kormos: There are amendments: one from the government, amendment 1; and there is my amendment, identified as A1.

The Chair: Mr Kormos, the amendment is labelled A1 in your package.

Mr Kormos: Which amendment do you want to deal with first?

Mr Flynn: Mr Chair, ours start at subsection 17(8) and go on from there. I think Mr Kormos's precedes ours.

The Chair: Go ahead, Mr Kormos.

Mr Kormos: I move that section 17 of the Employment Standards Act, 2000, as made by section 4 of the bill, be amended by adding the following subsection:

"(7.1) Where an employee is represented by a trade union, the union must agree to an employee agreement under subsection (2) or clause 3(a) or a revocation under subsection (6) or (7), and in the absence of an agreement

by the union, the employee's agreement or revocation has no effect."

This is a matter that was addressed by the Ontario Federation of Labour when they were here yesterday. It ensures that, where there is a collective bargaining agreement, an agreement between a boss and a worker cannot circumvent the role of the union and the role of that collective bargaining agreement.

Tommy Douglas would have voted for this amendment.

The Chair: Any other discussion on this amendment?

Mr Flynn: Mr Kormos and I bumped into each other in the hall today. He gave me some advance notice that these amendments were coming, so I was able to take a look at them. I can understand where they're coming from and why the OFL would ask this.

I've taken a look at what I think is going to be the proposed application form. What it says, clearly, what it asks of the employers, is that they have to provide that they have got a written agreement in place in accordance with the Employment Standards Act with the union that allows for employees to work the requested number of hours. They have to sign that, and it's subject to all sorts of penalties if you make a false statement. They also have to provide the name of the union local, the union contact name and the telephone number of that union.

I agree with the concerns. I'm not sure if I agree with the method of dealing with them. I suggest that the concerns are addressed by the application form that will be used to secure these agreements with the Ministry of Labour.

The Chair: Thank you, Mr Flynn. Mrs Witmer, please.

Mrs Witmer: We'll be voting against all of these amendments because we do not support Bill 63. We do believe it's a step backwards. It doesn't really respond to the modern workplace. The steps being taken provide less flexibility in the workplace than ever before.

We agree that those situations where you have employers who take advantage of employees certainly need to be dealt with. However, we don't believe this legislation introduced by the Liberal government addresses the issue and it more or less penalizes all employers and employees in Ontario. Many workplaces have successfully resolved all of these issues. This is a big step backwards as far as respecting the evolution of the modern workplace.

The Chair: Any further discussion? Mr McMeekin, please.

Mr McMeekin: Yes, Mr Speaker.

The Chair: Mr Speaker, no. I haven't been elevated to that yet.

Mr McMeekin: What's that?

The Chair: You said "Mr Speaker."

Mr McMeekin: Oh, sorry, Mr Chairman. That's what happens when you come right from the House to this place.

I'm fundamentally in agreement with the amendment that's been made. This is a personal opinion. I suspect the vote will be lost. But having said that, it strikes me as passing strange that in a province that acknowledges workers' rights to organize, to form unions and to negotiate collective agreements with workers—and as the parliamentary assistant has pointed out, the principle's already been acknowledged, at least in passing, in the legislation—that we wouldn't ascribe to protecting this. In fact, I suspect, not including this, it serves as a fundamental disservice to our understanding of the rights of men and women to come together to form unions. So I'm going to support this amendment.

The Chair: Further discussion? All in favour?

Mr Kormos: Recorded vote.

Ayes

Craitor, Kormos, McMeekin.

Nays

Arnott, Flynn, Ramal, Witmer, Wynne.

The Chair: The amendment is defeated.

We now go to the government amendment, subsection 17(8).

Mr Flynn: We have a series of amendments that deal directly with some changes in the time frame as opposed to the substance of the bill. They start with subsection 17(8).

I move that subsection 17(8) of the Employment Standards Act, 2000, as set out in section 4 of the bill, be amended,

(a) by striking out "December 31, 2004," in clause (a) and substituting "February 28, 2005";

(b) by striking out "December 31, 2004," in clause (b) and substituting "February 28, 2005"; and

(c) by striking out "December 31, 2004," in clause (c) and substituting "February 28, 2005."

These and a series of amendments that follow have to do with the date of the effect of this bill being moved forward.

Mr Kormos: What's going on? The bill is not going to be proclaimed until later than was anticipated?

Mr Flynn: Yes. The timeline that was first envisioned has moved into the future a little bit—I think March. Our staff can advise on some of the details of this. I think I'm going to let them, because it's going to relate to the next four or five amendments.

Mr Hill: There is a subsequent motion which would change the coming-into-force date of this bill from January 1, 2005, to March 1, 2005. That is why the dates are being changed.

Mr Flynn: That impacts each of these amendments going forward.

Mr Kormos: Why the delay?

Mr Flynn: Why?

Mr Kormos: Yes. I see amendment number 3 refers to March 1, 2005. Why the delay?

1550

Ms Crouse: If I can maybe just explain. It's an operational issue, frankly. The scheme of the bill, the way it's set out, is that originally we had it so that on October 1, employers would be able to make their applications to the ministry. That would give them approximately three months before the bill came into effect. That was for two reasons: one, so that employers could get their applications either approved or refused in advance of the bill actually coming into effect; and also to give the ministry some time to process them. Now that the coming-into-force date is being moved to March 1, everything sort of shifts accordingly.

The Chair: Ms Witmer, Mr Baird, anything on this one? OK. We'll deal with the amendment. All in favour of the amendment? Opposed? It's carried.

Mr Flynn: I move that subsection 17(10) of the Employment Standards Act, 2000, as set out in section 4 of the bill, be amended by striking out "April 1, 2005," and substituting June 1, 2005."

The Chair: Discussion? All in favour of the amendment? Opposed? It's carried.

Mr Flynn: I move that subsection 17(11) of the Employment Standards Act, 2000, as set out in section 4 of the bill, be struck out and the following substituted:

"Transition: application for approval before commencement

"(11) If the employer applies for an approval under section 17.1 before March 1, 2005, the 30-day period referred to in clause (4)(d) shall be deemed to end on the later of,

"(a) the last day of the 30-day period; and

"(b) March 1, 2005."

The Chair: Discussion? All in favour of the amendment? Opposed? It's carried.

Mr Flynn: I move that subsection 17.1(21) of the Employment Standards Act, 2000, as set out in section 4 of the bill, be struck out and the following substituted:

"Termination of old approvals

"(21) Any approval granted by the director under a regulation made under paragraph 8 of subsection 141(1), as that paragraph read on February 28, 2005, ceases to have effect on March 1, 2005."

The Chair: Discussion?

Mr McMeekin: Just a query on that. I'm assuming the intent is just to clean things up, Mr Flynn, so that it's consistently applied on the day the act fully kicks in?

Mr Flynn: That's right. As of March 1, 2005, everybody will be under the same act and covered under the same rules.

The Chair: Any further discussion? All those in favour of the amendment? Opposed? It's carried.

Mr Flynn: I move that subsection 17.1(22) of the Employment Standards Act, 2000, as set out in section 4 of the bill, be struck out and the following substituted:

"Time for applications

"(22) An application under subsection (1) may be made on or after the day the Employment Standards Amendment Act (Hours of Work and Other Matters), 2004 receives royal assent."

The Chair: Discussion? All in favour of the amendment? Opposed? It's carried.

Shall section 4, as amended, carry?

Mr Kormos: Whoa. Now you ask for debate on section 4, as amended, please.

The Chair: Sorry. Mr Kormos?

Mr Kormos: Look, New Democrats have been very clear that this government does nothing to keep its promise to revoke or repeal the 60-hour workweek. In fact, the participants from the public in this committee hearing yesterday, to the final one—there was unanimity, whether it was from the employer/human resource end or whether it was from the worker end—accused this government, condemned this government for its failure to keep its promise to repeal the 60-hour workweek. Section 4 retains the 60-hour workweek, 13-hour workday. This is a very sad day.

It's remarkable that the government couldn't even concoct a participant, couldn't manage to get a brother-in-law to come in and make a submission of support for this legislation. The public participants in this committee, to the final one, said this bill does nothing to repeal the 60-hour workweek, and in fact continues the Conservative policy and, in some respects, may well aggravate it. So New Democrats are voting against the Liberal 60-hour workweek. I'll be asking for a recorded vote at the point in time when you put section 4 to a vote.

The Chair: Further discussion?

Mr Flynn: Just to respond, it's quite clear that under the present legislation an employer can compel you to work up to 60 hours a week. If the proposed bill is passed, that will end. It's that simple. It's very clear to me.

I understand there was some disagreement from people who came forward yesterday. I would draw the committee's attention to a memo that was prepared by the research officer on the overtime averaging provisions that seemed to be in some question near the end of the meeting. Everyone will find that on their desk. I think he's been very clear in his response to that. So at least we're all operating on the same page here and there is no misunderstanding as to how overtime averaging existed in the past, how it existed with the introduction of ESA, 2000, and how it's going to exist under our proposed bill. I just wanted to draw the committee's attention to that so we're all operating from the same page.

Clearly, there are some changes in this proposed legislation that will afford better protection to workers in the province. I know it doesn't go as far as some people would like to see it go. We heard yesterday that in some people's opinion it goes too far. Generally, in matters that involve labour legislation, if you're right down the middle you're in the right place, and that appears to be where this bill is taking us.

Mr McMeekin: I've never necessarily been a right-down-the-middle-is-the-best-place sort of a guy. Notwithstanding that, and building on my colleague's

comments, I think it's important to be very clear that the intent of this legislation is indeed to be very restrictive about workers working in excess of 60 hours. In fact, the intent is quite clear—

Mr Kormos: Now we're talking about work in excess of 60 hours.

Mr McMeekin: Well, 48, of course, but you need to go through the application process, which, in and of itself I think is a very clear message to employers that the previous practice of willy-nilly requiring this to happen has ended. I think that's the point Mr Flynn was appropriately making.

I found it passing strange and I thought about the comment that was made—in fact, I tossed and turned about this through the night—but I can't recall who made it. There was reference to the ministry not even entertaining an application from an employer who was not in sync with, in harmony with, who in fact had abridged various employment standards—and said, for all intents and purposes, "That just doesn't make sense." I want to say for the record that I think it makes all the sense in the world.

If you've got an employer who has fallen into a pattern of significant abuse in terms of workplace safety and everything else, and then feels that he/she wants to avail themselves of the opportunity to be given a rare, perhaps one-time, opportunity to have an employee work in excess of hours set out by law, I, for one, don't want to be entertaining the application from that employer. I think the point that was made in the legislation with respect to that was a pretty fundamental point. I was a little surprised to hear one of the labour leaders talking about it not mattering, essentially, whether an employer met employment standards or not. I think that's quintessentially what labour legislation should be all about.

1600

The other thing I would just mention in passing is that while the averaging provisions aren't perfect, they are one heck of a lot better than what exists currently. In that sense, it's a very significant step forward and something I think we should be celebrating.

The Chair: Further discussion? A recorded vote has been requested.

Ayes

Flynn, McMeekin, Ramal, Wynne.

Nays

Craitor, Kormos.

The Chair: It's carried.

Section 5. Discussion on section 5?

Mr Kormos: Again, New Democrats support the thrust of more information, better information, information as we indicated with respect to section 1 and the language that is understood by the person intended to receive the information.

New Democrats also note that the member from Niagara Falls has displayed a streak of independence this afternoon that will—

Interjection.

Mr Kormos: Well, the member from Niagara Falls, Mr Craitor, has voted against his government on a couple of these sections. He knows that I hold that in regard. In fact, it's that sort of thing that can give longevity to a career here at Queen's Park. I want to commend Mr Craitor for basically telling his government that they're wrong and for voting against them. He hasn't sat it out, he hasn't walked on the vote, which is one way of registering a rather feckless protest. But if you're going to take them on, Kim, you take them on frontally; you vote against them. Look, you may never be in cabinet, but that's OK. The Premier can put you in or out of cabinet; it's the folks in your community who put you in or out of the Parliament. No member should ever forget that. I commend Mr Craitor's example to his colleagues.

The Chair: Further discussion?

Mr Khalil Ramal (London-Fanshawe): I just want to be on the record here. First, it's a great indication that we don't come to the committee with—what do you call it?—an agenda to vote for or against; we come here to discuss the whole issue and vote the way we think is correct and good for the union movement, the workers in this province and businesses in this province.

Mr Kormos: You should have left well enough alone.

Mr Ramal: I want to echo my two colleagues who spoke before me on these issues, Mr Flynn and Mr McMeekin, who were talking about the happy medium.

I know we listened yesterday to a lot of people, and I share their concern. I know that as workers they want to set the standard very high. Employers also want to find different ways. They also want less government involvement and fewer regulations. Anyway, Bill 63—

Mr Kormos: A good, libertarian Liberal.

Mr Ramal: That's OK. I'm speaking on the record. I'm not afraid to say my position. I was for employers and employees at the same time, and I understand. To be a government, you have to consult both sides and you have to take the median side, which has to accommodate for two elements of the economic structure in this province. That's why Bill 63 speaks to both sides and makes everything workable for both employers and employees. That's why we're voting with.

Mr Kormos: Mr Craitor didn't think so.

Mr Ramal: Well, it's up to him if he thinks differently. We believe in democracy, and everybody is entitled to his or her opinion in this matter.

The Chair: Mr Barrett, please, and then Mr Kormos.

Mr Toby Barrett (Haldimand-Norfolk-Brant): I guess I would ask the parliamentary assistant—and I've just joined this committee—with respect to the government motion. I have just received this and I wonder if you could explain a little bit of what this actually does.

Mr Flynn: Are you talking about section 5 or the entire—

Mr Barrett: Subsection 6(1). It's the page with the 6 in the upper right-hand corner.

Mr Flynn: We're just dealing with 5 right now.

Mr Barrett: Section 5 or page 5?

The Chair: We're on section 5 of the bill, starting on page 7 of the bill.

Mr Barrett: OK. I have a sheet with a 6 with a circle. Are we on that?

Mr McMeekin: We're not there yet.

Mr Barrett: We're on 5?

The Clerk of the Committee (Ms Anne Stokes): We're on section 5.

Mr Barrett: OK. I apologize. I'll wait till we get there.

The Chair: Mr Kormos, please.

Mr Kormos: Well, briefly, Mr Ramal, when you go back home to London and people say, "Why couldn't you be more like Kim Craitor?" don't say I didn't warn you.

Mr Kim Craitor (Niagara Falls): I'm sorry I voted that way.

The Chair: Any further discussion on section 5? Do you want a recorded vote?

Mr McMeekin: I just want to say for the record that there have been a number of new colleagues who have been elected to this House and no two colleagues represent the ability to so fiercely and passionately engage their intellect on issues and vote their principles as Mr Ramal and Mr Craitor. I think they're both to be complimented for their exemplary leadership in this place.

The Chair: Any further discussion? Shall section 5 carry? All in favour? Opposed? It's carried.

Section 6. We're dealing, Mr Kormos, with your amendment. It's labelled 5A, Mr Barrett.

Mr Kormos: I move that subsection 22(2) of the Employment Standards Act, 2000, as made by subsection 6(1) of the bill, be amended by striking out "and" at the end of clause (b), by adding "and" at the end of clause (c), and by adding the following clause:

"(d) any trade union representing the employee agrees to the agreement."

This is consistent with the amendment that I moved earlier which would prevent the bill from circumventing the collective bargaining unit.

The Chair: Discussion?

Mr Flynn: The same argument applies as to the previous amendment. I understand the reasons why they've been brought forward and I understand the sense behind them. I believe they will be covered off in the operational aspects of the application.

The Chair: Mr Kormos, you're requesting a recorded vote on this one?

Mr Kormos: Recorded vote, please.

The Chair: We'll now vote on the NDP amendment.

Ayes

Craitor, Kormos, McMeekin.

Nays

Flynn, Ramal, Wynne.

Mr Kormos: I would ask the Chair to please consider the relevant and long-standing tradition when it comes to the role of the Chair to deal with a tie vote. The clerk will advise you, I'm sure, as I have been advised so many times by clerks when I've sat as Chair of committees, that the vote of the Chair should go with the motion made.

The Chair: I'm seeking counsel with the clerk here.

I will vote against the amendment, which is consistent with the role of the Chair. In counsel with the clerk, it would seem to me that your previous amendment, Mr Kormos, would have to carry in order to make this, because the two really go together.

Mr McMeekin: Can I just have one minute, Mr Chairman? I understood it was the tradition that in the event of a tie vote, the Chair usually casts against. I am surprised that Mr Kormos wouldn't know that. You led me to believe the opposite.

1610

Mr Kormos: Mr McMeekin, I do know it. You're wrong and those who would propose it are wrong.

Mr McMeekin: Mr Chairman, was it your intention to lead me to believe the opposite? Is the Chair incorrect?

Mr Kormos: I'm not going to debate the Chair. The Chair just has a hard time finding his gonads.

The Chair: I'm sorry?

Mr Kormos: The Chair has a hard time finding his gonads.

The Chair: No, that's not the problem at all, Mr Kormos.

I've consulted with the clerk. That amendment is lost. We'll now go to Mr Flynn, please.

Mr Flynn: I move that subsection 22(2.2) of the Employment Standards Act, 2000, as set out in subsection 6(1) of the bill, be struck out and the following substituted:

"Transition: certain agreements

"(2.2) For the purposes of this section, each of the following agreements shall be treated as if it were an agreement described in clause (2)(a):

"1. An agreement to average hours of work made under a predecessor to this act.

"2. An agreement to average hours of work made under this section as it read on February 28, 2005.

"3. An agreement to average hours of work that complies with the conditions prescribed by the regulations made under paragraph 7 of subsection 141(1) as it read on February 28, 2005."

I can speak to that briefly, for the benefit of Mr Barrett.

As a result of this subsection, employees who already have agreements with their employers for overtime averaging would not have the burden of having to get new agreements. What would happen, though, if the proposed legislation is passed, the director would then have to

approve all such agreements that come into force after that date. Under the current ESA, 2000, only agreements that average weekly hours over periods of more than four weeks must be approved by the director. Under our proposed legislation, any overtime averaging agreements would need to be approved.

Mr Barrett: The reason I asked for further discussion is, my assumption all along has been that this legislation really does nothing to eliminate the 60-hour workweek, in spite of claims. I guess my specific question to the parliamentary assistant is, is this a motion that would actually eliminate the 60-hour workweek? Is this the one that accomplishes that goal? It's my understanding of the legislation that nothing has changed. People would still be working a 60-hour workweek. Is this the one that knocks it out of the ballpark?

As I say, I just joined the committee and I have trouble understanding whether this accomplishes the goal.

Mr Flynn: No. What we're talking about here in subsection 6(1) is overtime averaging. Under the current ESA, the changes that were made in 2000, you're allowed four weeks of overtime averaging. Under the previous one, under the New Democrats and your own party up until that date, it had to be done for a two-week period. What we're doing is returning to the old way of doing it, to the two-week period. So you can't overtime average over four weeks; you can only do it over two weeks.

Under the current legislation that exists today, you don't need director approval for anything up to four weeks. What we're saying is you need director approval from the MOL for any overtime averaging provisions or agreement you bring into force with your employees. What we're saying is during this period, if you already have an agreement with your employees to overtime average, that agreement remains in effect until the date of passage of this bill. At that time, you still need to get director approval and the two-week period would then apply to overtime averaging.

Mr Barrett: Is this something employees are going to have to work out every shift or does it land in the lap of personnel? Who works out all this averaging? Is this additional number crunching that a company would have to do, for example? Does the union get involved with this? It's complex.

Mr Flynn: I would hope so, or else I would imagine the union would become involved in any new agreement that was coming forward. The rules are changing. The rules will change as of the date of passage of this bill and all employers will have to comply with those new rules.

Mr Barrett: There will be more rules, will there?

Mr Flynn: I'm not sure if there'll be any more rules. There'll be different rules and they'll have to be complied with.

Mr Barrett: Does it help streamline the process or is it kind of an add-on?

Mr Flynn: We believe the process is streamlined, as far as the way an application is made. If one was to look at the old four-week period being the period under which you would not have to get director approval, one might say there may be more agreements that become necessary as a result of this.

It's hard to predict, but I think from a common sense perspective you'll probably get more agreements and more compliance in the workplace, and will return to the rules that were in place prior to the amendment. I think most people in Ontario and most employers, and even unions, perhaps if they were pressed, would prefer the two-week overtime averaging period as opposed to the four—although their first preference, I'm sure, would be one week, and I think they've stated that.

Mr Barrett: OK. As long as the average guy on the shop floor can figure this out and understand this, because I don't.

Ms Kathleen O. Wynne (Don Valley West): I just want to make two quick comments. In response to the first concern about are there more rules and is it less streamlined, what we're trying to do is put a balanced approach in place that protects. I think Mrs Witmer was talking earlier about a step backwards: In the sense that we're trying to put more protections in place, then yes, absolutely.

My understanding of this section, and you might want to get staff to clarify, is that this is a transition section. My understanding is that it grandfathers and allows for transition for employers and employees for agreements that are in place and, when the new legislation comes in, there's a provision for what to do with those former agreements. Is that the case? I think just about anybody can understand that.

Mr Hill: That's right. This section grandparents existing averaging agreements. When the new regime comes into place—if it comes into place—at that point, the employer will have to get an approval, or have a pending approval, in order to average the hours. But they will not have to go back and get new averaging agreements from the employees because this section will grandparent the existing agreements.

Ms Wynne: So in fact without this section, there would be a significant amount of confusion about what to do with those former agreements, and these need to be in place so that when the new rules come in, it's clear. So in a sense, it's a technical amendment in order to smooth the transition.

The Chair: Mr Barrett, I'll put you on the speaker's list here if you want. Mr McMeekin, you're next.

Mr McMeekin: I just want to be clear because, like Mr Barrett, I'm concerned that the average guy on the shop floor be able to understand this. My experience, having worked on a shop floor in a union setting, is that average guys on the shop floor understand a lot more than some people give them credit for.

All that aside, it seems to me that we've got a situation here where this section in the amendment is designed to protect the rights and privileges of both the employer and employee as negotiated, so that some arrangement that has been carefully worked out is not abrogated arbitrarily

and at the expense of either party when there's been a good-faith agreement. Would that be fair?

Mr Hill: Yes. The intention here is to not force the employer and the employee to go back and negotiate a new agreement. They will have to get the approval of the director of employment standards in order to continue averaging, but they will not have to get new agreements.

Mr McMeekin: I understand that and expect that most average guys on the shop floor will as well.

Mr Ramal: I think it's just a fair section that deals with the labour act, which gives flexibility for both sides—employees and employers—to choose the way they want to take their hours. Certainly, as I mentioned yesterday, I used what they called two-week averaging when I was working as a health care provider. I think it doesn't just work for the employer; it works for the employees, because we choose that way. This bill, I guess, will grant the flexibility for people, for both sides, to choose the way they want to work. That's why I want to support it.

1620

Mr Barrett: Like Mr McMeekin, I spent some time in a factory, and joined a union when I was 18. I will admit, when I was 18—I mean, it was union wages, it was American wages—it was very good money at American Can. I was given the union book when I first joined, and I went to the union meetings. I was there for four seasons. But at age 18, 19 and 20, the paycheque was there. Sometimes I went to my union steward but, quite honestly, I have to admit, and I do this sitting next to Mr Kormos, that I didn't read the union rules. I didn't read the union book. I left it up to—

Mr McMeekin: You trusted people. You trusted the union.

Mr Barrett: I trusted my union.

I'm just concerned. It's amazing. It may have been more clear back when I was age 18 than it is now. But mainly to the ministry staff: Would this amendment in any way contribute to eliminating the 60-hour workweek in Ontario?

Mr Hill: If "60-hour workweek" is a reference to the daily and weekly limits on hours of work, no, because this amendment is concerned with the averaging of hours for purposes of determining overtime pay entitlements.

Mr Barrett: Yes. Does the legislation itself eliminate the 60-hour workweek? Maybe that's a political question.

Mr Hill: It is a political question, and I think different people understand different things by what eliminating a 60-hour workweek means. I don't think it's appropriate for me to attempt to answer that question.

Mr Barrett: OK. Again, going back to when I was 18, we worked all the overtime we could get our hands on, and I think my net income was actually higher than it is now.

The Chair: Mr Craitor, then Mr Kormos.

Mr Craitor: Chair, through you to the staff, just so I've got this clear: I'm an employer, and I have an agreement with one of my employees. So on that day when this becomes law, what do I physically do to get my agreement approved?

Ms Crouse: What you'll have to do is file an application with the Ministry of Labour. You can do that on-line. You'll have to wait to receive approval from the director of employment standards. If you want to average employees' hours over more than two weeks, you'll actually have to wait to receive the approval. If you're only asking for two weeks, you have the written agreement, and if you don't hear from the ministry within 30 days, then you can go ahead and work on that basis. However, the ministry may still issue a refusal after that 30-day period.

Mr Craitor: OK. What does the ministry look at to make the determination that they're not going to reply to me in 30 days? What do they have up there? Do they have all these agreements sitting there in an organized fashion that they can go through and look at my agreement that I had previously and know that it's applicable to continue? How do they do that, so I understand?

Ms Crouse: The agreements are not actually filed with the ministry. The act requires the employer to keep them on file at their place of business. The reason for that is so that they can be checked when officers are out in the field doing spot-checks and proactive inspections.

What the ministry will be looking at in terms of assessing whether approval should be given or not are things like, does the employer have any outstanding orders under health and safety legislation or under employment standards legislation? That is a new thing for the ministry. They'll also be looking at other criteria, that we've had to approve things in the past, like, what is the reason that the extra hours are being requested? Is the schedule in compliance with other employment standards, such as, do the people get the daily and weekly rest that they're entitled to? Things like that.

Mr Craitor: Out of curiosity, how many such agreements exist? Do you have a figure?

Ms Crouse: Overtime averaging agreements?

Mr Craitor: Right now.

Ms Crouse: Actually, there may be some stats on that provided to the committee today. My understanding is that since 2001 there have only been about 25 agreements approved. The current system is that they only have to get approval from the director of employment standards if they're averaging over a period of longer than four weeks. So I think about 25 of those have been approved.

Mr Craitor: So if you only have 25, wouldn't it have been easier, from the staff's point of view, to just have them submit a new application for 25, rather than to create a piece of legislation for 25?

Ms Crouse: Well, we don't know how many are out there who might be averaging under a period less than four weeks. Our suspicion is there are a number of workplaces where they average over a two-week period, for example. Right now, the ministry doesn't have any stats on that, because they're not required to come to us.

This section says that if an employer has in good faith complied with the current act and gotten agreements with employees, all it means is they don't have to go out and do that again. In some workplaces, where they have individual agreements with potentially several hundred employees, that could be a fairly big piece of work. So it's just meant to grandparent those agreements, and that's it. They still will have to apply for approvals from the ministry.

Mr Kormos: I'm just wondering if Mr Barrett could give us a couple of verses of Solidarity Forever.

Mr Barrett: No, I can't, but I will say I was a local Canco man. I think it was Local 35 of American Can. That plant was established in the 1930s and we didn't have strikes for decades and decades. Very good union-management relations there.

Mr McMeekin: I found it fascinating, Mr Barrett sharing his story. It was really rather moving, his explanation that as a young man he learned to—although he may have forgotten the words to Solidarity Forever, and I've forgotten some of them myself, he recalls with fondness those days when a strong union protected his rights, when he felt he didn't even have to read the fine print because he knew he could trust his union brothers and sisters to protect his interests.

I want to say that not a lot has changed in Ontario. That kind of trust still exists, by and large, throughout the union movement.

Mr Kormos: If the truth be known, Mr Barrett has told us he was 18 years old; I suspect he had other things on his mind.

The Chair: Mr Ramal, were you a union member too at one time?

Mr Ramal: Yes, I was.

Ms Wynne: Everybody who worked in a factory, just say it now.

Mr Ramal: I was OPSEU.

The Chair: I was Allied and Commercial, at Quaker Oats, as a summer student.

Mr Ramal: I just had a question for the ministry staff. Would the nature of a job be a factor to determine whether to give permission or not?

Ms Crouse: Yes, it would. One of the things that Bill 63 would require the director to consider is the health and safety of employees. So that would be taken into account. If it's a very dangerous occupation, then I think longer hours would certainly be scrutinized more.

The Chair: Any other history members of the committee want to share with us this afternoon?

Any further discussion? Is a recorded vote required on this one? Is anybody interested in a recorded vote? All in favour of the amendment? Opposed? It's carried.

Mr Flynn: I move that subsection 22(5.1) of the Employment Standards Act, 2000, as set out in subsection 6(2) of the bill, be struck out and the following substituted:

"Transition: application for approval before commencement

"(5.1) If the employer applies for an approval under section 22.1 before March 1, 2005, the 30-day period referred to in clause (2.1)(d) shall be deemed to end on the later of,

"(a) the last day of the 30-day period; and

"(b) March 1, 2005."

This allows for a seamless transition for both the employers and the employees.

The Chair: Discussion? All in favour of the amendment? Opposed? It's carried.

1630

Section 6, as amended: Any discussion? Does anybody want a recorded vote on section, as amended?

Mr Kormos: I'm going to holler "recorded vote."

The Chair: OK. I'm just extending my courtesy to make sure.

Mr Kormos: I appreciate that.

The Chair: Section 6, as amended: All in favour?

Mr Kormos: Recorded vote.

Ayes

Craitor, Flynn, McMeekin, Ramal, Wynne.

Nays

Kormos.

The Chair: It's carried.

Section 7: Mr Flynn, please.

Mr Flynn: I move that subsection 22.1(18) of the Employment Standards Act, 2000, as set out in section 7 of the bill, be struck out and the following substituted:

"Termination of old approvals

"(18) Any approval of an averaging agreement that is granted by the director under a regulation made under paragraph 7 of subsection 141(1), as that paragraph read on February 28, 2005, ceases to have effect on March 1, 2005."

Again, this just puts everybody under the same rules.

The Chair: Discussion? All in favour of the amendment? Opposed? It's carried.

Mr Flynn: I move that subsection 22.1(19) of the Employment Standards Act, 2000, as set out in section 7 of the bill, be struck out and the following substituted:

"Time for applications:

"(19) An application under subsection (1) may be made on or after the day the Employment Standards Amendment Act (Hours of Work and Other Matters), 2004 receives royal assent."

The Chair: Discussion? All in favour of the amendment? Opposed? It's carried.

Any discussion on section 7, as amended? All in favour of section 7, as amended?

Mr Kormos: Recorded vote.

Ayes

Craitor, Flynn, McMeekin, Ramal, Wynne.

Nays

Kormos.

The Chair: It's carried.

Discussion on section 8?

Mr Kormos: On a point of order, Mr Chair: I suggest you put sections 8 and 9 together for a vote, with the consent of the people assembled.

The Chair: I appreciate your guidance. I think that's a wonderful idea. Shall sections 8 and 9 carry? All in favour? Opposed? Passed.

Discussion on section 10? Shall section 10 carry?

Mr Kormos: Recorded vote.

Ayes

Craitor, Flynn, McMeekin, Ramal, Wynne.

Nays

Kormos.

The Chair: It's carried.

Section 11: Mr Flynn, please.

Mr Flynn: I move that section 11 of the bill be struck out and the following substituted:

"Commencement

"11. This act comes into force on March 1, 2005."

This just goes along with my previous comments and those of the staff that this bill is being moved into the future a little bit with its time frames.

The Chair: Discussion? Shall the amendment carry? Opposed? It's carried.

Shall section 11, as amended, carry?

Mr Kormos: Recorded vote.

Ayes

Craitor, Flynn, McMeekin, Ramal, Wynne.

Nays

Kormos.

The Chair: It's carried.

Discussion on section 12? Shall section 12 carry?

Mr Kormos: Recorded vote.

Ayes

Craitor, Flynn, McMeekin, Ramal, Wynne.

Nays

Kormos.

The Chair: It's carried.

Shall the title of the bill carry?

Mr Kormos: Recorded vote.

Ayes

Craitor, Flynn, McMeekin, Ramal, Wynne.

Nays

Kormos.

The Chair: Carried.

Shall Bill 63, as amended, carry?

Mr Kormos: Recorded vote.

Ayes

Craitor, Flynn, McMeekin, Ramal, Wynne.

Nays

Kormos.

The Chair: Carried.

Shall I report the bill, as amended, to the House?

Mr Kormos: Recorded vote.

Ayes

Craitor, Flynn, McMeekin, Ramal, Wynne.

Nays

Barrett, Kormos.

The Chair: It's carried.

There is no further business for the committee. Would someone like to move adjournment? Thank you very much for your co-operation.

The committee adjourned at 1640.

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Mr Kevin Daniel Flynn (Oakville L)
Mr Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mrs Elizabeth Witmer (Kitchener-Waterloo PC)

Also taking part / Autres participants et participantes
Mr John Hill, general counsel, legal services branch,
Ministry of Labour
Ms Marcelle Crouse, manager, employment and labour policy branch,
Ministry of Labour

Clerk / Greffière
Ms Anne Stokes

Staff / Personnel
Ms Catherine Macnaughton, legislative counsel