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Official Report of Debates (Hansard)

Monday 21 March 2011

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Lundi 21 mars 2011

**Standing Committee on
General Government**

Toronto Transit Commission
Labour Disputes Resolution Act,
2011

**Comité permanent des
affaires gouvernementales**

Loi de 2011 sur le règlement
des conflits de travail
à la Commission de transport
de Toronto

Chair: David Oraziotti
Clerk: William Short

Président : David Oraziotti
Greffier : William Short

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Monday 21 March 2011

Lundi 21 mars 2011

The committee met at 1404 in room 228.

**TORONTO TRANSIT COMMISSION
LABOUR DISPUTES RESOLUTION ACT,
2011**

**LOI DE 2011 SUR LE RÈGLEMENT
DES CONFLITS DE TRAVAIL
À LA COMMISSION DE TRANSPORT
DE TORONTO**

Consideration of Bill 150, An Act to provide for the resolution of labour disputes involving the Toronto Transit Commission / Projet de loi 150, Loi prévoyant le règlement des conflits de travail à la Commission de transport de Toronto.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. We'll get started. Welcome to the Standing Committee on General Government. We're going to be continuing hearings on Bill 150.

ONTARIO FEDERATION OF LABOUR

The Chair (Mr. David Oraziotti): Our first presentation is the Ontario Federation of Labour, Sid Ryan. Good afternoon, Mr. Ryan.

Mr. Sid Ryan: Good afternoon.

The Chair (Mr. David Oraziotti): You've got, as you know, 15 minutes for your presentation. Any time that you don't use will be divided up among members for questions. You can state your name and start when you're ready.

Mr. Sid Ryan: Thank you. My name is Sid Ryan; I'm president of the Ontario Federation of Labour. Thanks for the opportunity to speak to you today.

However, I must tell you that we do not consider these hearings to be legitimate. By that I mean, if you take a look at the Webster's dictionary, it says it must conform to recognized principles or accepted rules and standards. Truth would be a recognized principle.

The provincial government has fabricated the need for this legislation and based its rationale on—excuse me, Chair, would you like to listen?

The Chair (Mr. David Oraziotti): Yes, I'm listening. Go ahead.

Mr. Sid Ryan: The provincial government has fabricated the need for this legislation and based its rationale on layers of lies that are contained within the bill.

Equally alarming, it has manufactured a crisis where none exists and tries to resolve it with the use of legislation that removes the fundamental rights of 10,000 workers. No government, ever, should take lightly the undoing of legal protections and long-standing processes. These have been developed in the context of more than 100 years of social, political and economic history and represent cherished principles and vital safeguards against the misuse of power.

You already know, or ought to know, that your actions will be construed as a violation of international law. I call your attention to the United Nations' International Labour Organization's convention 87, which Canada is a signatory to. In addition to prohibiting the removal of the right to strike for the reasons stated by the government, the convention also says that metropolitan transit systems and railways are not deemed to be essential.

The bill also likely violates the Supreme Court of Canada's ruling on the right to collective bargaining. The court ruled that the charter's protection of freedom of association must provide "at least the level of protection" as afforded by the ILO convention to which I have just referred.

We believe that government's specious rationale laid out in this preamble is part of the reason that it will be found to be in violation of the charter, and make no mistake about it: It will be challenged.

The preamble of Bill 150 says the need for depriving workers of the right to strike arises from "serious public health and safety, environmental, and economic concerns." The ATU has pointed out to you that the City of Toronto 2008 staff report says just the opposite: "The Toronto Fire Services, Toronto Emergency Medical Services and the Toronto Police Service have each provided their assessment regarding the impact of a strike at the TTC on their ability to effectively respond to emergencies. Each service has reported that there has been no noticeable effect upon their response times or ability to respond due to a strike by TTC employees and the interruption of TTC services."

The onus is on the government to substantiate its claims that such profound interference with workers' fundamental rights is necessary. Where is the evidence? There is no data and there are no examples of public health being compromised by a TTC strike. There is no economic or environmental evidence.

Bill 150 raises numerous questions, but the most fundamental one, I think, is whether any government

should be permitted to deny fundamental rights to its citizens on the basis of electoral considerations, because that is the motivation for Bill 150. The Liberals are attempting to shore up votes for the October election by courting Ford's electoral base. In February, the city refused the voluntary and unconditional no-strike commitment made by all three unions at the TTC. Ford wants confrontation, perhaps in a bid to construct a media image of himself as another Mike Harris, or maybe he's simply giddy with new power that he's unused to. Whatever his motivation, it is precisely this excess of power that the law was created to prevent.

Instead, the province's collusion with Ford has already impeded progress in negotiations, and this is unforgivable because the economic security of thousands of workers and their families is at stake. CUPE Local 2 president Gaetano Franco, whose 500 members work in signals, electrical and communications across the transit system, described to you the completely disrespectful response from the city after submitting the union's proposal. He was sitting at home waiting for bargaining dates and when he finally received the city's call, it was to tell him that they had already filed for conciliation without one minute of conversation on the particulars of the proposal.

Obviously, the Premier can do anything he wishes with respect to his party's election strategy, but what he cannot do is subvert the law and what he should not do is to join with Ford in vilifying unions and workers. The Premier parlayed the years of labour strife with the Harris Conservatives, the worst era in labour relations, into a win for his government. Bill 150 will undo all of this progress.

The labour movement has a long history of fighting for public transit and public services—the rights of all people, unionized or not, to have access to transit, housing, child care, health care, education and pensions, the very services and opportunities that millions of citizens take for granted every day. We have fought for these services on behalf of all Ontarians and many of these gains have been made because of unimpeded collective bargaining, and that includes the right to strike. That's our history.

What's the government's record? Ontario is the only jurisdiction in North America that refuses operating funding to its largest municipal public transit system. If the province is really concerned about the people of Toronto, it should think about rectifying this disgraceful state of affairs. The workers are not the problem with the TTC, nor are they in any way the cause of economic difficulties encountered by this province.

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My message to the Liberal government is this: You upend the collective bargaining process at your own peril. Free collective bargaining gives workers a stake in the outcome of bargaining, and without this, you remove the possibility for a smoothly running system. Imposing agreements on workers, who will most certainly take action if their working conditions become deplorable, is not the solution.

Labour peace and productivity are a two-way street that requires both honourable conduct and truth. Neither of these is to be found in Bill 150 or in this government's initiative. Thank you.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We've got a few minutes. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you, Sid, for showing up today, but I think it would be more appropriate if I turned the questions over. I think you and the government benches would have more to chat about than ourselves.

Mr. Peter Kormos: Chair, I relinquish all of my time to the Liberals here on the committee. I'm going to be delighted to be watching and listening to this.

The Chair (Mr. David Oraziotti): Mr. Kormos, thank you.

Mr. Dave Levac: Mr. Ryan, thanks for your presentation and, personally, for your work over the decades for the union movement and organized labour across the province. Thank you.

I'm a little curious: Can you share with me an opinion on any kind of legislation, even after a strike, where we've come together as a Legislature—

Mr. Sid Ryan: Where which?

Mr. Dave Levac: Where we've come together as a Legislature and legislated individuals back to work after a strike has started, and if that plays into your decision on this as a pre-emptive piece to that, or whether or not demanding that people come back to work, with legislation, is the same kind of—if you have the same kind of concern in dealing with that kind of legislation?

Mr. Sid Ryan: I think your government has been far too quick to jump into labour disputes. For example, there's a strike that has gone on for two and a half years at ECP in Brantford. I've been bending over backwards with your government to try to get them to intervene in this process so that we can put these workers back to work after two and a half years on strike. I think it's an abuse of the labour code in this province that people are allowed to do that. But yet, when it comes to the TTC, you're only too quick, after a day or two, to jump into the strike and end it.

To me, you're playing politics with the legislation in this province. You're not even-handed about how you apply it. If it's good enough to jump into the legislative process with respect to the TTC workers, how come you're not so prepared to jump in and help out with Vale Inco, which was on strike for a year, with over 3,000 workers up in Sudbury deprived of the ability to earn a living? Or with the strike that's taking place at Stelco today in Hamilton? Nowhere is your government to be seen. You run away from those issues, but yet, when it comes to the TTC and you think there are some votes to be had in an election year, you jump right in.

I don't even blame Ford, by the way, for this. I blame your government. McGuinty is the one who began the whole process after the initial walkout by the TTC workers. He invited this legislation. He goaded David

Miller into bringing this request forward. It all started with the Liberals.

You interfere in the process whenever you think there are votes to be had, but you run away from the issues when there are other big issues at stake, such as the private sector taking advantage of the lax labour laws which your government absolutely refuses—like anti-scab legislation. We've been asking you now for 10 years. You played politics with that as well.

You turned around to the construction industry, because the construction industry puts money into your election machine, and you gave them card-based certification, but you said to the rest of the labour movement—you gave them the finger.

You play politics, sir, all the time with labour legislation and with the lives of workers in this province, and it's got to stop.

Mr. Dave Levac: I appreciate the opinion. Specifically, though, can I drill that down a little bit and then say that inside of that, I still heard that you were not in favour of back-to-work legislation for the TTC, even after they were on strike and we asked them to come back?

Mr. Sid Ryan: I think you should allow the parties to negotiate. You're too quick to jump in and try to resolve something that you think is going to cause you a bit of a political problem.

Allowing the collective bargaining process to take place is the whole idea of collective bargaining. Both parties have got something at stake: Workers lose the ability to earn a living; the employer loses the ability to provide a service and gets some flak from the public. That's what drives the bargain. If you allow the parties to sit down and negotiate, instead of speaking to the employer in the TTC case, they know full well that if the union decides to use their legitimate right to go on strike, within nanoseconds, you're talking about legislating them back to work. Allow the process to work. You wouldn't be in this mess here today if you allowed the process to work.

Mr. Dave Levac: Okay. I appreciate that. How much time do we have, Mr. Chairman?

The Chair (Mr. David Orazietti): You've got about three minutes.

Mr. Dave Levac: Good. Thank you.

You referenced earlier the 2008 situation. You characterize it as the Premier goading Mr. Miller into asking for the type of legislation that you're speaking against right now, if I'm characterizing that correctly, and that Mr. Ford is not really the culprit here; it's the government, because they goaded Mr. Miller into asking for that. The Premier indicated that after the election, if it's asked for by city council, if city council makes the decision that it's looking for that type of legislation, the province would indicate that it would be helpful in seeing that that legislation is available to allow them to declare it an essential service. That's seen by you as simply the government setting that up so that it could happen, as opposed to Mr. Miller asking for it?

Mr. Sid Ryan: Precisely.

Mr. Dave Levac: So the last part about this—and I think you already know those numbers, but I just wanted to make sure that we were aware of them—we're talking about a small fraction of the number of contracts that are, unfortunately, settled by strike. The larger numbers are usually through the negotiation process, which I'm very much in favour of. Is there such a time frame that you can identify for when you believe that a government should intervene, if at all, when we're talking about the negotiation process, or even a strike?

Mr. Sid Ryan: I don't think you should be interfering in the process, period, unless the parties come to you jointly and say, "We're unable to reach some form of a compromise." In that case, then, I would cede the possibility. But if you keep interfering in the process within a matter of days—and the TTC knows from their history that your government in particular is quick to jump into the fray and take away the right to strike from workers and legislate them back to work within days—what's the incentive for the TTC to sit down and sort out that problem? None whatsoever. There's no incentive for them to bargain.

Again, as I say—and it's from your area. You're from Brantford, I believe?

Mr. Dave Levac: Yes.

Mr. Sid Ryan: So you must be quite embarrassed by your own government, to be sitting on the opposition benches and to have some of your voters, who voted for you, sitting out on a picket line for two and a half years. You drive by them every day of the week. I know you've been down to the picket line. You must be wholly embarrassed by your government's inaction to do something about that strike in Brantford, yet here you are, sitting on a committee that's taking the same right to strike that those poor folks down in Brantford have been fighting for, and for their principles, their wages and their benefits—your constituents—and here you are, sitting, wanting to take the right to strike off of 10,000 workers.

You sat there as well and you voted in favour of taking the right to strike away, legislating workers back to work after two days. But after two and a half years of your own constituents being out on strike, you can't even convince your colleagues sitting on either side of you and those around in your backbenches that maybe they should intervene and end that strike, or maybe they should give them some degree of legislation where we stop the scabs going into the plant that's in your riding, day in and day out?

Mr. Dave Levac: I'm glad you mentioned that. The short answer is, I have been working on it.

Mr. Sid Ryan: I'm not asking you that. I'm asking—you ought to be embarrassed. I want to hear you say you're ashamed of those who sit on the benches with you, that they allow workers to be exploited for two and a half years, to be taken advantage of, because of the lax labour laws in this province; that your government hasn't got the guts to stand up and say, "Do you know what? This is wrong. Workers should not be taken advantage of like this in this community or anywhere in this province."

You should be ashamed of yourself. You should be saying to these folks, asking this Chair of this committee, for example, what the hell is he doing to work with you? You keep on saying that you're working with your colleagues. Well, when are you going to get some results and maybe get those people back to work?

The Chair (Mr. David Oraziotti): Mr. Ryan, thanks. That's time for your presentation.

Mr. Sid Ryan: Thank you.

Mr. Dave Levac: And, Mr. Chairman, I want to thank the opposition for providing me with some opportunities to present this situation and ask some questions.

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CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair (Mr. David Oraziotti): The next presentation: the Canadian Federation of Independent Business. Good afternoon, Mr. Petkov. You have 15 minutes for your presentation. Any time that you do not use will be divided among members for questions. For our recording purposes, just state your name, and you can start when you're ready.

Mr. Plamen Petkov: Thank you, Mr. Chair. My name is Plamen Petkov. I'm the Ontario director of the Canadian Federation of Independent Business. I appreciate the opportunity to address you today in support of Bill 150 and in support of declaring the TTC an essential service. I do this on behalf of CFIB's 5,000 small and medium-sized business members in the city of Toronto. A copy of my presentation is included in the materials that were circulated to you, and the slide deck is on the right-hand side of your kit.

Let me start by saying that having a reliable and efficient public transit system in the city is of utmost importance to small and medium-sized business owners. Our members, their employees and their customers depend on the TTC for their daily commute. It is clear that transit strikes, or the threat of transit strikes, have become unacceptable to Toronto's businesses and residents. One solution, although not a perfect solution, is to declare the service essential and thus eliminate the threat of future strikes. That is what CFIB has been asking for.

On slide number 2 you will find a list of some of our initiatives on this front in the last two or three years, since the last TTC strike. During the previous city administration, we made two presentations to the executive committee of the previous mayor, Mayor David Miller. We delivered action alerts signed by our Toronto members. We also met with several councillors and city staff. We wrote to the Premier and we supported Mr. Caplan's private member's bill last year on this topic.

On slide number 3 we have listed some of the reasons that our members have identified as to why the TTC should be an essential service.

As there is no alternative to the TTC, the impact of a TTC strike to the general public and to the small business community is huge. Let's not forget that the TTC is also

the only affordable means of safe transportation to people of modest income. Unfortunately, those were the same people who were left stranded in the middle of the night when TTC workers walked off the job in 2008 without any prior notice. The residents and businesses in this city were held hostage in a labour dispute they were not a part of, and unfortunately, the same thing happened in 2009 during the 39-day civic workers' strike.

There are also environmental repercussions resulting from a TTC strike, such as increased air pollution from higher levels of car use, not to mention traffic congestion. But most importantly, the city taxpayers cannot afford the financial loss resulting from a TTC strike. The city manager estimated the cost of TTC strikes at \$50 million a day, and it is Toronto taxpayers, both residents and businesses, who have to foot that bill.

Slide number 4: We understand that an essential service comes at a cost. I believe a wide range of estimates has been put forward for an increase in wage settlements and arbitration costs in future contracts. This range, however, is way too wide for us to draw a reasonable estimate of exactly how much extra it would cost the city to make the TTC essential.

What we can do with more certainty, however, is calculate how much the last two TTC strikes have cost the city. Since 2006, there have been three TTC strike days. Using the city manager's estimate, Toronto has lost \$150 million just over three days. So it is clear that keeping the TTC status quo will be far more costly to our city than making it an essential service.

On the next slide: Regardless of which estimates we want to look at, we believe that there is a lot that we could do to keep wage increases and arbitration costs in check. One way to achieve that is to require arbitrators to abide by specific criteria when making an award. On this slide, you see that, overwhelmingly, 81% of our Ontario members support the arbitration with criteria approach. In Toronto, the support is even stronger at 86%.

On the next slide: We're pleased that Bill 150 includes a list of specific criteria for arbitrators, but ultimately, Toronto's fiscal health and the employer's ability to pay should be given a priority and primary consideration. That ability may appear unlimited to some, as the city can pass the cost on to the taxpayers, but let me remind you that over the last decade, Toronto has lost businesses and jobs to the 905 area, leaving fewer taxpayers to shoulder the load.

Comparing public sector wages and benefits with those in the private sector is also a criterion of utmost importance to us. Instead of looking at the highest unionized comparators when negotiating TTC contracts, arbitrators should look at compensation for similar occupations in the private sector requiring similar education and experience, just like it is listed under paragraph 4 in the bill. This will ensure a balance between fair wages and benefits for TTC employees and sustainable costs for Toronto taxpayers.

On the next couple of slides, CFIB used census data to estimate that public sector transit workers in Toronto re-

ceive about 22% more in wages than private sector workers in matched occupations. When benefits are factored in, the difference increases to 47%. So there is certainly a growing need to restrain the increase of average compensation, including benefits, in future wage settlements.

In conclusion, a reliable public transit system is essential to our city to sustain both the local economy and quality of life for residents and visitors. Businesses cannot succeed without a reliable way to get their employees to work, and people will hesitate to live in or visit a city in which they cannot move around freely.

CFIB supports Bill 150 and we recommend that you declare the TTC an essential service to end the threat of future strikes. However, we also caution you that to keep arbitration costs in check, you must ensure that arbitrators abide closely to the defined criteria included in the bill.

Making the TTC an essential service, as I said in the beginning, might not be a perfect solution, but it is certainly a better option than the current status quo.

Thank you for the opportunity to address you today, and I'll be glad to answer any questions that you may have.

The Chair (Mr. David Oraziotti): Thanks for the presentation. Mr. Kormos, you're up first, if you have questions.

Mr. Peter Kormos: No, thank you, Chair. Thank you very much.

The Chair (Mr. David Oraziotti): Mr. Qaadri.

Mr. Shafiq Qaadri: Thanks to you, Mr. Petkov, for your deposition and deputation on behalf of the Canadian Federation of Independent Business. I compliment you not only on your presentation—you've itemized a number of—the logic model, I suppose, of the government with reference to reliable and efficient access. You've touched on a number of the costs. I wanted to just share with you some statistics, some numbers, and perhaps get your own opinion contextualized to your particular sphere of influence, your domain—small businesses.

I bring specifically—you may realize, for example, that the president of the ATU, who testified in that very chair not too long ago, seemed to dismiss the economic and environmental and other impacts of work stoppages in the TTC. Of course, numbers and statistics can be used in various profitable ways, and of course when we're dealing with such large numbers, but I'd like to just share with you a report that was commissioned by a former MPP of this Legislature.

Of course, these figures are for a year-long absence of TTC, so admittedly, hopefully that will never take place, but I think the overall cost estimate of loss was something in the order of about \$12 billion: \$6 billion in economic benefits; \$20 million in terms of environmental energy costs; \$200 million in terms of highway, parking and construction costs; maybe \$300 million—that's of course the financial expense of medical costs and so on. There's a number of other figures that I can cite.

What, to you as a representative of the 5,000 small businesses that you referred to and cited in your initial

deposition, is the lead item? What is the thing that motivates your members? What is the thing that would appear in your own press release, for example, summarizing your deputation today?

Mr. Plamen Petkov: Absolutely. I think there's a number of things. First of all, as I said, what I'm hearing from my members is that every time TTC goes on strike, there is no alternative for that service, period. This is a monopoly service provider. When they're on strike, there is no alternative. You cannot move people around the city. That's number one.

Second, obviously, is the financial loss that results from any strike day. Of course, we can look at different estimates here. I have referred to the city manager's estimates. That's from 2008. I know that Mr. Kinnear, for example, has used other estimates.

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The bottom line is, there is a cost associated with every single strike, with every single day that TTC workers are on strike. It's really up to the government to decide which estimate to use. Obviously, I would like to see more detailed estimates on this, but what our members are telling us is that their business suffers financially if their employees or their customers cannot make it to their store or to their plant.

Obviously with environmental aspects, I think a lot has been accomplished on this front by the city of Toronto in recent years. I think the goal was to position Toronto as an environmental leader in North America. I just don't understand why that aspect is not being considered by certain stakeholders in this debate.

Mr. Shafiq Qaadri: I would just bring to the attention of the committee slide 2. First of all, you've mentioned here the deputations that you've made to the city of Toronto—that's particularly for Mr. Kormos—but you refer here to 550 action alerts. What does that actually mean?

Mr. Plamen Petkov: Yes. There is a copy of that action alert in your kit. It's right under the presentation.

That was done in 2008, after the last TTC strike. That was addressed, obviously, to the previous mayor and council. The Premier was copied on that. We sent this to our members. We gathered 550 of these signed by individual business owners. We delivered those to the mayor at that time, and that was during one of our deputations to the executive committee.

Again, that was a huge issue. Immediately after the last strike, our members were outraged. That's why we were able to collect a significant number of these immediately.

Mr. Shafiq Qaadri: I see.

Mr. Petkov, I'd just bring your attention to your elegantly outlined slide 6, in which you speak about the arbitration criteria. Of course, the scope of this particular bill does not address the arbitration system. I was, I guess, encouraged to see that you support, in broad outline, the current framework. Are there any things that you'd like to highlight with regard to arbitration, particularly as it affects your membership?

Mr. Plamen Petkov: Certainly. The reason I included that slide here is just to demonstrate that it's of critical importance to our members to have these criteria embedded in the bill. At the same time, this is the bare minimum. This is a starting point. It is great to have it in the bill, but we also have to make sure that arbitrators actually abide by those criteria.

As I said, the employer's ability to pay is very important; the economic situation in the city, in the province, in the country, is also extremely important. We are facing an arbitration system right now that needs improvement. We are now running a deficit of almost \$20 billion—\$19 billion. We are officially a have-not province. We have the Premier asking for a voluntary wage freeze in the next two years, and at the same time we have arbitrators who are awarding contracts with up to 2% to 3% increases—

Interruption.

The Chair (Mr. David Oraziotti): Can you sit down, please? He's had 13 minutes. He's had 13 minutes. We've got a clock right here.

Interruption.

The Chair (Mr. David Oraziotti): I'm sorry. We're keeping the official time up here.

Interruption.

The Chair (Mr. David Oraziotti): You're going to have to leave if you can't sit down. He's had 13 minutes. You had 15½ minutes, if you'd like to get the facts. Obviously, you want to make a statement while you're here at the committee. Thanks for the grandstanding. We're going to move on. These guys have a question. Thanks. If you can't be quiet, you have to leave.

Go ahead.

Interruption.

The Chair (Mr. David Oraziotti): Yes. He has a question. We're at 13½ minutes.

Interruption.

The Chair (Mr. David Oraziotti): You can leave if you'd like.

Go ahead, Steve.

Mr. Steve Clark: Thank you, Mr. Chair.

What drives me a little crazy are these pie charts. I guess it's just a little bit of an issue with me. Slide 5 talks about, I believe, your membership, not a public opinion poll, so I'd like you just to confirm the numbers, who was involved in the Ontario survey and who was involved in the Toronto survey.

Mr. Plamen Petkov: Absolutely. On the left side of the kit there is the actual question with the background that we provided to members with arguments for and against that question.

In Ontario, we gathered just over 3,800 responses; in Toronto, about 400. The question, like I said—I know I'm running out of time, but the question is there in the kit with the background information that all members received.

The Chair (Mr. David Oraziotti): Thank you. That's time for your presentation. We appreciate you coming in today.

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO

The Chair (Mr. David Oraziotti): Our next presentation is the Canadian Union of Public Employees, Mr. Hahn. Mr. Hahn, state your name for the purposes of Hansard, and you can start your presentation. You have 15 minutes. Any time you don't use will be divided among members for questions.

Mr. Fred Hahn: Thanks. My name is Fred Hahn, and I'm the president of CUPE Ontario.

As you know, CUPE has more than 240,000 members across Ontario, including 500 workers at the TTC, members of CUPE Local 2, who work on signals and communications across the system. I want to start by underscoring the importance of their work to the transit commission and to make it clear that we support the presentation that we know they've made previously to this committee.

I should also point out that we represent employees in half a dozen municipal public transit systems across Ontario and more than 60,000 members in municipalities, all of whom are watching this process very carefully.

I want to thank you for the opportunity to present our views. There are three key messages that we'd like to bring to the committee about Bill 150.

Number 1: When it comes to designating essential services in Ontario for the purpose of this kind of legislation, there is a well-defined and historically recognized legal threshold that must be met. That bar is set high, as it should be. When we're in a discussion about removing people's legal rights, that bar should be set high. Before we can justify taking away those rights, we must meet the test of demonstrating clear and defined threats to public safety. For eight years, this government has not seen that threat, because it doesn't exist. It has not been met, we believe, in this legislation. If the government truly believed that this was an essential service, then they would not stand by in the face of cuts to bus routes or hours of service.

Number 2: While the TTC, in our view, does not meet the legal test of being an essential service, we know that in the day-to-day understanding of that word, it is very much essential. It's so vitally important, in fact, that the question we want to ask the government is this: How can it refuse to do what Ontario always did before Mike Harris was the Premier of this province and actually ensure provincial operating funding to the TTC? What the people of Toronto care about most is ensuring the operation of their public transit authority. But Bill 150 is not about protecting the public's vital service; it is about distracting the public's focused attention, moving it away from the issues of overcrowding, cuts to routes and hours of service, and the absence of provincial operating funding.

Finally, Bill 150 is an unwarranted attack on generations-old, hard-earned rights, civil rights which are at the foundation of our proven collective bargaining system, a system that our own provincial Labour Relations

Act supports and encourages as a fair and civilized approach to resolving labour-management disputes. Bill 150, intentionally or not, legitimizes and even encourages a growing Tea Party-style attack on public sector workers, their unions and collective bargaining overall, an attack that's unworthy of this government—unworthy, we would say, of any political party in our province.

The advocates of Bill 150 in the government are asking Ontarians to believe that without the legislation, Torontonians would not have assurance that their transit service could be relied upon when they need it. If this were true, there might even be some grounds for debate, but we know it's not true. The Premier of the province knows it's not true. The mayor of Toronto knows it's not true. Even CFRB host John Tory knows it's not true. That's because on February 10 all three unions at the TTC, including CUPE, made a voluntary and unconditional no-strike commitment. That commitment was made in full public view at a well-attended press conference. It was put in writing the same day to Ontario's labour minister, Charles Sousa.

So if the legislation is not needed to prevent strikes, then why is it here? If Bill 150 is such good public policy, then why hasn't it been anywhere on the government's agenda for the entire eight years that it was in office? And why, when this same policy came forward as a private member's bill, did more Liberals, including ministers and former ministers, actually vote against it than for it?

Today, members of this committee might ask, even if it's true that unions have made this legislation unnecessary by voluntarily agreeing to forgo work stoppages at the TTC, why does it matter if the bill goes ahead anyway? It matters because for the province of Ontario the right to strike lies at the heart of a successful collective bargaining system, and the only time it makes sense to remove those rights is when public safety is threatened. Collective bargaining only works when both sides are prepared to compromise to reach an agreement, and nothing encourages the willingness to compromise more than the prospect of a strike. That's true for the union side and for the employer side. But when the possibility of a strike is removed, the incentive to compromise is reduced, and both sides can let an arbitrator make tough decisions for them.

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We should look at what's been happening at the TTC bargaining table since Bill 150 was introduced. Only a few weeks ago, CUPE Local 2—our local at the TTC—their bargaining team met with the employer, exchanged contract proposals and then, knowing that the legislation was being rammed through the House, TTC management, without engaging in even one minute of real, actual, face-to-face negotiations, telephoned the union to say that it had filed for conciliation. This is how, in one legislative swoop, without the bill even being passed, the legislation has already damaged any hope of meaningful contract bargaining at the TTC.

As I said at the outset, I want to repeat our three key messages. First, the government has failed to meet the

threshold for the legal test of essential services legislation. Second, the bill is unnecessary to ensuring continuity of service and distracts attention away from quality service issues that the public is most concerned about: stable ongoing operating funding that will protect public services against cuts to routes and hours of service. Third, this bill is an unwarranted attack on the rights of thousands of Torontonians and sets a precedent for challenging the rights of public employees elsewhere in the province.

It is an irresponsible invitation to a Tea Party-style public rhetoric against those who work in the public sector, rhetoric which, as we've seen in many places like Wisconsin, is really about aggravating social conflict and division, and which is unbecoming and unworthy of this government and any political party in this province.

We say to the committee, if your concern as legislators is to have a strong and reliable transit system in the city of Toronto, you shouldn't pass this legislation. Rather, you should turn your attention to the real issues of overcrowding, cuts to routes and hours of service by funding operating funding at the TTC. You should turn your attention to the fact that Ontario continues to embarrass itself as long as it continues to be the only jurisdiction in North America to refuse operating funding to its largest municipal public transit system.

Finally, while it should be very clear that our union is opposed to this legislation, as it is unnecessary and, indeed, destructive, it also appears that the government intends to proceed, regrettable as that is, so we must point out that there are features in this bill that set it apart from and make it worse than other already existing essential services legislation in the province, features that make a bad bill even worse. Specifically, we refer to the bill's inclusion of final-offer selection as a method of arbitration that may be used to resolve the bargaining disputes of the TTC.

Final-offer selection is a method of arbitration in which, ultimately, the arbitrator is required to choose the proposals of either the employer or of the union in their entirety, rather than selecting the best proposals from either side. This winner-take-all approach is hugely damaging to good labour relations.

Even if one accepts the premise of Bill 150, which we do not, final-offer selection is totally unnecessary for its purpose. As the largest trade union in Ontario, with more than 240,000 members in every community and every riding in the province, CUPE must insist that if Bill 150 proceeds, final-offer selection must be removed from it entirely.

In closing, I'd like to ask you to reflect on the arguments we've raised here today, that you weigh this bill against the large body of historical evidence of generations of successful free collective bargaining in Ontario, that you remember that the obligation of the government is to govern for all of the people in the province, and that it is wrong to punish men and women in one community to satisfy the political needs of one mayor versus the needs of all of the people of the province. We ask you to

consider this because we don't think it's too late to stop a bad bill from becoming law.

Thanks for your attention, and I'll be happy to answer any questions.

The Chair (Mr. David Oraziotti): Thanks for your presentation. We'll start over here with the government caucus. Go ahead, Mr. Levac. Do you have a question or—Mr. Zimmer, go ahead.

Mr. David Zimmer: Mr. Hahn, on February 22, 2011, CUPE wrote—you signed the letter—to all the members of the Ontario Legislature and you raised various arguments against the legislation. At the second paragraph of the letter, you refer to the issues that the TTC in Toronto and the public were facing as “a non-existent issue.”

The question that I have is, do you think these TTC strike issues are a non-existent issue to the students who use the TTC, the workers who need the TTC, the seniors and the parents who have to send their kids out and about on a daily basis on the TTC and who have no other alternative if the TTC is not running? Is it a non-existent issue for them?

Mr. Fred Hahn: Well, we know this because our members are members of the public. What people are most concerned about is having a reliable service that they can use as a public transit authority. That's why we're saying very clearly that Bill 150 does nothing to resolve issues of reliability. In the current round of negotiations that are coming, the unions have already made an offer that will ensure that there's no work stoppage.

But beyond that, the bigger issues, we believe—and in fact, we know the people of the city of Toronto believe—are about funding that service in a way that makes it reliable. How can we talk about an essential service when those same students and nurses who get off at midnight and people who rely on that transit authority will not be able to rely on a bus route that just got cut in their neighbourhood because there isn't sufficient funding to allow for it to happen? An essential service means that it has to be provided for everyone, whenever they need it. That's why we think the real issue here is about core operating funding from the province for the largest municipal transit authority in the province.

The Chair (Mr. David Oraziotti): Thank you. We need to move on.

Mr. Hillier, questions?

Mr. Randy Hillier: Thank you, Mr. Hahn, for coming here today.

I want to just ask you—first off, I have to say I did find it interesting that you referred to the present government as a radical Tea, Party-type movement. But I do want to ask you this: Looking at your presentation, we see a number of members of the government side who voted one way last year and they're voting a different way this year; even some members on this committee. The members from York South–Weston, Pickering, Stormont–Dundas, Etobicoke, Brant and Don Valley West all voted against making the TTC an essential service last year. Of course, they're now championing that it ought to be an essential service.

I just want to get your take and CUPE's take on elected people who vote one way one day and vote a different way the next day, and if you have any faith or trust in the present government.

Mr. Fred Hahn: Well, it mystifies us as to why people would vote for something that we think is a bad idea. Again, it doesn't solve the issues of the TTC. In fact, it targets workers. It says that if there are problems at that service, it is the workers who are the problem. Without those workers, there would be no service. Those workers have come forward, all three unions of the TTC, to ensure continuity of service in the round of bargaining that has begun. So from our perspective, this is completely unnecessary and unwarranted.

Why members of the government would change their view is something that I guess we'll have to ask them. It's why we asked the question in our presentation.

At the end of the day, this bill is unnecessary, unwarranted and makes no sense in our view.

Mr. Randy Hillier: Have you heard anything yet that justifies, in your mind, why Liberals one day would vote against an essential service bill proposed by a private member and then champion it the next day when it's a government bill?

Mr. Fred Hahn: We're well aware that there has been a request from the mayor of Toronto. It's why we wanted to make clear in our presentation—it's why I ended by saying that, from our perspective, the government of Ontario is responsible for setting out a labour relations environment for the entire province. One municipality, and a request from one municipality, cannot and should not set up a situation where one group of workers that delivers one service in one municipality is treated differently from other workers in the province. It is short-sighted, in our view.

Mr. Randy Hillier: Thank you.

The Chair (Mr. David Oraziotti): Mr. Kormos, go ahead.

Mr. Peter Kormos: Thank you, Chair—you're not angry anymore, are you? You've calmed down? Okay.

Interruption.

Mr. Peter Kormos: Brother Hahn, thanks for coming. I, too, noted the 10 flippers that you identified in your submission, but it underscores for me something that I've known for a long time. That is, the nicest thing about being a Liberal is that you don't always have to be a Liberal, and we're learning that through the course of discussing Bill 150.

Is this bill going to improve labour relations at the TTC?

Mr. Fred Hahn: It will harm labour relations at the TTC.

1450

Mr. Peter Kormos: Is it going to improve TTC service?

Mr. Fred Hahn: We believe it will do nothing to improve TTC service.

Mr. Peter Kormos: Will the bill, in fact, stop work stoppages?

Mr. Fred Hahn: We believe that it will not, in fact, stop work stoppages, because even while the bill speaks to things being illegal, that doesn't necessarily mean that it will stop work stoppages.

What will guarantee a good public service and what will guarantee good labour relations is an environment in which those workers and the TTC can come to agreements together in an environment that we use, that 97% of the time across the province of Ontario in the public sector and the private sector works well, which is free collective bargaining.

Mr. Peter Kormos: See, because I think—

The Chair (Mr. David Oraziotti): That's our time.

Mr. Peter Kormos: —the public is getting sold a bill of goods on this one.

The Chair (Mr. David Oraziotti): I let you go a little longer. That's time. Thanks.

We appreciate you coming in today, Mr. Hahn, for your presentation.

MR. DAVID RAPAPORT

The Chair (Mr. David Oraziotti): The next presentation: David Rapaport.

Mr. David Rapaport: Thank you. This dragged me out of retirement.

The Chair (Mr. David Oraziotti): Good afternoon. Welcome to the Standing Committee on General Government. You've got 15 minutes for your presentation. You can start by stating your name, and any time you don't use will be divided among committee members.

Mr. David Rapaport: Thank you. My name is David Rapaport. I handed out a couple of copies—I didn't make 20 copies.

I'll begin with a brief description of myself. I am now retired from the Ontario public service after working for 25 years in information technology, mostly for the Ministry of Education. I was an active member of the Ontario Public Service Employees Union, OPSEU, for that time, between 1984 and 2009. I was on the OPSEU executive for 10 of those years, and in that capacity I was involved with discussions/negotiations with the Rae government between 1991 and 1993 on reform to the Crown Employees Collective Bargaining Act, CECBA, which included discussions on the right to strike for public servants and on essential services. I'll return to that later.

In 1991, McGill-Queen's University Press published my book on the 1996 OPS strike, and after retirement in 2009 I began studies as a Ph.D candidate in the Canadian studies program at Trent University in Peterborough, focusing on labour history. This is my presentation, and I represent myself and myself only.

On its face, the move to recognize the Toronto Transit Commission as an essential service is a peculiar move. The TTC is not an essential service. In Ontario, the criteria for essential services are described and laid out in the legislation governing the labour relations between the Ontario government and unionized employees in the Ontario public service, and between crown corporations

such as the LCBO and GO Transit and their unionized employees. This is the Crown Employees Collective Bargaining Act. In many ways that's the flagship legislation here when it comes to essential services, because it's dealing with your own employees.

Section 34 of CECBA clearly describes when a public service is an essential service for the purposes of collective bargaining. It must conform to one or more of the following four criteria: (1) danger to life, health or safety, (2) the destruction or serious deterioration of machinery, equipment or premises, (3) serious environmental damage, or (4) disruption of the administration of the courts or of legislative drafting.

This limitation on free collective bargaining is found in other labour legislation such as the legislation governing labour relations in the hospital sector. I'm referring to the Hospital Labour Disputes Arbitration Act, HLDAA. Section 11, based on the first principle found in CECBA—danger to life, health and safety—clearly states that in the hospital sector strikes and lockouts are prohibited.

The service provided by the Toronto Transit Commission is highly valuable. I personally use it almost every day. Its disruption would be and has been highly inconvenient. However, according to current criteria for essential services in Ontario, it is not essential; it's not even close. Declaring public transit in Toronto an essential service would be an arbitrary act based on political motivation.

Furthermore, there hasn't been an onslaught of TTC strike or lockout activity in the recent past or even the long-term past. There have been 13 lost days in the past 31 years, an average of 0.42 lost days a year. This is hardly an emergency. Considering it a problem is equivalent to Stockwell Day's ringing the alarm bells about unreported crime. If you cannot see the problem, then simply imagine the problem, or, in the words of a former Ontario Minister of Education, manufacture the crisis.

Therefore, from a collective bargaining perspective, there is something dishonest and arbitrary about Bill 150. Given the current state of essential service determination in Ontario, there is nothing essential about public transit in Toronto. Why, then, would you limit the right of free collective bargaining for transit workers in Toronto?

Bill 150 represents the diminishment of democratic rights. Even though the city of Toronto voted on this matter and requested this from you, you have the final word. You can say no. Acknowledgement of the rights of Toronto city council to forward its views is not democratic if it means the contraction or elimination of the democratic rights of workers and their unions. It is particularly problematic when the TTC is clearly not an essential service.

Passage of Bill 150 would be political pandering to an overtly right-wing administration at Toronto city hall. Under the practice of Canadian governance, provincial Parliaments have jurisdiction over legislation pertaining

to labour relations, not municipalities. This is your decision. You have full ownership.

This bill has implications for labour relations in the entire province by interfering with free collective bargaining. It would be more honest to have a debate over what constitutes an essential service rather than arbitrarily make an exception to the current standards. This bill is dishonest and it is arbitrary.

The Mike Harris government diminished collective bargaining rights for all workers many times, starting with Bill 7 in October 1995, yet it maintained the right to strike for crown employees. The passage of Bill 150 would represent a legislative feat that out-Conservatives the Common Sense Revolution. Does the Liberal government want this legacy? I would think not.

There are many problems at the TTC, such as finance, infrastructure and service. Enacting an anti-union law might satisfy the appetite of some right-wing politicians in the city of Toronto and elsewhere but it does nothing to address these many problems at the TTC.

Approach these issues directly and openly. Do not pass this bill. Thank you for your time.

The Chair (Mr. David Orazietti): Thank you for your presentation. Mr. Hillier, you're up first.

Mr. Randy Hillier: Thank you very much. It was a very thoughtful presentation. You made some good arguments and some good points. The bill is open to challenges on whether or not the TTC is, in fact, an essential service and meets the criteria. I just want to thank you for bringing forward those thoughts in the presentation.

The Chair (Mr. David Orazietti): No other questions? Mr. Kormos, go ahead.

1500

Mr. Peter Kormos: Thank you kindly, Brother Rapaport.

Mr. David Rapaport: Brother Kormos.

Mr. Peter Kormos: Old trade unionists don't retire.

Mr. David Rapaport: I know. We just write Ph.D. dissertations.

Mr. Peter Kormos: Have you paid any attention to the preamble of the bill?

Mr. David Rapaport: I'm afraid not, no.

Mr. Peter Kormos: Okay. It's interesting, because the preamble tries to create a silk purse out of a sow's ear, so to speak. By declaring that the disruption of transit services gives "rise to serious public health and safety ... concerns," the preamble tries to create as a reality the fact that this is a bill addressing public health and safety. But they don't even get it right there, because they say "concerns" as compared to real danger.

The head of the OFL made reference to the Supreme Court of Canada decision, the one that flowed out of the BC health workers' issue. What did the Supreme Court of Canada say, if you can tell us—some people should know this, for the purpose of understanding this bill—about collective bargaining, and what is the role of the right to withdraw one's labour in the context of collective bargaining? In other words, is there collective bargaining when you can no longer withdraw your labour?

Mr. David Rapaport: You're referring to the 2007 decision with the BC health unions. They declared that collective bargaining was in fact covered by the Charter of Rights as a right of association, and that the British Columbia government acted inappropriately and illegally in terms of diminishing collective bargaining rights.

But let's talk a little bit about this other aspect of the right to strike. I don't think there's any authority on collective bargaining or labour relations that would dispute the notion that the best agreements that occur in collective bargaining are those that are actually negotiated, simply because both parties take ownership of that decision. In fact, the word "mature" is used quite regularly when it comes to that. When an arbitrator imposes—and the word is "imposes"—a decision on a collective bargaining dispute, neither side has to take ownership of it. It not only does nothing to improve labour relations; it impairs labour relations with the current collective agreement.

As far as health and safety goes, I don't think that anybody would say, "God, a TTC strike is really messy and inconvenient. I don't particularly like them. I have to walk around." But it's still not essential. Democracy is sometimes unpleasant and it's messy, but the best way to do collective bargaining is with the right to strike and the right to lock out. Let the side that feels stronger and more powerful and more sure of itself go ahead and win.

Another point I want to make is that governments have to face the fact that you're employers; you're not just governments. You have the responsibility of being an employer, and when you impose your legislative prerogative to change the collective bargaining regime for your own employees or any public sector employees, I have to say that it's a bit arbitrary and it's a bit opportunistic. It's really relinquishing your responsibilities as an employer.

Don't pass this bill. It's wrong. It's pandering. It's bad for collective bargaining and it's bad for labour relations. It's wrong. Don't pass it, please.

The Chair (Mr. David Orazietti): Okay. I'm going to stop you there. Thanks. We're going to move on. Mr. Zimmer, go ahead with your question.

Mr. Qaadri?

Mr. Shafiq Qaadri: Mr. Rapaport, of course on the government side I'd like to thank you not only for your presence today but for your many years of service to the OPS. I think we'll all be accessing your book, published, I understand, in 1999: *No Justice, No Peace: The 1996 OPSEU Strike Against the Harris Government in Ontario*.

We don't have any elaborate questions, but I'd just like to ask you—I'm sure you're aware of what took place on Sunday, April 28, 2008, in this Legislature, when there was all-party support to legislate the TTC workers back to work after that particularly fateful weekend.

Mr. David Rapaport: Yes.

Mr. Shafiq Qaadri: I'm sure you're aware that all three parties were onside for that.

Mr. David Rapaport: Yes.

Mr. Shafiq Qaadri: With that particular move—legislation passed—is it fair to say that all three parties essentially deemed the TTC an essential?

Mr. David Rapaport: I'm not sure I want to get into a partisan kind of discussion here in terms of this issue—

Mr. Shafiq Qaadri: Your remarks, sir, have been quite partisan, so I invite you to continue.

Mr. David Rapaport: I'm making my remarks against those people who are bringing this bill forward. If it happens to be the Liberals, it happens to be the Liberals. If it were the Tories or the NDP—and, believe me, I've spoken against all three parties. I'm sure Mr. Kormos—

Mr. Peter Kormos: So have I.

Mr. David Rapaport: I know you have.

I'm addressing the issue. If it comes out partisan—well, you folks happen to be the government right now and that's just the way it is.

I understand what happened in 2008. There are many ways of contracting or diminishing collective bargaining rights for workers, and one of them is declaring something an essential service, which the federal government

has done for years and years in their dealings with the Public Service Alliance. That's one way of doing it.

Another way of doing it is by legislating people back to work, and I would oppose that as well. Collective bargaining should be respected. It's the best way. The right to strike and maintaining this and negotiating an agreement between the two sides is the most mature, the most democratic and the most proper way to come about with an agreement.

Mr. Shafiq Qaadri: All right. On behalf of the government side, we thank you for your very measured and thoroughly knowledgeable remarks and wish you success in your doctoral pursuits.

Mr. David Rapaport: Thank you.

The Chair (Mr. David Oraziotti): Dr. Qaadri, your sense of timing is much better—15 minutes on the dot.

Thank you very much for your presentation. The clerk is happy to clarify any of the time today that was used by any of the presenters. Everyone had an equal amount of time of 15 minutes. So thank you for coming in today.

The committee is adjourned.

The committee adjourned at 1506.

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