



Manitoba Federation of Labour

Annual Brief to Cabinet

**December 9, 2005
Winnipeg, Manitoba**

Introduction

The Manitoba Federation of Labour (MFL) is pleased to present this outline of current issues of interest to the organized labour community and to many non-unionized working families. The MFL is chartered by the Canadian Labour Congress (CLC) and is charged with representing the interests of CLC affiliates, and the working people they represent, which are located in the province of Manitoba.

Representatives of the nearly 100,000 unionized workers who are members of our affiliates meet in General Convention every three years to debate issues and pass resolutions which form the official policies of the MFL. Many of the issues that are referenced in this document are the product of that process.

This paper is not an overview of all of our policies – simply those that have been identified as pressing. Failure to mention an issue should not be taken as an indication that it is no longer a priority for our affiliates; it is simply a reflection of priorities established for this presentation.

Since your Government has begun a review process of the Employment Standards Code, those issues will receive the most attention.

1.0 Employment Standards Code

The announcement of this review released by Labour and Immigration Minister Nancy Allan sets an important framework for the process now begun. Minister Allan made the following points:

- Employment Standards laws and regulations have not had a detailed review since the 1970's - thirty years. Manitoba's workplaces and the processes used in them have transformed dramatically in that time. In fact, one observer noted that thirty years ago, the Government of Manitoba had only one fax machine at its disposal.
- "The review will look at increasing flexibility and modernizing protection, coverage and compliance to reflect the realities of the modern economy, the changing face of today's labour force and the demands on today's families"
- Particular interest is focused on the rise of non-traditional employment relations, new technologies, hours of work and overtime provisions, protecting vulnerable workers improving work-life balance and strengthening compliance.

It is important that everyone understand that attacks on the government for undertaking this long overdue review are coming from partisan political figures that have an ideological, anti-union agenda. The fact is, nearly all union members have collective agreement clauses that exceed the provisions of the Employment Standards Code and will be mainly unaffected by improvements to it. The ESC is designed to address the needs of working people who are not members of unions, but who are vulnerable to the actions of employers who don't have their interests at heart.

1.1 Non-traditional Employment Relations

As noted above, there has been a significant increase in the number of people engaged in non-standard work. They are in jobs that do not fit into what used to be regarded as the traditional mould – one employer; full-time, permanent work; full-time in one location; statutory benefits

and entitlements; long-term career prospects. This departure is widely known in Canada as ‘non-standard’, ‘contingent’ in the United States and ‘precarious employment’ in most locations.

Statistics Canada published a report in its magazine **Perspectives** in October 2003 which contains an excellent overview of the issue and is the source for the following information.

Non-Standard employment has one or more of the following characteristics:

- Part-time employment
- Temporary employment (term or contract, seasonal, casual, hiring agencies, jobs with a specific end-date)
- Own-account self-employment (no employees, no protection from Employment Standards legislation)
- Multiple job-holding

The high growth period for non-standard employment in Canada was between 1989 and 1994 when it grew from 28% of the over age fifteen workforce to 34%, where it has hovered since (data current in 2003). Women are more likely to hold a non-standard job than men and young workers are more likely than workers at the peak of their career.

A study conducted by Professor Leah Vosko, York University, in 2002 found that in Canada, more than a quarter (27%) of the people in non-standard jobs, many self-employed, were there because they could not find full-time work with one employer. Others sought this kind of employment situation in order to accommodate education (42% of men, 25% of women), child care responsibilities (15% of women, 1% of men) or non-work related activities.

While Manitoba’s full-time job creation record in recent times has been encouraging, the national overall long term experience has been a higher growth rate for temporary employment than full-time employment.

Why has this trend occurred?

Simply put, it is more profitable (in the short-term) for some employers to adopt this employment strategy, driven by globalization, technological change and corporate restructuring. However, it does not work out well for the workers in these jobs.

A study of contingent work conducted in 2000 by the Contingent Workers Project (now called Toronto Organizing for Fair Employment), details a number of critical issues facing the non-standard workforce, including:

- Low income – nearly 70% of the studies respondents reported annual incomes of \$18,000 or less.
- Downloading of costs to the employee from employers and government by calling them “independent contractor” when in fact they are often in an employer-employee relationship. Many were not eligible for Employment Insurance benefits for lack of insurable earnings hours and had no access to health and sick benefits normally associated with being employed.

- Rightly or wrongly categorized as independent contractors means workers have no, or believe they have no access to Employment Standards Code benefits such as vacation pay or overtime and notice of termination provisions.
- No access to full-time employment benefits such as medical insurance, pensions, child and elder care benefits, fitness programs, training and education and a variety of leave benefits.
- The study found that nearly half of the study group do not know their scheduled shifts in advance, worked split shifts and seemed to alternate between excessive work hours in some weeks and too few hours in other weeks.
- Workers reported being perpetually “on-call” and waiting for a telephone contact about their next shift which may or may not appear. This made seeking other employment difficult or not possible.
- The study documents serious job related stress issues. There are also serious concerns about health and safety issues related to lack of training and proper equipment.

These are just a few samples of the research on non-standard employment issues that is available. These glimpses into what has become common-place for many workers lend emphasis to the need for speedy and effective legislative action by the government of Manitoba.

Among the measures that will be outlined in this paper is one that deals with the conversion of full-time jobs to part-time jobs in order for an employer to avoid paying employment costs. **The MFL urges the provincial government to implement pay-equity, benefits and rights for part-time workers with complete recognition and protection.**

1.2 Coverage For Agricultural and Other Excluded Workers

Currently, certain provisions of the ESC do not apply to all of the paid workforce, such as workers in the agricultural sector. An example of a just what does not apply to these workers is minimum wage provisions contained in the Act. We recommend that exclusions applied to the following workers by lifted in the ESC and any other Act that contains them:

An employee who is employed

- (a) in agriculture, fishing, fur farming or dairy farming; or
- (b) in the growing of horticultural or market garden products for sale.

An employee who is employed in a private family home, paid by a member of the family, and whose employment in the home consists of working as

- (a) a domestic worker for not more than 24 hours in a week for the same employer;
- (b) a sitter attending primarily to the needs of a member of the household who is a child; or
- (c) a companion attending primarily to the needs of a member of the household who is aged, infirm or ill.

A salesperson, other than a route salesperson, who is

- (a) remunerated in whole or in part by commission, and

- (b) engaged in soliciting orders, principally outside the employer's place of business, for goods or services to be later delivered or provided to the purchaser.

1.3 **Minimum Wage**

The recently completed Minimum Wage Review was mandated to review the minimum wage schedule and to develop a strategy for directing Manitoba's minimum wage levels in 2006 and beyond. Last fall, Minister Allan invited stakeholders to submit comments on minimum wages as part of the process leading up to the April, 2005 increase.

The MFL's position boils down to the following:

The minimum wage is, by definition, the lowest rate of pay possible for paid work. It is not to be reduced for any reason such as working in a job that include gratuities, training period, age, or other considerations – with the possible exception of work done in life skills training environments for persons with disabilities and who receive adequate financial support from other sources, regardless of work done in the training environment.

In our view, the appropriate minimum wage should be sixty percent of the average weekly wage for Manitoba, as calculated by Statistics Canada. Historically, the minimum wage has been substantially below that level. Today, it stands at 43.26% of average weekly wages. By way of example, if minimum wage were 60% of the average weekly wage of about \$16.35/hour it would stand at \$10.05/hour. However, in our view, a four year strategy should be adopted to move it 60% of the average weekly wage as it stands on April 1, 2009.

Further, we recommend that the government amend the Employment Standards Code to provide for an automatic adjustment every January 1st so that the minimum wage remains at 60% of the average weekly wage.

Increasing the Minimum Wage in this fashion will provide a number of benefits. These include the fact that both workers and employers will know well in advance what adjustments will be made to the minimum wage, enabling both to do sensible financial planning. And further, increased spending power will benefit both workers and the provincial economy since most of the increase will re-enter the local financial stream almost immediately.

As noted above, the minimum wage provisions of the Employment Standards Code do not apply to a number of classes of workers in Manitoba and we recommend that this change. The guiding principle that a fair day's work should be work fairly paid.

For that reason, we recommend that workers currently excluded from the minimum wage provisions of the Employment Standards Code be included.

1.4 **Leave**

An aspect of the modern workforce is that many families have two major income earners with a need for greater access to compassionate and family leave provisions. They need to be able to care for a sick or dying spouse, child, sibling or parent. They need access to leave for family business such as making financial arrangements, attending medical appointments and doing other business that must be done during business hours, as well as bereavement leave. For these

reasons we recommend that all workers have access to short term paid leave to meet these needs and the entitlement to access long term Employment Insurance funded leave.

It is important that individuals who are on leave are not penalized by loss of seniority. We recommend that the Code be amended to spell out specifically that seniority will continue to accrue while a leave that is authorized under the Code, including maternity and paternity leaves, is in effect.

One thing we should flag for your government is the possibility that the federal Employment Insurance Act may soon be amended to expand benefit qualification to cover compassionate leave for family members beyond immediate family to include siblings. It is our understanding that the compassionate leave provisions under EI will be accessible by anyone who is designated by the person who is ill, family member or not. Provincial government amendments will be necessary in the near future to give workers access to this new entitlement. This development is partly the product of an action undertaken by Neil Cohen, the Executive Director of the Community Unemployed Help Centre. If successful, this expansion will benefit many Manitoba workers.

1.5 Benefits for Part-time Employees

Many part-time and contingent workers, particularly those labelled “independent contractor”, need access to pro-rated benefits, vacations-with-pay, statutory and general holiday entitlements recognized. Without required entitlement to benefits, workers are at the mercy of employers who are determined to reduce costs by not offering benefits.

1.6 Paid Breaks

Currently, the Code requires an employer to give workers a break after five hour of work. This is inadequate. People need relief from work at least every three hours. One of the disturbing aspects of the not giving employee’s breaks on a reasonable schedule is that some workers have resorted to wearing adult diapers to protect against the need for a bathroom break that is not granted by the employer. This measure results in a lack of dignity that seriously undermines any notion of an acceptable quality of life in the workplace and should not be tolerated in our society.

We recommend that the ESC be amended to provide employees paid breaks of at least 15 minutes, for every three hours of the work shift, in addition to unpaid meal breaks.

1.7 Overtime and Call In Protections

Another aspect of the modern workplace is the pervasiveness of technology that enables employers to contact workers when they are not in the workplace, even while they are off-duty. Cell-phones, pagers, e-mail, home computers, website chat-rooms have made it impossible for some workers to ever be truly alone. Contacts made by the employer must be treated as an unscheduled call-in to work with the appropriate payment entitlements, that is, a minimum of three hours pay.

It has come to our attention that some employers circumvent the minimum three hour “call-in” credit by pressuring the employee to go home before the three hour period has been worked. The Labour Board has ruled that this is a voluntary action by the employee and removes the obligation of the employer to pay the minimum three hour call-in penalty. It is anything but

“voluntary” since if employees do not agree to going home early, they are not called in for future shifts.

This leads to another aspect of overtime – unpaid overtime. It is estimated that as much as fifty percent of time worked that can be regarded as overtime is unpaid. Never mind not paid at the over-time rate, but totally unpaid. Particularly vulnerable are supervisors and salaried workers. Time worked should be time paid, except for managers who have the power to hire and fire and truly set their own hours. Supervisors in white collar work places are not managers – they are similar to workers who are “lead hands” in an industrial workplace.

Early this year, the Manitoba Labour Board made a ruling that could affect the lives of many workers. It ruled that salaried worker employment contracts that set a flat salary for an indeterminate number of hours are invalid, and that all salaried worker employment contracts should specify how many hours an employee is expected to work and what the rate of pay will be. Expecting a worker to work at straight time without such guidance “effectively allows an employer to demand of an employee excessive amounts of overtime without any further compensation.” The Board stated in its Reasons for Decision that “such an interpretation of the Code would be inconsistent with its fundamental purpose of preventing the exploitation of employees.”

Of course, the employer is appealing the decision.

The Code should be amended to ensure that all workers, salaried or hourly paid, should be entitled to fair compensation for hours worked beyond eight hours in one day and forty hours in one week.

There should also be protections against the assignment of excessive amounts of overtime, either in the form of a limit on the number of hours of overtime in a day or a week, or the establishment of higher overtime premiums after a reasonable number of hours. An example of this would be an overtime rate of twice the basic rate of pay after four hours of overtime in a day or twenty hours in a week with a minimum of eight hours off between the end of a shift and the start of the next shift.

1.8 Vacation and General Holiday Entitlement

Currently, workers in Manitoba are entitled to two weeks of paid vacation per year after one year of continuous employment with the same employer and three weeks of vacation after five years. This should be increased to three weeks after one year, four weeks after five years, five weeks after ten years and six weeks after twenty years of service. This vacation entitlement should not be affected by a change of ownership of the workplace. Part-time workers should be entitled to the same increase of vacation time and pay using the appropriate calculation formula, without losing entitlement to seniority accrual and entitlement to EI benefits.

Currently, the August Civic Holiday and Boxing Day are not classed as General Holidays in Manitoba, allowing employers to pay straight time, or to close down for the day and not pay employees at all. To ensure fairness for all workers, these days should be designated as General Holiday days, subject to the same pay rules as other General Holidays. We also urge that provision be made to classify either Easter Sunday or Easter Monday as a general Holiday, with the selection of the appropriate day being subject to mutual agreement between the employer and

union or an elected employee representative in the absence of a union. In addition, the province of Manitoba should follow establish a General Holiday in the month of February, Heritage Day.

Currently, employees of businesses classed as “continuous operations” and seasonally operations are not eligible to collect the overtime rate in addition to their basic rate for work performed on a general holiday. We believe this is unfair and the workers should be entitled to the same compensation as employees of other companies.

General Holiday pay should be calculated and pro-rated based on the average daily number of hours worked in the four weeks preceding the week of the general holiday. The requirement that an employee work at least 15 days in the prior 30 days to be entitled to General Holiday pay should be repealed.

1.9 Enforcement

One of the most persistent complaints we hear from non-unionized workers is their reluctance to pursue their rights for fear of being terminated by the employer. There’s little point in having rights if it takes an act of courage to have them respected. There must be an increase in proactive workplace inspections of employment records throughout the province, and investigations triggered by anonymous and third-party complaints allowed. To accommodate this, there will need to be more resources dedicated to increasing the number of Employment Standards Officers and Inspectors.

There needs to be a means developed to monitor the working conditions of employees who perform work in their home, as in the needle trades, or in the home of their employers. Too often, these workers function in isolation and out of the public eye and are reluctant to step forward when their rights are being violated, or they are unaware of their rights because of lack of access to information or language barriers.

1.10 “Independent Contractors”

There are employers who seek to avoid employment expenses by hiring workers and calling them “independent contractors”, even though there is a true employer-employee relationship or at the very least, dependent contractor status. No statutory deductions such as EI and income tax are made and no Workers Compensation premiums are paid by the employer.

Often, workers don’t realize they are responsible to make statutory payments themselves, or they are paid so little that payment isn’t made. Insurmountable difficulties result when these workers need access to safety nets such as Workers’ Compensation, Employment Insurance or the Canada Pension Plan.

It is difficult to find a consistent definition of who is a genuine independent contractor through of a survey of existing legislation. At times, the definition varies within the same jurisdiction.

For example, in Manitoba:

- The Employment Standards Code does not contain such a definition.
- The Labour Relations Act is silent on the matter.

- The Workplace Safety and Health Act acknowledges that an independent contractor is different from an employee without saying what the difference is or what earmarks are unique to an independent contractor.
- The Workers Compensation Act defines an independent contractor as: *Independent Contractor includes a self employed person engaged in any of the industries set out in the Schedule.*

We recommend that the province provide a clear definition in the Employment Standards Code of who is a genuine independent contractor and what the implications are for that person when dealing with employment rights and obligations.

The Manitoba Labour Board has based some decisions on worker status by indicating that if a worker does not control the hours or work and the way work is carried out, then the worker is not an independent contractor.

1.11 Plain Language Guides and Legislation

A document as important as the Employment Standards Code should be in the hands of all working people in Manitoba and it should be written in plain language. Employers should be required to provide a new-hire with a guide to the Code, and other relevant labour legislation, on the first day of employment. These documents should be posted throughout the workplace and included in school curricula for work-age students.

Guides to Manitoba's employment and labour relations laws need to be available in languages commonly used in our province, so that people are aware of their rights and better able to take appropriate action if their rights are violated.

1.12 Termination for Just Cause

One of the provisions that exists in some other jurisdictions in Canada, but not in Manitoba, is the requirement of demonstrable just cause for termination. This speaks directly to a shameful problem that faces some women when they return to work following maternity or parental leave. Their employment is terminated for little or no reason shortly after their return-to-work and all employers have to do to protect themselves is ensure there is no mention of the child's birth or the maternity/parental leave on the separation documents. According to some labour appointees to the Manitoba Labour Board, these complaints are extremely difficult to respond to. A part of a remedy would be to require demonstrable just cause for employment termination.

1.13 Group Terminations Policy

The MFL urges the province to amend group terminations provisions in the Code to include a mandatory termination procedure for employers of units of twenty or more employees to include the following:

- 1) That workers be given at least one year's notice of closure,
- 2) A committee, composed of employees, management and labour, meet after the notice is given to find alternatives to closure;
- 3) If closure is inevitable, at least one week of severance pay be given for every year of service;

- 4) All employers in Manitoba pay a closure tax to create a fund administered by the provincial government, which will, after severance pay is exhausted, supplement income of workers terminated by plant closure until they find suitable employment.
- 5) Employers should be required to provide sufficient funds for the cost of retraining, job searches, relocation and counselling of employees affected by a plant closure.

1.14 Job Losses as a result of corporate mergers

A persistent cause of job losses is corporate mergers that are designed to limit competition or to acquire corporate assets such as technology. In our view, if a merger results in permanent job loss within five years following the merger, workers should be paid severance pay amounting to four weeks of pay per year of service. To ensure sufficient funds are available, companies should be required to contribute to a government administered fund that is guaranteed by a performance bond.

1.15 Severance

The Canada Labour Code provides for severance pay. We believe that the Manitoba Code should allow for one week of severance pay per year of service, in addition to other payments such as pay in lieu of adequate notice of permanent layoff or termination. This should apply to all workers leaving the workplace, including injured and seriously ill workers.

1.16 Equal Pay for Work of Equal Value

There can be no question that the nearly two decades of experience with public sector Pay Equity legislation has been positive and of great benefit to many working women. It is time to extend this brand of workplace fairness to women in the private sector.

We recommend that the essence of the Pay Equity Act that currently applies to the public sector be amended to include the private sector and included in the Employment Standards Code.

2.0 Labour Relations Act

The Manitoba Labour Relations Act is the basis of relations between employers and the legal bargaining agents of their employees. It must be a dynamic document, reflecting the needs of the parties and, as such, must be reviewed and amended on a regular basis if it is to keep pace with changes in the workplace, the economy and the needs of working people.

There are a number of improvements, from the perspective of working people, which are needed at this time. This paper will look at a number of the highest priorities that exist now. This is not to say that these references represent all of the MFL's concerns; simply that these are the ones we have chosen to highlight at this time.

2.1 Automatic Certification

Currently, of all the jurisdiction in Canada that recognize the appropriateness of granting automatic certification as a bargaining unit to working people, based on the number of members of the proposed bargaining unit who have signed union membership cards, Manitoba has the

highest threshold at 65% or more. Of the remaining jurisdictions, the thresholds that trigger automatic certification range from 50% plus one, to 55% of the proposed bargaining unit.

Indeed, for many years, the automatic certification level in Manitoba was set at 55% until a previous government ended automatic certifications and required that a Manitoba Labour Relations Board (MLRB) supervised vote be held in all application procedures, no matter how many employees had indicated their desire to be members of a union and to bargain collectively. Fortunately for working people, this government recognized the offensive nature of this requirement and its anti-democratic implications and reintroduced the concept of automatic certification based on the number of union cards signed during a certification drive.

But it is our opinion that the government set the threshold for automatic certification far too high at 65%. The wishes of a majority of the employees, 50% plus one, should be the test that must be met. After all, in most of the Canadian and Manitoba democratic processes it is a simple majority that is required to show the true wishes of a group of people, not 65% or even 55%. Requiring more than a simple majority is only a sop to those who wish to frustrate the expression of the majority of voters – in this case, employers or anti-union activists.

In fact, there are instances where far less than an indication of 50% plus is required to determine the outcome of an election. For example, the first-past-the-post electoral system used in Canada to elect MLA's, municipal councillors and MP's in government elections results in election wins with margins in the 30 and 40 percentiles.

The current requirement of 65% is excessive and should be reduced to 50% plus one.

2.2 Manitoba Labour Board Resources and Time Periods

When a certification drive results in signed union cards from 40% or more of the potential bargaining unit members, the Manitoba Labour Relations Board is required to supervise a secret ballot vote to determine the true wishes of the employees who will make up the proposed bargaining unit. Currently, the Labour Relations Act requires that tight time lines be followed (a vote must be held within seven working day of the date of application) in recognition of the pressure an employer is able to exert on employees in the period between application and the actual vote in order to frustrate the application.

But in our experience, the Board does not have the human and financial resources to meet this time schedule. In fact, our affiliates report that as much as six months can elapse before a hearing is held by the Board to determine the outcome. This allows the employer plenty of time to intimidate and exert pressure on employees.

The same lack of resources results in slow action by the Board in other matters as well, to the point that working people sometimes abandon well-founded complaints, or fail to file a justifiable complaint.

Unions are prepared to meet the requirements of the MLRA, but the Board must be in a position to meet the requirements as well.

We urge the government to address this unacceptable situation and find the resources to allow the Board to function efficiently and timely to meet the needs of the labour relations community in Manitoba. Delays invariably result in damage to employee rights.

2.3 No Strike-Breakers

In the course of the history of labour relations in Canada and Manitoba, and the inevitable disputes it entails, there are ample examples of the imbalance of power in the relationship between employers and workforces. These examples, at their worst, involve picket-line violence because of the use of outside workers by the employer. The picket-lines may be inspired by either the workers exercising their right to strike in order to win a fair collective agreement or the employers exercising their right to lock out their workforces to impose their will on the employees or even to break the union and return to a non-union workplace where their wishes can be imposed unfettered.

These examples of violence are almost always the result of employers using strike-breakers.

The MLRA currently outlaws the use of “professional strike-breakers” without adequately defining who or what they are, particularly when they are not employees of a professional strike-breaking company. When does a strike-breaker become a professional? When they are supplied by a strike-breaking company? When they work for a security firm hired by the employer to ostensibly protect the property and plant during a strike but actually intimidate and assault the regular employees? The first time they are hired by a company involved in a strike or a lockout? The second time? The third?

Employees have the right to strike and employers have the right to lock their workers out. As it stands now, employers have the ability to replace their workforce with strike-breakers in order to defeat their regular workforce. But when the regular workforce tries to make their strike effective by preventing this, they are harassed by security firms and strike-breakers hired by their employers or even by publicly paid police services.

Some jurisdictions have recognized the fundamentally unfair imbalance of power between an employer and a worker, particularly during a strike or a lockout, and have banned the use of strike-breakers or so-called replacement workers altogether. Such legislation has greatly reduced the incidence of lockouts that are not designed to strengthen the employer’s hand, but to break the union (union busting is already illegal in other contexts). It has greatly reduced needless picket-line violence in general. It has done this without damaging employer rights or creating an imbalance of power in the workers favour.

The MFL urges the government to amend the MLRA to outlaw the use of any strike-breakers at all during a work stoppage to end violence and disguised union busting.

2.4 Construction Section Needed in MLRA

The Construction Division of the MFL has proposed that a separate section dealing specifically with the construction industry is needed in the Manitoba Labour Relations Act in order to deal with its unique needs. The construction sector is largely seasonal and characterized by projects and short-term employee attachments to any one employer. As a consequence, employer

contractors have varying numbers of employees and often have none at all if they are not actively engaged in a project.

In addition to these factors, the construction industry relies on so-called industry standard agreements or “master agreements” in order to provide stability for both workers and employers. Ratification of these agreements often occurs long before the beginning of the construction season and before any employees are hired.

Many other jurisdictions in Canada either have separate construction industry acts, or specific sections within their labour relations acts dealing with the unique nature of the construction industry.

We urge the province to take similar legislative action in Manitoba.

3.0 Issues of Concern to Provincial Government Employees

3.1 Joint Trusteeship

The many thousands of individuals who fall within the Civil Service Superannuation Board Pension Fund (CSSB) have been made a promise by the Province of Manitoba, and more specifically the Minister of Finance, regarding Joint Trusteeship of the CSSF. Shortly into the mandate of this government, officials representing Labour were told by the Minister that Legislation enshrining Joint Trusteeship would be passed shortly.

As far back as August, 2000, in fact, Finance Minister Selinger signed a memorandum committing to “develop a plan which would implement joint trusteeship arrangements at the earliest possible date.” In the five years that have followed, nothing has been done. Due to the broken promise by this government, a policy grievance has been filed on the matter.

Joint Trusteeship ensures a governance model requiring equal representation from both employees and the employer on the pension plan’s governing board. It makes sense that the individuals who contribute to the plan should have greater representation than they do currently. This is the model used in many other public sector pension plans including the City of Winnipeg, hospital workers in Manitoba, and public employees in British Columbia, Quebec, and Ontario. Workers should have a voice regarding improving the pension benefits they have worked for. Right now, cabinet approval is required for any improvements in benefits.

We urge the Provincial Government to follow through on their promise to enshrine Joint Trusteeship in Legislation during the Spring 2006 session of the Legislative Assembly

3.2 Child Care

Early Childhood Educators (ECEs) are leaving the childcare field in droves due to low wages and substandard benefits. Manitobans want swift action on childcare to ensure their children can get the best start possible in life.

Almost half (46 percent) of ECEs who enter the profession leave after just two years, and after five years about 60 percent have gone on to other occupations. Conservatively, Manitoba is short over 400 ECEs right now. Between 35 and 40 percent of childcare centers are forced to seek a licensing exemption because they can't attract enough qualified, trained staff. Workers in the sector are overwhelmingly women (estimates are as high as 96%), many of whom are single mothers who find it increasingly difficult to provide for their own families.

Childcare in Winnipeg is a \$101.6 million industry employing more than 3,236 individuals and enabling parents in over 12,700 (3,691 single parent) households to earn an estimated \$715 million annually. For every 1 job in childcare, an additional 2.15 jobs are created or sustained. Economists at the University of Toronto have shown that for every dollar spent on childcare there is a \$2 economic benefit - other economists have estimated returns between two and seven times the original investment. Only one province has lived up to its responsibility to children: Canada-wide, spending on regulated child care went from \$988 million in 1995 to \$2.6 billion in 2003 - 98% of this increase came from Quebec.

The Province provides the vast majority of funding for childcare in Manitoba, and yet when it comes to negotiating salaries and benefits for the workforce, they leave it up to parent boards. It is our position that parent boards should not have to negotiate with the people who care for their children as they are not experienced in labour negotiations. We do not ask parent councils to negotiate with teachers of students in K-S4 - why, then, do we put the onus on parents of young children to oversee this responsibility?

We are calling on the Provincial Government - again, as the major funder of childcare in this province - to begin negotiating around a common table with ECEs and their union representatives where applicable.

3.3 Justice

The issue of overcrowding at Manitoba's jails and remand facilities has become a serious health and safety issue for both inmates and Corrections staff and the problem is getting worse. For example, inmates have been double bunking at the Winnipeg Remand Centre for several years, but many are now triple bunking and it's not unusual to have five inmates in a cell at one time.

Many workers are concerned that another Headingley riot may be brewing. When the Headingley riot occurred in 1996, there were 321 inmates incarcerated at the time. There are now 500 inmates at Headingley.

The Provincial Government has made a number of important and much needed investments in the recent past that have increased resources for front line police and RCMP, but little attention has been paid to the issues affecting those who house and supervise offenders.

We urge the Provincial Government to ensure that as front line services are bolstered that increased attention is paid to other areas of the Justice system that impact staff, inmates, and the community.

3.4 Devolution of Services

Recommendations flowing from the Aboriginal Justice Inquiry sought a better reconciliation of the needs of communities, those in conflict with the law and victims. We support the recognition and establishment of traditional Aboriginal justice models and systems within Aboriginal governments.

This devolution of services must, however, be carefully planned and implemented to ensure that while culturally appropriate systems are in place, benchmarks of service are not compromised. There have been a number of issues raised with the recent devolution of Child and Family Services that have raised red flags. It has been argued that greater care could have been taken in areas like having their voices and experience in the implementation process. As further devolution takes place – including the devolution of probation services to Aboriginal communities – we urge the government to ensure these steps are taken in the future.

3.5 Employee Representatives on Boards

Utilizing the experience and expertise of front-line employees on boards is an excellent way to empower workers within an organization, ensure their voices are represented when changes take place, and to make sure mistakes are minimized.

The NDP Government of former Premier Howard Pawley was a great proponent of this system to great success. In fact, former MGEA President and current NDP Premier Gary Doer was an advocate for this system in the 1980s. The practice was largely scrapped under Premier Gary Filmon. We urge the current Provincial Government to review their stance on employee representation on boards and make efforts to include employees in the planning process via board positions.

4.0 Worker Compensation – Expansion of Coverage

The Government deserves commendation and thanks for its review of the Workers Compensation Act and the improvements that resulted. These amendments have done much to make the Act relevant again and a useful resource for injured workers. We look forward to the proclamation date of January 1, 2006.

When workers, their families and their employers came forward to participate in the public review, it became very clear that there were many injustices within the Workers Compensation Act. Many of the fairness and justice issues were dealt with by the amendments but unfortunately, it left many injured workers with a bitter taste in their mouth since they have learned that the changes to the Act will not have an impact on their particular cases. They seek no monetary windfall through retroactive payments, but they do wish to be included in the improvements.

This can be best accomplished by identifying those existing claims that have had their benefits reduced to 80% under the old 24 month rule and restoring them to 90% of net wages. This will then provide a single tier in wage loss benefits system for all workers.

Further, they should be allowed to receive negotiated top-up provisions from their employer, without penalty, which should be included for the purpose of calculating insurance and CPP benefits to bring their entitlements to 100% of net. No workers' benefits and awards should be reduced by any percentage based on age.

One of the most important aspects of the review was the recommendation to expand Workers Compensation Act coverage to all workers currently not under mandatory inclusion. An important aspect of coverage is the prevention of injuries, an expanded and clear mandate of the WCB.

It is our understanding that this expansion of coverage will occur in stages over the next five years, beginning with workers in industries not currently included in the list of mandatory coverage, but are similar to industries that are currently included.

We hope that the Government will consider including a larger group of workers in initial coverage expansion than appears to be the case. For instance, those industries where coverage is currently voluntary should also be included in the first expansion stage.

When the system is demystified, many employers have voluntarily embraced it as the most effective and comprehensive coverage plan for their employees and themselves available.

At this time, between 65 and 70% of the workforce are engaged in work that requires mandatory Workers Compensation Act coverage. About a third of the remainder of the workforce are covered because employers have voluntarily sought and paid for coverage. We believe that great care must be exercised by the government to ensure that workers now covered through voluntary, not mandatory, action by their employers not wind up with no coverage at the end of the day.

In our view, all workers (those who are engaged in paid-employment, and those who work as volunteers without monetary compensation) ought to be covered by Workers Compensation for both income replacement and for access to rehabilitation and retraining benefits.

There are those who claim that certain workers (farm workers for example) should not be covered. We do not share this view. We feel that anyone in the agricultural industry who receives a T4 slip be considered as a worker with a right to Workers' Compensation protection, including those employed on family-owned farms.

We urge the government to be cautious when deciding who should or should not enjoy the protections of the Workers Compensation Act as it carries out its public consultations on coverage expansion. Err on the side of caution by including workers automatically, unless and extremely compelling case can be made to continue their exclusion from coverage. Should such a case be made, one of the criteria must be that there is a provision for equal or improved income replacement and health care benefits by the employer.

5.0 Workplace Safety and Health - Enforcement

The impact of too few financial and human resources in critical areas has become a persistent theme in this paper. Earlier, we spoke of the difficulties that have arisen as a result of under-

resourcing the Manitoba Labour Board and the Employment Standards Branch of the Department of Labour. This is part of a larger issue that is having a negative impact in other areas as well.

The government is to be commended for the recent improvement made to the Workplace Safety and Health Act and joint committees in all workplaces await the new regulations that the department has been working on these past two years. These measures have the potential of making Manitoba's workplaces much safer for working people, especially young workers or first-time job holders in hazardous industries. But the impact is weakened by a chronic lack of resources for the enforcement side of the equation.

This is the necessary next step for workplace safety and health action in order to make the legislative changes effective and a positive change on the workplace landscape.

Enforcement by prosecution is a slow and laborious process that sometimes results in a negative end for all parties. The use of administrative penalties, a more efficient and positive approach, has not as yet been fully incorporated in the activity of the Division. We suggest that the Government provide the impetus to further reduce injuries in the workplace by taking a determined stand against those who are not abiding with the law by empowering inspectors to make their presence and the importance of safe workplaces known.

On July 27, 2004, Robert Kusch, a 30 year old machine operator for Help All Temporary Work Agency, had been assigned to work at Western Scrap Metals in Winnipeg. Robert was operating an aluminum bailing machine when his head became caught in the crusher mechanism and he was killed. During the process and subsequent investigation charges were laid against the Western Scrap Metals for not providing a safe workplace, but no charges were laid against the employment agency for not ensuring the safety of the people they place. This gap in protection of workers results in many minor injuries going unreported. We ask that same protections be extended to the temporary employment workforce as are enjoyed by the permanent workforce.

There is a provision in the Workplace Safety and Health Act that allows someone in a workplace who observes the potential for injury to stop the work process in order to prevent it. This has been unsuccessfully attempted by third party complainants in the construction industry. When they contact Division inspectors to report dangerous working conditions, such as improper scaffolding, they are met with resistance. They are told that the Division only responds to complaints from within a workplace. We feel it is the Inspectors responsibility to enforce the law and control dangerous situations no matter how it has been called to their attention.

We look forward to the many initiatives that will come forward from the increased mandate the Workers Compensation Board has in prevention of injuries. When coverage has been expanded, when enforcement has increased and when all workers are assured of the Governments determination to reduce injuries we will see a significant decrease in the number and rate of injuries in the Province of Manitoba. Finally, we will then be able to say that we have both the lowest compensation costs and lowest injury rate in the country.

6.0 Health Care

The government has been determined to protect the integrity of our publicly-funded, universally accessible health care system, in the face of enormous pressure from the rightwing and the usual suspects in the news media who promote these views.

This is especially true in the recent spate of publicity surrounding the Maples Surgical Centre and owner Dr. Mark Godley's determination to violate the Canada Health Act by selling medically necessary surgeries, such as hip and knee repairs and allowing overnight stays for patients – in spite of clear provincial and federal legislation that forbids these things. Godley's campaign to undermine our universal, publicly-funded healthcare system began as a difference of opinion over the efficacy of offering MRI scans to patients outside of our health care system, allowing them to skirt relatively short waiting lists by taking advantage of their ability to pay.

One of the warnings contained in the Romanow Commission's report on Health Care focused on the danger of a private health care system "poaching" staff from the public system and exacerbating a divide in the quality of service between the two. Already, the operation of the Maple Surgical Centre has confirmed that effect. A story carried in the Winnipeg Free Press on November 25, 2005 reports that the Centre has lured staff from the public sector to operate its MRI equipment, forcing the Health Sciences Centre to scale back its own MRI operations by more than 20 hours a week, potentially making waiting lists in the system longer.

This is consistent with the experience in British Columbia where private clinics have been allowed to operate since 2001. In the same period, waiting lists in BC's public health care system have increased by 31%.

We urge the government to continue its fight against these efforts to privatize health care and turn the well being of Manitobans into another source of corporate profit-taking. You deserve our thanks and support.

But we are concerned about events that occurred in October of this year. We learned that the government intends to contract out a centralized hospital human resource and financial services system to the private sector. This system consolidates these services for all hospitals and personal-care homes in Winnipeg. Contracting-out means that part of the public financial support for an important health care system resource will disappear into the private sector profit margin, at a direct cost to the health care system.

We believe this makes a private sector presence in our public health care system more palatable and encourages those who support privately delivered medical procedures. One provincial politician who promotes privatized health care was moved to observe, "If he sees contracting out to the private sector can create efficiencies in the system, why won't they look at doing this with medical procedures?"

We urge the government to drop this contracting out plan and operate a centralized human resource and financial services system within the publicly owned system.

7.0 Contracting Out and P3s

However, we are compelled to put on the record our continued opposition to the seductive lure for all levels of government that contracting out and public-private partnerships represent. The federal government, most municipal governments and many provincial governments have tried to take advantage of the concerns of the public about the integrity of many vital public services by wholesale privatization and the contracting out of services – sometimes disguised as public-private partnerships (P3s).

In many cases, the devolution of the delivery of important public services or entire programs are nothing more than ideologically based decisions to bolster the private sector at a direct cost to the public in the form of reduced services, more expensive services, fewer jobs, lower salaries and reduced benefits. This is the natural result of using critical public services to generate profits within the private sector.

As an organization, the MFL is committed to a strong and vibrant mixed economy. We want a healthy private sector that is able to create and sustain good jobs for the members of our union. We want vital public services delivered by publicly employed workers who are paid fair wages and benefits for the work they do and who are accountable to the public. But we want the funding for these public services to be focused on efficient service delivery by expert, dedicated public sector workers without part of the service delivery dollars being hived off for a profit margin in a private sector corporation that has no accountability to the taxpayer.

The conversion of public sector jobs to private sector jobs has a direct cost to the community. Fairly paid, full-time unionized jobs have a track record of turning into low-wage, often part-time non-union jobs where workers have fewer benefits that are important to a community's overall quality of life.

We believe that when high-skill public sector jobs, particularly in the areas of the health care and the community safety support infrastructure, are privatized or contracted out significant hazards to the public's safety and well-being are needlessly created.

In recent years, more than one government has fallen prey to the idea of public-private partnerships (P3's) when undertaking new public infrastructure. Rather than financing these projects through tax revenue or public borrowing, these governments have entered into agreements with the private sector. The private sector builds and operates the infrastructure while government finances it to take advantage of the government's substantially better borrowing rate. The private sector reaps the benefit of the capital project by setting its own user fees while the public pays for its construction. When the private sector fails to deliver on its promises or operates inefficiently, the public picks up the cost without the same kind of accountability they'd receive from a publicly owned entity.

For the workforce, the jobs provided by a P3 project are often lower paid with fewer benefits and non-union.

The MFL and its affiliates urge the government to continue rejecting the use of P3s and to maintain the delivery and ownership of public services where they are accountable to the public. We urge you to continue to resist privatization pressure from the opposition and the business sector. We ask you to assist the municipal levels of government to do the same by financing infrastructure projects and exploring alternative financing vehicles.

8.0 Project Labour Agreements

In spite of the hysteria promoted by the Heavy Construction Contractors Association, it is now obvious to everyone that the Floodway Project Agreement is an excellent way to conduct large construction projects and is working as it should. The history of Project Labour Agreements is lengthy, both inside Manitoba and elsewhere. For example, our northern hydro electricity potential has largely been developed under project labour agreements as have many notable projects across the country.

Aside from the obvious benefits of have greater cost control and no strikes or lockouts during the project, there are many other reasons why using and promoting major project labour agreements is a good idea. They represent an opportunity to put in place positive proactive programs such as training and employment opportunities for the aboriginal workforce, and for other under-represented groups.

We urge the province to continue using Project Labour Agreements for publicly funded projects and to promote their use within the private sector.

9.0 Apprenticeship and Training

The government and its senior officials deserve a great deal of credit for negotiating and signing the Labour Market Partnership Agreement with Ottawa last month, ensuring that apprenticeship and worker training in Manitoba will be on a sound financial base over the next five years. This is a major opportunity to use predictable and sustainable funding to invigorate a key element of the province's economic development strategy, and brightens the future for young people and workers entering the apprenticeship and workplace training environment.

In addition, skills-gap training will receive important support as the result of federal-provincial cooperation.

The MFL is pleased to be part of the tripartite process now scrutinizing labour force and skills development issues through the Premier's Economic Advisory Council. One area under review is the challenge of promoting apprenticeable trades as a career option for students and young workers. In addition to the obvious strategy of stepping up promotion and awareness campaigns among young people, parents and educators, we believe that giving employers incentives to adopt viable workplace training programs and sponsoring apprentices deserves investigation. It is important that incentives to encourage employer-sponsored workplace apprenticeship training include the requirement that it be such training be continued until the worker attains journeyed status. As well, there must be a sensible journeyed ticket holders to apprentices ratio maintained in the workplace.

We urge the government to further improve the skilled-trades outlook by increasing its efforts to classify additional trades as requiring compulsory certification in order for a worker to practice them. As well, we oppose the continuing pressure from employers and others to de-skill journeyed workers by splitting up their skills training for certification at a lesser level – that is training workers to only work specific portions of a job, rather than making sure they meet “Red Seal” certification standards and able to perform all skills related to a trade.

Expanding the list of apprenticeable trades is another positive strategy. The caveat being to avoid accomplishing this by splitting up existing trades into several related trades.

10.0 Provincial Government Capital Contracts Tendering Policy

Government focuses significant financial spending commitments to capital construction projects throughout Manitoba every year. The tendering process that leads to the awarding them to contractors are an opportunity to have a positive impact in our construction industry workplaces.

Companies submitting contract tenders to government should first be required to demonstrate that they have:

- A documented safety record
- A commitment to use provincially certified trades people (Red Seal)
- A commitment to employment of registered apprentices
- The employment of workers from equity groups such as aboriginal workers, women and visible minorities.
- An acceptable labour relations history
- A commitment to abide by Manitoba Legislation
- A commitment to transparent payroll records.

Not meeting these simple tests should be reason enough to disregard the contract tender.

11.0 Construction Sector - Temporary Foreign Workers

The MFL understands that sometimes it is necessary to address domestic skilled labour shortages through an immigration policy that enables immigrants with these skills to fill these needs.

But our affiliates in the building trades have raised a concern about another, quite separate, practice. That is, using foreign workers on a temporary basis to do specific jobs, then returning to their home country while there are unemployed construction workers with the appropriate skills elsewhere in Canada. In our view, this is an abuse of the federal temporary foreign worker permit system. It not only means no work for unemployed residents of Canada, but it also has negative implications for providing apprenticeship opportunities for young people, particularly in equity groups such as the Aboriginal workforce, women, refugees, landed immigrants and others.

In addition to the lost labour force development opportunity, wages paid for this work usually escapes to other countries to benefit their economies, rather than ours.

We ask that this issue be raised by the Manitoba at the federal-provincial relations table.

12.0 Safe Workers of Tomorrow

The Safe Workers of Tomorrow project (SWOT) was established in 1997 to promote workplace safety and health issues among students in the workforce or are about to take their first job. It's sponsored by the Manitoba Federation of Labour and the Workers' Compensation Board (Community Initiatives and Research Grants) to provide education and awareness to students and

young workers on safe workplace practices. It is also closely associated with the Manitoba Safety Council.

Since its modest beginning in 1997 when four presentations were made to a total of 347 students, it has grown over the years to the point that volunteer discussion leaders made over 730 presentations to more than 17,200 students across Manitoba during the 2004-05 school year.

That means, more than nearly 66,000 young people have been contacted through nearly 2,500 presentations made by volunteers, many of them young people themselves which reflects the programs peer to peer strategy.

In fact, the mainstay for this remarkable delivery record is SWOT's Volunteer Speaker Bureau. Since 1997, these volunteers donated nearly 7500 hours of their time, skill and energy to helping young workers protect themselves from injury.

Currently, the SWOT is funded through an annual grant from the Workers' Compensation Board (WCB) and support from the MFL. In 2003, the Department of Labour was able to provide a one time grant to enable SWOT maintain operations.

The success of SWOT is indisputable. It addresses an unmet need and as awareness of the program grows, the demand for it does too.

The MFL urges the government to establish a long-term program strategy with secure funding for this critical project by including it in the provincial budget. This will enable the SWOT to survive on an on-going basis. It will also allow the program to reach the people who need it badly. Finally, it will further reduce the number of young people who are getting injured in Manitoba's workplaces.

Conclusion

In closing, we thank you for the opportunity to share our views on so many topics and we look forward to providing any further information to you that may further clarify any of the discussion points that have been raised.

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