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Saskatchewan Government and General Employees' Union

REGINA HEAD OFFICE

November 10, 2010

VIA EMAIL

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Dear Sirs and Mesdames:

Re: **The International Labour Organization Committee on Freedom of Association Recommendations Case No. 2654**

We write on behalf of the Saskatchewan Government and General Employees' Union ("SGEU") to provide an update to evidence submitted to the International Labour Organization Committee on Freedom of Association in Case No. 2654 in which the Committee request to be kept informed of developments, and in response to the Government of Saskatchewan's Response to the Committee's Recommendations, issued October 22, 2010.

The Government's October 22, 2010 response contains significant inaccuracies respecting SGEU's conduct of negotiations with respect to an essential services agreement. It indicates, *inter alia*, (1) the content of the *Public Service Essential Services Regulations* is "primarily the result of negotiations between the Government and the ... SGEU"; and (2) that the Government enacted these regulations after "[t]he SGEU refused to meet to discuss these essential circumstances." Both of these statements are untrue.

The SGEU's Public Service/General Employment (PS/GE) Bargaining Unit staged legal strike action from December 21, 2006 through February 4, 2007. The strike was resolved with the assistance of Special Mediator Vince Ready, who included a term in his January 24, 2007 Recommendations for Settlement indicating that the parties ought to bargain essential services language in the collective bargaining agreement. A copy of the Special Mediator's Recommendations is attached to this letter as Appendix A.

The parties met a number of times to discuss essential services and exchanged proposals both before and after the *Public Service Essential Services Act* ("PSESA") was enacted on May 14, 2008. Detailed accounts of these meetings are contained in two documents attached to this submission: SGEU's April 17, 2009 submission to Arbitrator Colin Taylor (in respect of a request for the inclusion of an interest arbitration clause in the parties' essential services agreement), attached to this letter as Appendix B, and an Unfair Labour Practice Application filed with the Saskatchewan Labour Relations Board, attached to this letter as Appendix C.

Throughout these negotiations SGEU has taken the position that access to interest arbitration should accompany any essential services regime that significantly limits SGEU's ability to stage effective strike action. Notably, in a meeting with the Special Mediator that took place on November 20, 2008, the Special Mediator confirmed that he had the jurisdiction to determine which employees would be designated essential and which would not, in addition to prescribing some mechanism to resolve similar disputes in the future. Notes of this meeting taken by SGEU Legal Inspection and Regulatory Component Chair Hank Lashta are attached to this letter as Appendix D.

Although the employer initially approached negotiations for an essential services agreement in apparent good faith, its behaviour changed after the passage of the PSESA. For example, on January 21, 2009, the employer wrote to Arbitrator Ready and advised him that it considered his jurisdiction to be limited to determining only a single category of essential services (those required to prevent a danger to the health and safety of the public) and that "your process should end with the determination of which programs and services are essential as it pertains to public health and safety." It indicated that the enactment of the PSESA fundamentally changed the parties' situation, and that it intended to "engage SGEU in discussions" respecting the additional categories of services contemplated by ss. 2(c)(i) (B) (C) and (D) of the PSESA. SGEU responded to his letter with a January 31, 2009 letter indicating that the Union intended to use the instant process to conclude the terms of a "comprehensive agreement" "either through negotiations or final and binding resolution", and that notwithstanding the Employer's position respecting the limited scope of the process, was "prepared to continue the discussions ... with a view towards binding resolution." Copies of these letters are attached to this submission as Appendices E and F.

The determination of essential services in accordance with the Special Mediator's 2007 Recommendations was referred to Arbitrator Colin Taylor, who works in association with Special Mediator Ready. The union requested that the arbitrator include in his award a provision allowing the parties to refer matters to interest arbitration if a significant threshold of SGEU members is deemed essential. At the Arbitrator's request, the parties provided written submissions respecting the union's request for access to interest arbitration.

During Spring of 2009, SGEU continued to negotiate with the Saskatchewan Public Service Commission with respect to the designation of additional essential services. On March 26, 2009, Arbitrator Taylor provided the parties with a "preliminary essential services designation" which is attached to this letter as Appendix G. On April 30, 2009 the employer provided SGEU with numbers of employees to be deemed essential under the additional PSESA categories (see Appendix H). The Government declined to provide this information to Arbitrator Taylor when he requested it, however, claiming that the information was "not fully known at this time" (See Appendix I). Finding it difficult to negotiate in the shadow of the employer's ability to unilaterally prescribe essential services by Regulation pursuant to ss.21(i)(B) and 6(3) of the PSESA, on June 10, 2009 SGEU wrote to the employer and asked it to provide SGEU with the numbers and names of employees expected to be deemed essential, and to confirm whether Regulations were

contemplated. A copy of this correspondence is attached to this letter as Appendix J. On July 3, 2009 the employer wrote to SGEU and indicated that Regulations would be forthcoming that month and that further meetings with SGEU were desired. A copy of this correspondence is attached to this letter as Appendix K.

On July 2, 2009, Arbitrator Taylor issued his decision respecting interest arbitration in the Essential Services Agreement between SGEU and the Government. Arbitrator Taylor concluded that, in part because the Province had enacted the PSESA, he could not accede to SGEU's request for an interest arbitration clause in the parties' essential services agreement. A copy of the Arbitrator's reasons is attached to this letter as Appendix L. An application for judicial review of this award has been filed (see Appendix M) and has been stayed by the Court of Queen's Bench pending the determination of the constitutionality of the PSESA in the SFL's Constitutional Challenge, which was selected as the "lead case" by the Court in July 2010.

On July 10, 2009, *The Public Service Essential Services Regulations* were enacted. As detailed in an Unfair Labour Practice Application filed with the Saskatchewan Labour Relations Board, attached to this letter as Appendix C, the Regulations include most or all of the positions deemed essential by Arbitrator Taylor, but go further to include services that were the subject of ongoing negotiations between SGEU and the Province. A copy of the Regulations is attached to this letter as Appendix N.

SGEU wrote to the employer on July 23, 2009 and asked the Province to suspend enforcement of the Regulations "until we have had a chance to meaningfully bargain with respect to these matters". A copy of this correspondence is attached to this letter as Appendix O.

On August 4, 2009, the employer wrote to SGEU and indicated that its position was that "the [PSESA] does not require the Government of Saskatchewan to negotiate with its respective unions an agreement on which services will be prescribed as essential under ss. 2(c)(i) (B) (C) and (D)." A copy of this correspondence is attached to this letter as Appendix P.

SGEU filed an Unfair Labour Practice Application on September 1, 2010, challenging the enactment of the Regulations and the Constitutionality of the PSESA. A copy of the Unfair Labour Practice Application is attached to this letter as Appendix C. The Unfair Labour Practice Application has been placed in abeyance at the Saskatchewan Labour Relations Board pending the outcome of challenges to the Constitutionality of the PSESA currently underway at the Saskatchewan Court of Queen's Bench.

In its Reply to this Application, the Government acknowledges that negotiations with respect to services, levels of service, and the number of employees to be deemed essential were underway at the time the Regulations were enacted. The Government's Reply is attached to this letter as Appendix Q.

The SGEU, PS/GE bargaining unit's Collective Bargaining Agreement expired September 30, 2009.

SGEU continued to attempt to negotiate an Essential Services Agreement with the employer through the end of 2009. See email correspondence dated November 13, 2009, attached to this letter as Appendix R, and the SGEU's proposed Essential Services Agreement, attached to this letter as Appendix S.

Ultimately the parties never concluded an Essential Services Agreement, despite SGEU's good faith participation in protracted, expensive, and difficult negotiations in this regard. A renewal Collective Bargaining Agreement was concluded in March 2010.

Meanwhile, SGEU's Health Sector Bargaining Unit's Collective Bargaining Agreement expired in April 2008. Negotiations for an Essential Services Agreement with Health Sector Employers were also time-consuming, expensive and fruitless. Emboldened by the Bill 6 Amendments to the *Trade Union Act*, the Health Regions and their bargaining agent the Saskatchewan Health Care Association ("SAHO") staged a well-planned and impactful communications campaign directed at union members, that seriously undermined SGEU's ability to represent and negotiate on behalf of these members. SGEU was also forced to file an Unfair Labour Practice on behalf of Health Sector members before it was able to conclude a renewal collective agreement with Health employers. SGEU Health Sector bargaining unit members voted 90 percent in favour of strike action in December 2009, placing the union in a legal strike position for most of 2010. A collective agreement was concluded between SGEU and Health sector employers in September 2010, without any essential services agreement ever being concluded. A copy of SGEU's Health Unfair Labour Practice is attached to this letter as Appendix T.

With respect to the September , 2010 decision of the Court of Queen's Bench dismissing SGEU's Constitutional challenge to s.20 of *The Interpretation Act* and the appointment of the current Chairperson of the Saskatchewan Labour Relations Board, SGEU has provided its counsel with instructions to appeal the Court of Queen's Bench's decision to the Court of Appeal.

In concluding both Health Sector and Public Service Collective Agreements this year, it has been apparent to SGEU that the Government and health employers have taken advantage of unions' inability to stage effective strike action to impose a "wage mandate" or wage controls. Despite having a very strong strike mandate from SGEU's Health Sector bargaining unit, SGEU was forced to conclude a collective agreement which provided for only meagre wage increases well below expected cost-of-living increases. See SGEU's September 28, 2010 press release, attached to this letter as Appendix U. The PS/GE collective bargaining agreement similarly provides for minimal wage increases well below cost-of-living increases and concessions demanded by the employer. See SGEU PS/GE's February 2010 bargaining report, attached to this letter as Appendix V.

This concludes SGEU's update on matters addressed in the Committee's Recommendations in Case No. 2654. The undersigned would be pleased to

provide any further information that may be desired. Please contact us at your convenience.

Sincerely,



Juliana Saxberg
Director of Legal Services

JKS/tdw

Attachments