



A Submission
to the
Saskatchewan Department of Labour
Additional Hours Consultation

by the
Saskatchewan Federation
of Labour

February, 2005

OPENING STATEMENT

The Saskatchewan Federation of Labour would like to express its appreciation to the Minister of Labour, Deputy Minister, Branch Directors and the other officials of the Department for providing us this opportunity to present our position and supporting arguments on the important issue of Most Available Hours.

Our understanding is that you have scheduled these consultation sessions primarily in order to hear from stakeholders on the matter of designing – or at least refining - a regulatory framework to implement Most Available Hours.

In claiming an interest in this matter we point out that the SFL is the largest labour organization in Saskatchewan, with affiliated unions and membership in all sectors of the economy.

The Saskatchewan Federation of Labour (SFL) represents close to 90,000 unionized workers across the province that are members of some three dozen national and international unions.

The SFL and its affiliates are more familiar with the working people of Saskatchewan than any other organization. And with that expertise we offer you the contents of this brief, which contains our advice for implementing Most Available Hours.

PART-TIME WORK

The reality of part-time work is all around us. It is generally agreed that one job in five is part-time. In the service sector in particular, but at retail outlets as well, there is an even higher percentage of jobs, which are less than full-time.

Young working class people would at one time complete their schooling and go out to look for a job. Young people today often go out and look for more hours of work and hope to obtain enough hours to pay the rent and cover the bills.

Research by Statistics Canada Labour Force Survey and the Sask Trends Monitor indicates that at least one in five part-time employees want a full-time job. That is fully 20 per cent of the part-time workforce, and there is certainly no indication that this is an inflated or exaggerated figure. In fact we note that this issue was specifically studied by extensively distributed questionnaires when the Labour Standards Act Review was under way as the government proceeded with legislating Most Available Hours. At that time your own Department of Labour Discussion Paper survey found that 32 per cent of part-time workers in Saskatchewan wanted full-time jobs.

An extensive study done for the Canadian Council on Social Development (Schellenberg, 1998) entitled *The Changing Nature of Part-time Work* found that the percentage of part-time workers who want full-time jobs had increased steadily from 11 per cent in 1975 to 35 percent in 1994. The study also found that low incomes, few employee benefits and a

pervasive, chronic insecurity accompany part-time work. Two out of five part-timers earned less than \$7.50 an hour. Fewer than one in five had any access to employee benefit plans. And many had fluctuating hours resulting in a not only inadequate but also an unpredictable income.

Beyond that there is another group of part-time workers that should not be ignored. These are the part-timers who want more hours of work than the current system is able to deliver to them, but because of educational or family obligations, they cannot take full-time employment. These workers just want some additional hours beyond what they have now.

The research is more consistent and unified in identifying part-time workers to be predominantly young, female and lower income. Your Department's Discussion Paper published figures indicating that 75 per cent of part-time workers in Saskatchewan were women and 75 per cent of part-timers worked in the service sector.

Professor Dave Broad and Fern Hagin of the Social Policy Research Unit at the University of Regina report, in December 2002, that 69 per cent of part-time employees are female and they tend to be distributed more evenly over all age categories than male part-timers, who were predominantly young (*Women, Part-time work and Labour Standards: The Case of Saskatchewan*, SPR Unit, U of R, 2002).

We note that the employed provincial labour force is currently 474,200 (as of Jan '05). Assuming that this Statistics Canada figure is accurate we expect something close to 100,000 Saskatchewan people are part-time

workers. Clearly this is a very sizable group of citizens, voters and taxpayers and they have every right to look to their provincial government for initiatives that will provide them with an improved work life and a better standard of living.

THE IDEOLOGICAL OPPOSITION

Still there has been opposition to Most Available Hours, some of it - in fact much of it – unreasonable, irrational, incoherent and nearly hysterical.

This proposal is not a “job killing monster” or “a nightmare of bureaucratic red tape”. The Most Available Hours initiative is modest, sensible, practical and eminently workable.

The hostility to this proposition has been driven by blind ideology rather than well researched facts and informed good sense.

It is hard to imagine any viable company, let alone any sector of the economy being put in jeopardy of an economic tailspin by an initiative as innocuous as Most Available Hours.

One criticism of Most Available Hours is that it will be complex to administer. Let’s examine that concern.

Presumably employers with part-time workers will presently be using some method of keeping track of these employees. Perhaps it will be an

alphabetical listing of the employees, together with their phone numbers and addresses. This Most Available Hours proposal will simply require the boss to rearrange the list to have the longest serving employee's name at the top and the more junior workers listed in descending order below. Not an overly onerous requirement if you ask us. In fact management will already have to know about the length of time an employee has put in with the company for the purposes of extending holidays for example.

The draft regulations make calculating length of service easy by using date of hire rather than accumulated hours worked.

The shift to this new scheduling system can be straightforward and simple.

It should be noted too that the requirement for part-time employees to state their availability for more work would be very useful to employers. The provisions set out at draft regulation 12.3 obliging part-time workers to provide a statement of their availability will greatly assist managers in scheduling people to fill upcoming shifts. Employers will not have to contact employees to see if they can work or not. The statement contemplated at section 12.3(1) will supply that to the company. Our preference would be to permit employees to amend these availability statements periodically at set dates each year to coincide with academic semesters.

Another claim by the business lobby groups is that the proposed Most Available Hours regulations will damage or destroy the employers' ability to

engage in employment equity programs and accommodate groups such as disabled persons, Aboriginals, visible minorities and women.

Since the business crowd generally has managed to achieve a pitiful record in this area to date - characterized chiefly by foot dragging and inertia - it is a bit ironic, to put it mildly, that they should now turn to this as a centerpiece argument in opposing rights for part-time workers.

Furthermore, the Charter rights in the Canadian Constitution and the rights extended by the Saskatchewan Human Rights Code are not eroded, diminished, and infringed upon, trumped and certainly not extinguished by a simple, short Order in Council enacting some regulations attached to the Labour Standards Act.

This whole “denial of minority rights” assertion is bogus and ludicrous given the legal supremacy of the Charter and the Code. The argument is not one an objective observer would categorize as “a clincher”.

One undeniable fact is this: length of service is the only real truly objective criteria, because it is “colour blind”. A number of measurement (i.e. years of service) is not open to racism, sexism, discrimination, favouritism, and the like.

Another of the criticisms of Most Available Hours is the suggestion that it will necessitate the assigning of unqualified people to tasks that require skill to perform.

Our response is to point out that it is the owners and managers of workplaces who have been doing the hiring thus far, and they will continue in that capacity following the proclamation of this legislation. They will continue to be in charge of training and skills development among their staff. If it is the wish of employers to hire qualified people and devote some resources to maintaining their qualifications, nothing in the draft regulations will hinder that.

In fact the regulations insist on qualified people being assigned to do the work, and the term “qualifications” is specifically defined in the draft regs. The regs need to be tightened up in this area to take into consideration the concerns raised by some affiliates of the SFL. There will also be, upon proclamation, a statutory requirement at section 13.4(1) that employees with “qualifications” be offered additional hours of work.

If less than qualified or under skilled part-time employees are put to work in the months and years to come, it will not be because of the Most Available Hours legislation. In fact, if it happens, it will be in spite of this new law.

THE THRESHOLD

The draft regulations, at section 12.2, propose that Most Available Hours be implemented at “...every employer with 50 or more employees employed at any location...”. That, according to the Department of Labour’s Policy and Planning Branch, would cover 1,600 firms or 4 per cent

of the companies in the province. The Department estimates that 36,000 to 40,000 part-time employees would be working at those 1,600 larger firms. The Department goes on to estimate that combining the employees, who want more hours with the workplace's ability to deliver them, would mean that approximately 10,000 part-time workers would take advantage of the new law.

Now, we applaud that as far as it goes, and are pleased for the part-time workers employed at these larger companies. But given the total number of part time workers in the province cited earlier, it is clear that the reach of the original draft regulations is coming up short. With a hundred thousand part-time workers, and at the very least a fifth of them wanting more hours of work, to enroll and ultimately benefit only 10,000 is insufficient.

Covering just 4 per cent of companies would leave 96 per cent unaffected. And the result may well be that more part-time workers will realize no benefit from these changes than those who will. This in our view is inadequate.

We see no need for a cutoff at all, but if the government insists on having a threshold it should be no higher than 10 employees in total or five part-time employees. If, because of this consultative process, the government decides to give serious consideration to lowering the threshold to a total staff complement of ten, or part-time employees totaling five or more, the labour movement would endorse that inclination.

That figure of 10 employees has worked for decades as the point at which the Occupational Health and Safety Act has full effect and the OH&S Committees are required, for example.

Ten employees is the threshold in section 44.1 of the Act, which deals with group terminations. Ten employees is also the size of a retail trade workplace required to get two consecutive days off in every seven. Both those provisions have been in the Labour Standards Act for years, and we have not heard that the rights granted under those sections are taking effect in business of too small a size.

The two consecutive days off in retail establishments is a provision not that different from the Most Available Hours measure. Is there any evidence that retail operations are threatened by the continuation of the legal requirement to give back-to-back days off? And where is there any proof that the size of business at which the provision applies is far too low?

Has the threshold for group terminations been found to be an intolerable intrusion upon the rights of management? We've not heard of any objections.

In 1994 during the spring session of the legislature the government passed a law, which extended certain employee benefit plans to part-time workers, and the business size for application of the legislation was 10 or more full-time equivalent employees. Section 45.1 of the Act and 24(2) of the regs have provided for that relatively low threshold for a decade now,

and there has been no perceptible disruption to the provincial economy nor discernable hardship to businesses.

Commercial hog barn employees came under the Act in September 2002 and are covered if the size of their operation is 6 or more FTEs. Again, this is a relatively low threshold, and 6 FTEs will, at times, calculate out to 10 employees.

Virtually all other parts of the Labour Standards Act take effect well below the level proposed in the original draft regs for the Most Available Hours measure.

It simply is not credible to argue that employers with a dozen, or four dozen staff, or some number of employees in between, are unable to set up a scheduling procedure consistent with these regulations.

We note too that rural-based, part-time workers will be all but completely denied any benefit from this new law, if the threshold for application remains at 50.

Our view is that workers in establishments of 10 employees are just as important and as valuable as those in workplaces of 50 or more. They are no less deserving and should not be receiving less in the way of rights and benefits under provincial labour laws.

If the government were willing to seriously consider lowering the threshold to workplaces of 10 or more employees, the overwhelming

majority of the labour movement, and working people generally, would strongly endorse that course of action.

We further argue strenuously that the government should alter the present wording to remove the “at any location” language from the draft of regulation 12.2. The net effect of this qualifier is to further exempt workplaces that should be included in Most Available Hours.

The threshold of 50 employees at any location creates administrative imbalance within individual companies. For example, the Safeway store in Swift Current would not presently be covered by these draft regulations, while the Prince Albert Safeway would be. Within the city of Saskatoon the Safeway store on 33rd street would be exempted but all other stores operated by that company would be covered under Most Available Hours if location were retained as part of the qualifying criteria.

Some employees routinely work at different stores from one week to the next, and should be entitled to expect the application of a uniform set of labour laws at each venue. The best parts of the province’s labour laws are those, which apply to as many workers and employers as possible.

The minimum wage, for example, applies almost universally. Annual paid holidays and OH&S regulations benefit virtually all workers. Public holidays, overtime pay and equal pay don’t take effect based on the size of the business, nor should they.

We protect all workers from violence in the workplace and harassment and ethnic or racial slurs.

That same principle can and should apply here, and if it does we will have a better law, which working people, across the province, in cities, towns and rural areas, will view with respect rather than skepticism or scorn.

We should not even attempt to extend rights selectively. That is not what rights are all about.

We should aim for inclusion not exclusion, for full participation not exemptions. Our objective should be to stand on principle and not sacrifice what's right and just.

Our sincere hope is that this present opportunity to benefit significant numbers of marginalized workers will not be squandered in some ill-advised attempt to pander to those opponents of working people who are not available to be persuaded in any event. And who, at this point, state they are not even so much as prepared to engage in a mature dialogue about this matter.

MAXIMIZING HOURS

The implementation of Most Available Hours should be undertaken with the aim of allotting the most part-time hours possible to the senior part-time employee each day. It appears regulation 12.4(2) has that objective,

which is consistent with the Minister of Labour's and the government's stated intention of creating more full-time jobs. A mechanism which will consistently and routinely deliver eight hour days and five day weeks, to workers previously employed part-time (who want, and need more work), will accomplish precisely that worthwhile result – real jobs.

We argue as well for the retention of a clear and precise regulation 12.4(3), which sets out the “cascading” mechanism of delivering additional hours to the next most senior qualified employee on the length of service list.

A less rigorous legislative structure or halfhearted implementation is likely to deliver some more hours to veteran part-timers over the course of a week or month but ultimately nothing more dramatic than a continuation of an enhanced form of part-time employment.

Most Available Hours regulations, well designed and fully implemented, will be of considerable value to workers, even beyond the enhanced income and improved security.

As Department officials will know, we have had for a decade now the requirement for employers to extend pro-rated employee benefit plans to part-time workers, if the company offered such coverage to full-time employees. The dental, prescription drug, group life and insurance coverage is extended to workers if they have been continuously employed for 26 weeks and have worked 390 hours in that period. Or to put it in terms more familiar to workers, if you can work at least 15 hours a week for half a year,

you must be enrolled in the plans and receive 50 per cent of the benefits. At a consistent 30 hours of work per week full coverage is extended.

This Most Available Hours measure will have the additional effect of lifting many workers over these thresholds and into coverage for very important things like dental work and prescription drug bills.

Similarly, unemployment insurance eligibility will be affected in a very positive way for many workers because of this initiative. In January 1997, the government of Canada amended the unemployment insurance legislation to move from a weeks-based to an hours-based system. The result was to dramatically reduce the number of workers who could qualify for unemployment insurance benefits. Currently a steady 35 hours per week is required to even apply for EI. Meanwhile a Canadian Labour Congress study has revealed that the average part-time employee gets sixteen and a half hours of work per week. (*Falling UI Protection for Canada's Unemployed*, CLC, 2003). Typically part-time workers are not achieving even half the hours necessary to initiate an EI claim.

The Most Available Hours proposal will help many Saskatchewan part-time workers qualify for unemployment insurance coverage and be eligible for EI benefits when and if they need them. What about the Mother, who can't get EI benefits when she goes on Maternity Leave because she couldn't get enough hours at the workplace?

FULL-TIME JOBS

We would further urge the government to develop a section in the regulations that ensures full-time positions, which become vacant are not divided up into chunks and handed out to a number of part-time employees. Vacant full-time jobs should be posted or advertised and filled as whole jobs, not fragmented. If an existing part-time employee applies for and gets the full-time job in the traditional or conventional way, that would be fine, but we oppose any suggestion that the aim of these regulations is to carve up full-time positions, and turn full-time jobs into part-time.

Our understanding is that this was not the objective of the proponents of Most Available Hours. If the government has come to share that view, then there should be modifications made in the original draft regulations section 12.1 (a) (i), for example. As the term “employee” is used there we would consult section 2d of the Act, which defines employee as everyone at a workplace paid for their work – and that would certainly include both full and part-time wage earners. The practical effect of the first version of the draft regulations would be to divide up existing full-time jobs. That needs to be removed from the regulations before they are proclaimed in an Order in Council.

CLARIFICATION

It would be very useful, in our view, to have some statutory or regulatory language aimed at encouraging full compliance with these

regulations. A section of the regs might require “scheduling in good faith” so that an uncooperative employer could not take the position that because of business fluctuations and the unpredictability of unforeseen events, all the hours in his or her workplace are short term and therefore subject only to call-in staffing and not to scheduling. That would defeat the intent of these regulations, but could be headed off with a regulation requiring a reasonable level of compliance with the intent and letter of the law.

It may be useful as well to very clearly set out that call-ins are not subject to these regulations. Perhaps at reg 12.1(a) where the wording could be amended to read “but does not include any hours that become available because of any sudden or unusual occurrence or condition which arises that could not, by the exercise of reasonable judgment have been foreseen and scheduled by the employer pursuant to section 13.1 of the Act”.

It certainly was our expectation that call-ins would not be subject to these regulations, and we believe the draft regs say that. But it may help in implementing and administering these new regulations to restate it prominently, and with precision.

It is our recommendation the regulations accommodate a provision that would designate any part-time employee who works for a substantial amount of time to be designated a full-time employee. The duration of that period of work might be set at thirteen consecutive weeks.

THE AUTHORITY TO PROCEED

There has been some comment by employer lobby groups and media columnists that this Most Available Hours legislation is unprecedented, intrusive and authoritarian.

We would point out to those critics that this province in years past had a legislated ratio of full-time to part-time workers. It was in the form of an Order in Council under the Minimum Wage Act and it provided for companies to have part-time employees so long as the number did not exceed 25 percent of the total number of full-time employees. If the workplace had fewer than four employees it could have one part-time worker. So the threshold for application of that law too was as low as possible.

Now we don't regard any of our labour laws as intrusive. But for those critics of the present proposal who use such language, we would just for a moment consider that the ratio in place in the 1950s and 60 was pretty effectively a complete cap on the number of part-timers a company could have. The Most Available Hours law has no such impact.

It is worth pointing out as well that the province did some polling in December 1993 and again in September 1994 on the issues of better protecting workers' rights in labour laws and extending some benefits to part-time workers. In both polls, which are available at the Legislative Library and elsewhere, the results were overwhelmingly in favour of government action on behalf of working people.

The support was so strong, in fact, the pollster comments on the huge public endorsement for updating our labour laws (with 71.9% support) and providing benefits to part-time employees (fully 89.6% expressing approval). We believe that strong public support remains in place today, and therefore it is not at all authoritarian to proceed with enacting Most Available Hours. It is a practical expression of the democratic will of an overwhelming majority of the people.

On the issue of this Most Available Hours proposal being unprecedented in other jurisdictions in North America, we would say this.

The Trade Union Act of 1944 had unique and original provisions for Saskatchewan workers. Later that same decade our public prepaid hospital insurance was unprecedented on this continent. In the early 1960s Medicare came first to the people of this province. Ten years later a highly original and progressive Occupational Health and Safety Act was pioneered here.

Working people and their families are very grateful that Saskatchewan moved in these areas and broke new ground in better protecting working people and their families.

LEADING THE WAY

Just on the subject of providing leadership, there are a number of trade union organizations, which have had direct experience with Most Available Hours and made it work smoothly and successfully.

At Canada Safeway and the Imperial 400 Hotels in Saskatoon and Regina scheduling is done by Most Available Hours. The same is true at Casino Regina, Sherwood Co-op, Temple Gardens Mineral Spa, the Howard Johnson Hotel, AlSCO Linen and Brinks.

At Pepsi Cola and Coca Cola in Saskatoon, at Lilydale Poultry, Leon's Manufacturing, Canada Bread and Morris Rod Weeder scheduling of part-time workers is done by length of service or seniority.

There is contract language providing for a version of Most Available Hours at the Yorkton IGA, the Holiday Inn in Yorkton, the Heritage Inn in Moose Jaw, the Moose Jaw Co-op, the Confederation Flag Inn in Saskatoon and the Seven Oaks Motel in Regina.

The health care unions report to us that the collective agreements between CUPE, SEIU and SGEU and the health regions have call-ins by seniority. This short term scheduling is done by a version of Most Available Hours and the unions report that the system works well, is fair, is non-discriminatory, eliminates favouritism and ensures qualified employees are doing the work.

Casual and part-time employees simply indicate to their employer that they want more hours and when the work becomes available the employees are contacted on the basis of seniority. It is a simple and completely functional arrangement, which any workplace could implement.

The Federation of Labour can provide, upon request, copies of the collective agreements covering the in-scope workers at many of those workplaces and businesses.

For years these workplaces have had Most Available Hours language in their contracts and made it work. There is no reason why it can't work in other businesses.

CONCLUSION

The government is to be commended for, at long last, complying with their democratic responsibility of fulfilling the wishes of the legislature by enacting the Most Available Hours amendment, which passed in 1994. In our view this measure will improve the work lives of a group of employees who have for too long been marginalized and exploited.

We urge the government to bring the Most Available Hours law into force as soon as possible and seriously consider amending the draft regulations to incorporate the suggestions contained in this brief.

Further, the Saskatchewan Federation of Labour can identify, from within the ranks of its affiliated unions, individuals who are experts in the field of collective agreement language. We would be prepared to encourage those individuals to make themselves available for further consultation and regulation refinement.

Thank you.

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