UNITED STEELWORKERS
UNITY AND STRENGTH FOR WORKERS

District 3
Western Provinces and Territories

Stephen Hunt
District Director

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) ("USW") is an international trade union which represents approximately 225,000 members in every province and territory in Canada and in virtually every economic sector of today's economy. In Saskatchewan, USW represents approximately 5,000 employees in a range of economic sectors, including mining and manufacturing, but also including office and clerical workers.

USW has carefully considered the issues raised in the consultation paper issued on or about May 2, 2012 and we have consulted with the Union's members in Saskatchewan. USW shares the view expressed by other representatives of workers in Saskatchewan that this process, as set forth in the May 2 letter from the Minister of Labour Relations and Workplace Safety does not afford representatives of workers sufficient time or opportunity to provide input, especially given the broad scope of "consultation" contemplated by this process.

The discussion paper refers to a need to "renew" labour law in Saskatchewan and suggests that the input of unions will ensure that labour law will meet the needs of working people. As set forth below, USW is firmly of the view that many of the issues raised in the discussion paper are harmful to the needs of working people and if implemented, the changes contemplated by this government will set back the clock for workers in Saskatchewan.

USW reserves its right to file additional submissions and representations on or after July 31. We have attempted below to address some of the issues of importance to USW. However, we wish to emphasize that if we have not provided submissions on a particular issue that should not be taken to be agreement by USW to the government's suggestions or proposals.

Scope under the Trade Union Act

1. Employees in Saskatchewan have the right to join and form unions for the purpose of collective bargaining. As part of the process of unionization, an application for certification is filed, and in dealing with an application for certification, the SLRB may determine whether persons should be excluded from the bargaining unit because they exercise managerial functions. In addition to determining the issue when a union files an application for certification, the SLRB also has authority under s. 5 of the Trade Union Act ("the Act") to consider whether the job duties of employees in a bargaining unit under a collective agreement require that those employees be removed from the bargaining unit because their functions are managerial.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union
300-3920 Norland Avenue, Burnaby, BC V5G 4K7 • 604-683-1117 • 604-688-6416(Fax) • www.usw.ca

2. Under the Act, the defined term "employee" specifically excludes persons whose work is "of a managerial character" (see s. 2(f) of the Trade Union Act). The exclusion ensures that employees in a bargaining unit are not required to perform management duties that may create a conflict between their responsibilities to their employer and their loyalty towards members of the bargaining unit.

3. The SLRB has over many years established a body of case law that interprets and applies s. 2(f) of the Act, taking into account the facts of each case before it, and the language and the purpose of the Act. The SLRB has considered and applied s. 2(f) in a variety of different circumstances and across a wide range of workplaces.

4. The SLRB has long been recognized by the courts as a tribunal with labour relations expertise. In a judicial review of an SLRB decision in Hollinger Canadian Newspapers, LP (c.o.b. The Saskatoon Star-Phoenix Newspaper) v. Communications Energy and Paperworkers' Union of Canada [2001] S.J. No. 585, the Saskatchewan Court of Queen's bench said:

> "labour relations boards exemplify a highly specialized type of administrative tribunal. Their members are experts in administering comprehensive labour statutes which regulate the difficult and often volatile field of labour relations. Through their constant work in this sensitive area, labour boards develop the special experience, skill and understanding needed to resolve the complex problems of labour relations . . ."

   It is consistent with this deferential approach to the labour relations expertise of the SLRB that the determination of whether job duties are managerial is for the SLRB to consider on the facts of the case before it, considering the evidence and the law. This function is best left for a case by case determination by the quasi judicial processes of the SLRB, rather than to the legislature.

5. The labour relations statutes which govern collective bargaining in other jurisdictions across Canada contain definitions of managerial employee similar to that which is contained in the Act. To attempt to codify a more detailed or comprehensive definition of managerial employees would depart from the practice in other jurisdictions in Canada. USW submits that there is no need to amend the Act to "clarify" what is meant by "managerial character" and "confidential capacity with respect to industrial relations".

Accountability

1. The discussion paper cites the federal government's Bill C-377 as a model for amendments to the Act requiring extensive information disclosure by unions. Bill C-377 is a broad and sweeping initiative that mandates disclosure of information by trade unions and labour trusts to the Canada Revenue Agency, to be posted and maintained on a website administered by the government.

2. USW has a long history and tradition of disclosing financial information about Local union finances to its members. Most USW Local Unions across Canada, including in Saskatchewan, require that expenditures be expressly authorized by the membership of the Local Union. Furthermore, many USW local unions disclose financial information to members as a matter of course. For example, USW Local Unions in Regina report spending by either distributing financial statements to members at membership meetings, and on request by individual members, or by reporting the information in financial statements at membership meetings.

3. USW and its Local Unions support the principle of transparency and disclosure of information to members, including financial information. However, a requirement to disclose based on the model of Bill C-377 is nothing more than a blatantly and aggressive anti-union policy designed to undermine and weaken trade unions.

4. That the federal government's policy which the discussion paper seeks to repeat is a thinly veiled attempt to undermine unions is evident from a cursory review of many of the provisions of Bill C-377, as follows:

   a) the policy will require unions to dedicate significant resources (both out of pocket expenditures and staff time and expense) to comply with the detailed and onerous filing requirements, and those resources will be diverted from other important functions served by unions;

   b) the policy requires unions, pension and benefit plans to disclose information that may be highly sensitive and confidential, including information about benefit payments and pension payments to beneficiaries. Employee benefit organizations have joined unions in criticizing Bill C-377;

   c) the policy requires unions to disclose payments to law firms and contractors or companies which provide services to a union. The policy requires that unions disclose information that is solicitor-client privileged. In addition, it requires disclosure of highly sensitive information about the cost of contracts or service agreements, which could be used by competing contractors in future bid processes. Prominent legal counsel as well as businesses have expressed concern about the implications of this disclosure, and have criticized the Bill;

   d) the federal government claims that it is treating unions fairly and that its requirement for disclosure arises from the fact that unions benefit from their "not for profit" status. Despite this attempt at justification, the onerous filing requirements of Bill C-377 do not extend to any of the other 90,000 organizations in Canada which are categorized by the CRA as non-profit. The narrow coverage of the bill (unions, and not all non profit entities) underscores the concerns raised by the labour movement that the government's agenda is to weaken unions;

   e) the government will have to spend significant resources to establish the necessary electronic database and website to enable unions and labour trusts to post in compliance with its policy. Maintenance and enforcement of compliance with the law would cost additional significant government resources. This policy expands government and expends resources and is inconsistent with the frequently-stated ambition of the Wall government to reduce expenditures and reduce the size of government.

5. More than twenty years ago, in its decision in Lavigne v. Ontario Public Service Employees Union [1991] 2 SCR 211, the Supreme Court of Canada confirmed the right of unions to engage in political and advocacy activities. In addition to recognizing the economic and social importance of unions as collective bargaining agents, the court's ruling confirmed the important role of trade unions as important participants in a thriving democracy, expressing the voice of working Canadians. The court acknowledged the important role of unions as political advocates which

contributes to a stable and secure middle class and supports a strong economy for the benefit of all Canadians. To suggest, as the discussion paper does, that political action is not a legitimate role for unions reveals a fundamental misunderstanding of the roles of unions in today's economy, and it contradicts the thoughtful and considered view of many others, including the Supreme Court of Canada.

6. On May 23, 2012, Prof. Sean Tucker of the Faculty of Business Administration at the University of Regina delivered a lecture which questions the reliability and accuracy of the assertion (contained in the discussion paper) that a majority of Canadians support public disclosure of union financial information. See: http://www.uregina.ca/admin/faculty/Tucker/download.html.

7. USW submits that the discussion paper provides no legitimate policy basis for amending the Act to include disclosure requirements similar to Bill C-377. The proposal for disclosure is for Saskatchewan, like Bill C-377 in the federal sector, a frontal attack on unions.

Certification and Decertification of Unions

a) Restore Card Based Certification

1. Bill 5, which took effect in 2008, repealed the long-standing provisions of the Act which provided for "card-based certification", and replaced them with a mandatory vote regime. The government called this change "democratic". In fact, mandatory votes are anti-democratic and anti-worker. Mandatory representation votes ignore the realities of the workplace. In order to be democratic, a vote must take place in a setting that is free from coercion and intimidation. The workplace is not such a place. It can not be such a place. The suggestion that mandatory certification votes are democratic reveals a willful blindness to the overwhelming power and control exerted by employers in the workplace. Mandatory representation votes are simply a license for employers to interfere in the democratic selection of a trade union by workers.

   The USW, together with other unions in Saskatchewan and the Saskatchewan Federation of Labour, challenged Bill 5 in the Court of Queen's Bench. In the February 6, 2012 decision of Ball J at paragraph 273 of his decision in Saskatchewan v. Saskatchewan Federation of Labour, 2012 SJ no. 49, the court acknowledges employees' vulnerability to the power of their employers:

   > "… the reality that employees are vulnerable to the influences of their employer, direct and indirect, which interfere with free exercise of their associational rights. As a former chairperson of the SLRB, I take notice of the fact that even a reasonably courageous employee can be cowed by employer statements that directly or impliedly threaten negative consequences if the wishes of the employer are opposed."
   > (emphasis added).

2. Ball J considered evidence of the labour movement in support of their challenge to Bill 5. He rejected the government's evidence in defence of the legislation, and concluded that the mandatory vote system had had the effect of, and would continue to have the effect of, reducing the success rate of unions in applications for certifications (*supra*, paragraph 254).

3. Academic research proves that mandatory vote campaigns provide employers with the opportunity to engage in aggressive anti-union campaigns and other conduct in the lead up to a representation

vote, which affects vote results and has reduced the success rate of union applications. (See, for example, Riddel, C. (2004), "Union Certification Success Under Voting versus Card. Check procedures: Evidence from British Columbia, 1978-1998, Industrial & Labor Relations Renew", Vol. 57, No.4, pp. 493-517)

4. The USW experience is consistent with the academic evidence: in any regime where mandatory votes are required for certification, employers dedicate significant time and resources to defeating the union's efforts from the time they learn of the organizing campaign up to and including the date of the vote. This allows employers to take advantage of their power in the workplace to defeat the true wishes of the employees. It has contributed to a decline in the success rate of applications for certification, but even in cases where the union succeeds in its campaign and becomes the certified bargaining agent the workplace is often irreparably and in some cases irretrievably harmed by the adversarial and divisive nature of the vote campaign.

5. Mandatory votes exist in only four other jurisdictions in Canada: BC, Alberta, Ontario and Nova Scotia – in the rest of the country, including the federal jurisdiction, unions may be certified without a vote, on the basis of membership cards. However, in the jurisdictions in which mandatory certification votes are required, they must take place promptly after an application for certification is filed.

6. Unions are good for Canada, and good for Saskatchewan. Mainstream economic organizations like the OECD, the International Monetary Fund and the World Bank recognize that unions contribute to more equitable societies by reducing the gap between rich and poor, and by ensuring stronger public services and social safety nets. And these benefits are achieved without undermining economic performance. (See "Unions, Equality and Democracy" , Canadian Centre for Policy Alternatives, June 18, 2012, Andrew Jackson). At a time when the gap between rich and poor is growing in Canada, unionization is a way to ensure that Canada's middle class is protected and strengthened. Policy initiatives that have the effect of reducing the likelihood of successful union campaigns will defeat this important objective.

7. USW submits that the Act should be amended to bring back card based certification, so that the true wishes of employees to form and join a union is protected without providing opportunities for employer interference.

b) Voluntary Recognition

1. Voluntary recognition is not explicitly referred to in the Act. However, in Saskatchewan, employers and unions may enter into voluntary recognition agreements where the employer recognizes the union as bargaining agent for its employees. For this reason, USW submits that no change to the law is necessary.

2. The government's discussion paper expresses concern that sometimes, the amount of time required to process an application for certification exceeds the duration of the work which is being done by the employees who are affected by the application. The discussion paper suggests that voluntary recognition agreements should be expressly authorized in the Act as a way of ensuring

that bargaining rights are determined quickly. USW agrees that it is in the interest of sound labour relations for applications for bargaining rights to be determined without delay. The most effective way of ensuring prompt determination of bargaining rights is to ensure that applications for certification are processed promptly and without the need for mandatory votes. To this end, in addition to eliminating mandatory votes, it is essential that the SLRB have sufficient resources, including an adequate number of vice chairs and staff, to deal with applications for certification quickly.

3. If voluntary recognition is to be expressly permitted by the Act, USW submits that workers' rights to freely select the bargaining agent of their choice must be protected. Voluntary recognition agreements which do not reflect the wishes of bargaining unit employees must not be used to defeat employee wishes to be represented by the union of their choice. To ensure this objective is met, the Act must be amended to include protection for employee free choice by requiring that a voluntarily recognized union faced with a decertification or displacement application during the first year of the voluntary recognition agreement must demonstrate that it was entitled to represent a majority of employees in the bargaining unit when the voluntary recognition agreement was entered into. A model or precedent for this is found in s. 66 of the Ontario Labour Relations Act.

c) Decertification

1. The Act, like other labour laws in every jurisdiction in Canada, provides for "open periods" in which members of a bargaining unit may seek to decertify their union or may seek to replace their union with another union (see s. 5(k) and s. 33(5) of the Act). The description of the open period in the Act is similar to that which is contained in other labour statutes.

2. The discussion paper suggests that employees do not understand when they are entitled to file a decertification application. USW submits that, based on its experience, employees are able to understand the decertification procedures contemplated by labour statutes and are able to access them if they wish to do so.

3. A decertification application requires that the applicant obtain support for the application. Typically an applicant will speak to employees at the workplace to try to persuade them to support his/her position. Often, employees who are opposed to the decertification effort will challenge the applicant's efforts to obtain support in the workplace. This competition for support can result in divisions among workers, which may in turn contribute to disruptions in the workplace.

4. Currently, the Act restricts and limits the potential for disruption caused by a decertification application to the period immediately before the anniversary date of the collective agreement. However, if decertification applications can be filed at any time during the collective agreement, the workplace may be subject to multiple decertification challenges, causing instability in the workplace. A union which is frequently and persistently subject to decertification applications over the course of a collective agreement may find its ability to work with the employer to find labour relations solutions to complex problems is undermined.

5. The current labour relations regime provides many options for employees to challenge their union representation during the course of a collective agreement. Employees may file duty of fair representation complaints, or they may access their union's constitutional and democratic procedures for challenging their unions actions, all outside of the time limits for filing a

decertification application. Accordingly, USW submits that it is not necessary to expand the opportunities for decertification, since there are other remedies available to employees who are dissatisfied with their union's representation.

6. The discussion paper asks if employers should be permitted to file applications to rescind bargaining rights where, for example, the union is not effectively representing employees. The USW most strongly objects to this suggestion, which would give the employer an unprecedented role in deciding whether the employees' freely chosen bargaining agent should continue to represent them.

7. USW submits that the timing of decertification applications in the current statutory system, which is duplicated elsewhere in Canada, establishes an effective balance between employee's rights to challenge their bargaining agent and hold it to account, and the need for stability in the workplace.

d) Who can vote in an Application for Certification?

1. A review of SLRB jurisprudence reveals that the question of who is entitled to vote in an application for crtification filed and processed in the normal course has rarely been the subject of a Board decision. This suggests that the question is typically resolved by the parties and the SLRB's staff and officials during the normal course of the certification process.

2. USW submits that, as with other matters arising out of applications for certification under the Act, this one is most appropriately dealt with by the SLRB in accordance with principles established by the case law and based upon consideration of the facts before it.

Unfair Labour Practice

1. USW submits that the provisions relating to unfair labour practices are clear and do not require revision. However, Saskatchewan is virtually alone in labour jurisdictions in not expressly providing for remedial or unfair labour practice certification under the Act.

2. Unfair labour practice certification is granted in other jurisdictions where the actions of an employer during an organizing campaign have the effect of defeating or denying the true wishes of the employees. Where an employers actions are so significant that the true wishes can not be known or determined in a vote, unfair labour practice certification is the only meaningful remedy. If this remedy is not available to the Board, then there is no effective deterrent to prevent employers from engaging in illegal activities with impunity.

3. Section 10.1 of the Act entitles the SLRB to grant a representation vote after an unfair labour practice has been committed and the union is not able to establish that it has the 45% support needed for a vote. However, a second vote is not an adequate remedy where an employer has threatened the job security or economic well being of employees. The Ontario Labour Relations Board has found in some cases that an employer's unfair labour practices have so effectively threatened employees' livelihoods that those employees will likely vote against the union in a secret ballot vote. The SLRB, like the OLRB, must have authority to grant remedial certification in cases like these. See, for example, Boehmer Box LP, [2010] OLRB No. 992.

Transferring Certification

1. As noted in the government's discussion paper, labour relations statutes across Canada contain successor and common employer provisions. They provide stability and predictability to the collective bargaining relationship. Successor (or sale of business) provisions protect an employee's right to continue to be represented by his/her union when the employer sells, leases or otherwise disposes of its business, requiring the purchaser of the business to recognize the union, to deal with the union and to apply the collective agreement. Common (or related) employer provisions protect an employee's right to be represented by his/her union by enabling labour boards to declare an employer to be related to an employer already bound by a collective agreement.

2. Sale of business provisions do not protect collective agreements between unions and contractors when the employer provides services under a contract, which is placed for bid and a new contractor secures the contract to provide services.

3. Section 37.1 of the Act protects bargaining rights by providing for a "deemed sale of business" when the provincial government or a municipality contracts out cafeteria, janitorial or security services. This provision ensures that employees in these sectors do not lose their union and their collective agreement when their employer loses the contract to do the work to another contractor. This provision provides stability and certainty to workers in low-wage sectors of Saskatchewan's economy. By requiring that the collective agreement terms bind the successful bidder, the law protects the most vulnerable workers by establishing a base line for conditions of employment – the existing collective agreement – that binds all of those participants in the bidding process.

4. USW represents security guards and other contract for service employees in many bargaining units across Canada. Our members in these units have chosen to be represented by a trade union, and the law should ensure that their right to be represented by the union is not disrupted by a bidding process. That can be achieved by amending the Act to provide for continuity of bargaining rights and collective agreements not just in the case of subcontracting by a municipality or the provincial government, but in all cases where a contract for services changes hands. The Act should be changed to protect vulnerable workers in the contract for services sector by providing for a deemed sale of business in all cases where a contract is changed in a bid process, and not just in cases involving the government, a municipality or an employer in the broader public sector.

Negotiations

1. USW submits that the existing provisions of the Act, providing a framework for parties to engage in collective bargaining, should not be amended.

2. The appropriate place for parties to deal with concerns about strikes or lockouts which have occurred pre-emptively or unfairly is before the SLRB.

Third Party Dispute Resolution

1. Across Canada, labour legislation provides for grievance and arbitration as an expeditious and informal way for the parties to a collective agreement to resolve workplace disputes during the term of a collective agreement. The quid pro quo for the establishment of a grievance and arbitration process is that the employees may not strike and the employer may not lock out during a collective agreement.

2. The key benefit of resolving workplace disputes informally and expeditiously is that serious irritants which can cause labour relations difficulties and disruption in the workplace are resolved by the parties during the grievance procedure. For those few issues which remain unresolved, the arbitration process is available.

3. The grievance and arbitration procedure is an effective tool only if it is expeditious. Delay in resolving a workplace dispute causes labour relations harm and workplace disruption. Accordingly, expedition in the arbitration process is sound labour relations policy.

4. The Act currently contains an expedited arbitration process which can only be accessed if both parties to the collective agreement agree. This requirement for consent means that an intransigent employer can defeat a union's effort to have a dispute resolved quickly.

5. Many other jurisdictions in Canada provide for expedited arbitration, including British Columbia, Manitoba and Ontario. And in other jurisdictions expedited arbitration can be accessed by either party to the agreement, by application. Consent of the other party is not required. This means, for example, that a terminated employee is able to have his case heard and determined quickly, or that an issue which is of particular concern to an employer and may be causing divisions in the workplace can be resolved quickly and effectively.

6. USW submits that the dispute resolution procedures of the Act would more effectively serve the labour relations objectives of the Act if expedited arbitration were amended to enable either party to access this procedure.

Duty of Fair Representation

1. The duty of fair representation was first established at common law and has since been codified in virtually every labour statute in Canada. The common law duty required that unions represent their members in manner that is not arbitrary, discriminatory or in bad faith.

2. In codifying the common law duty, the statutory language in labour statutes across Canada closely parallels the language in s. 25.1 of the Act. Labour Relations Boards have for many years interpreted and applied the statutory language. In addition to issuing decisions under the relevant statute which explain and describe the duty, many labour boards including the SLRB provide detailed directions and explanations about the duty on their websites. This information can be easily accessed by workers.

3. A Quicklaw search reveals that in the one-year period between July 2011 and July 2012, seven of the 26 reported decisions issued by the SLRB were duty of fair representation complaints. This means that more than one quarter of the SLRB decisions issued during this time arose under this

single section of the Act. A search of the five year period ending in July 2012 reveals the same proportion of duty of fair representation decisions issued. These figures do not account for complaints which were filed and resolved without the need for the SLRB to issue a decision. These numbers demonstrate that union members are aware of their rights and are accessing the SLRB for the purpose of complaining about their union's conduct.

4. For the reasons given above, USW submits that no changes are necessary to the duty of fair representation provisions of the Act.

Picketing

1. The right of workers to communicate with others by picketing is lawful and it is protected by the Canadian Charter of Rights and Freedoms. This protection has been affirmed in decisions of all levels of courts in Saskatchewan, up to and including the Supreme Court of Canada. The Supreme Court said the following, in British Columbia Government Employees' Union v. British Columbia 53 DLR(4^{th}) 1:

> "Picketing is crucial form of collective action in the arena of labour relations … It is an essential component of a labour relations regime founded on the right to bargain collectively and to take collective action. It represents a highly important and now constitutionally recognized form of expression in all contemporary labour disputes".

2. The discussion paper refers to some restrictions on picketing, arising from a Saskatchewan case which was also decided by the Supreme Court, RWDSU Local 558 v. Pepsi Cola Canada Beverages (West) Ltd, [2002] SCR 1. In this important ruling which significantly expanded the scope of protection for picketing, the court held that picketing as a form of expression is fundamental to democracy, and it engages one of the "highest constitutional values". The decision upheld a ban on picketing at the residences of management employees, because the constitutional protection of picketing did not expand to include criminal activity or tortious activity.

3. However, the law presumes that picketing can and will affect other parties, including employers and third parties (Industrial Hardwoods Products 1996 Ltd v. IWA Local 2693 et al, [2001] OJ No. 28). Any legislative attempt to limit the scope of this important Charter-protected right will be challenged and tested against the expansive Charter values.

4. The discussion paper asks if picketing should be regulated in the Act. USW submits that regulation of picketing in the Act is not necessary. USW is not aware of any delay or other difficulty that parties have encountered in accessing the courts to seek injunctions. The common law recognizes the important constitutionally protected rights of workers to communicate by picketing.

5. If the government concludes that regulation of picketing by the SLRB is necessary or appropriate, USW submits that the British Columbia model for regulation of picketing is an appropriate model. Most notably, in British Columbia, the Labour Code contains detailed and extensive language which establishes a code for conduct of unions and employers during strikes. Importantly, while the Code regulates picketing, *it also limits employers' right to hire and use replacement workers during a strike*. A code on strike related conduct, which includes a ban on replacement workers

while protecting the important constitutional right of workers to picket, is the only balanced way to regulate picketing.

Technological Change

1. The Act requires that employers notify unions of upcoming technological changes to their workplace, and provide detailed information in respect of any such changes. The parties must bargain in good faith about issues affecting employees that arise from the changes, including a comprehensive workplace adjustment plan.

2. In imposing a requirement to negotiate a plan, the legislature recognizes that the parties to a collective agreement are best situated to negotiate terms that will govern in the case of employees who are affected by technological change. This is consistent with the well established labour relations principle that the parties to a collective agreement have the historical and institutional knowledge of the needs of employees and the employer's business and applicable precedents to tailor a plan to most effectively meet the needs of the employees.

3. This review of the Act must respect the legislative purpose behind the existing technological change provisions and any changes to the Act should expand and not diminish the opportunities for parties to negotiate resolutions to difficult and challenging labour relations situations. Accordingly, it is not appropriate to restrict the circumstances in which the parties are required to negotiate about technological change.

4. The requirement to negotiate an adjustment plan is a remedial provision, and remedial statutes are properly interpreted liberally and in favour of the beneficiaries of the law. A broad interpretation of the phrase "technological change" is consistent with this rule of interpretation. The SLRB's interpretation of "technological change" to include plant closure in at least one case was struck down on judicial review. (See, Regina Exhibition Association v. Saskatchewan Joint Board, RWDSU [1998] SJ No 30) However, this decision does not mean that a plant closure can never meet the definition of technological change. This is an issue for the SLRB to determine on a case by case basis.

5. In British Columbia, the BC Labour Code requires that a workplace adjustment plan be negotiated when a plant closure is announced.

6. A broad interpretation of technological change does by itself impose obligations on an employer, because the requirement to negotiate a workplace adjustment plan does not impose or establish a substantive entitlement to particular benefits. Rather, it requires the parties to negotiate about certain listed issues. USW submits that for all of the reasons given here, the current provisions of the Act regarding technological change are appropriate and should not be narrowed or limited.

First Collective Agreement

1. Following certification of a union as bargaining agent for a unit of employees, the negotiation and conclusion of a first collective agreement is a critical stage in the parties' relationship. It is

essential to the establishment of a harmonious bargaining relationship that the process of first collective agreement bargaining begin promptly and conclude without undue delay, and many labour statutes in Canada recognize the importance of this. As a result, most include provisions which enable the parties to first contract bargaining to access interest arbitration if they are not able to settle a first agreement.

2. Unions must be able to access first collective agreement arbitration without delay. Where an employer does not make expeditious efforts to settle a first agreement, the newly organized employees may become frustrated with the lack of progress at the bargaining table and, as a result, the union's credibility with employees in the bargaining unit is undermined. If a pattern of employer resistance to negotiating a first agreement persists for any period of time before a union is able to access interest arbitration the bargaining unit may become irreparably weakened and divided. In these circumstances, an imposed agreement does little to address the discord in the workplace that results from a divided workforce, and instability may continue despite the imposition of an agreement.

3. The Act should be amended to permit more expeditious access to first agreement arbitration for the reasons given above. USW notes that the SLRB has rejected first agreement arbitration applications as premature in cases where the Board has concluded that inadequate bargaining has taken place. (See for example, Walmart 2012 SLRBD no. 9). Given that the Board has exercised this authority to prevent applications from proceeding if it concludes inadequate bargaining has occurred; there is no need to codify longer timelines.

Final Offer Votes

1. During collective bargaining, unions are entitled to determine what offers they will place before bargaining unit members for ratification. Union officials who do not place an offer before the membership know that their decision could result in adverse consequences to the union. A membership which is unhappy about their union's decision could demand a vote through the union's internal process or it could choose to elect a new group of local union leaders at the next opportunity or to take action under the Act.

2. Final offer votes provide an unusual and exceptional opportunity for employers to interfere directly in the relationship between a union and its members, because they permit a collective agreement to be put to bargaining unit members at the employer's request and without the union's agreement.

3. Under final offer vote provisions, an employer can require a vote on an offer which it believes will be acceptable to the bargaining unit and which the union has determined will not be put before the membership.

4. Because the exercise of this right is unusual, it should be used only in limited circumstances. It is disruptive to the bargaining unit. The current language of s. 45 of the Act recognizes this and provides that only one final offer vote may be held under this section during any one strike. This is consistent with the law in other jurisdictions, where similar limitations exist on an employer's right to interfere in the union's decision making process.

5. It should not be easier for employers to make application for a final offer vote, nor should employers be permitted to make multiple applications. Repeated final offer votes will undermine the union's authority and credibility. Furthermore, repeated votes are disruptive in the workplace.

Strike and Lockout

1. Canada is bound by international treaties, including ILO Convention 87 which protects the right to strike. In its decision dated February 6, 2012 in Saskatchewan v. Saskatchewan Federation of Labour et al, [2012] SJ No 49, the Court of Queen's Bench held that the right to strike is a fundamental freedom protected by the Canadian Charter of Rights and Freedoms. Without it, the right to collective bargaining is an empty and meaningless one.

2. Although it is a charter protected right whose origins in the international sphere have been well established, the right to strike is not one which is taken lightly by unions and workers. Like other unions, USW does not commence a strike unless and until the membership has been consulted and is provided with a free and fair opportunity to participate in the decision. Unions know that if a strike begins without meaningful consultation with the employees who will be walking the picket line, the strike may fail and the union may be subject to criticism or complaints. These factors operate as a compelling incentive to be cautious and consult meaningfully before strike action is taken. Accordingly, USW is surprised that the discussion paper suggests that the provisions of the Act which regulate the right to strike are inadequate.

3. Surface bargaining or other illegal conduct which is of concern to the parties in bargaining is properly addressed by existing mechanisms in the Act (including filing bad faith bargaining complaint), rather than by amending the legislation to impose additional preconditions to exercising the right to strike.

4. Continuation of benefits for workers while on strike does not cost the employer anything. It entitles strikers who are giving up their wages for an indefinite period of time to maintain a basic level of health benefits for themselves and their families and thus protects strikers and their families from the consequences of delays or failures to seek medical or dental help, or obtaining prescription drugs, for the duration of a strike.

5. If workers who are on strike do not know that they have a right to be reinstated to employment at the end of the strike, then their ability to exercise that right to strike is undermined or weakened. If the government amends the Act to take away the right to reinstatement, USW says that the government is improperly interfering with the constitutionally protected right to strike.

6. In providing for a right to displace replacement workers who have been doing their jobs during a strike, and a right to arbitration if a worker has been discharged during a strike, s. 46 of the Act codifies existing law. If the Act is amended to eliminate or reduce these rights, not only would it be an unconstitutional limitation on the right to strike, but it would represent a reduction of rights now well established at law.

Replacement Workers

1. USW submits that the Act should be amended to ban the use of replacement workers during strikes. In our experience that the use of replacement workers results in prolonged and more intense labour conflicts. The picket line is the point of contact between striking or locked-out workers and the employer. When outsiders to the dispute try to flaunt the barrier, conflict occurs. The presence of replacement workers doing strikers' work raises picket line pressures. Violence on the picket line increases. Such anger and violence serves to further entrench union and employer positions, making it more difficult to reach a collective agreement.

2. Statistics bear out our experience. Both Quebec and British Columbia ban the use of replacement workers during a work stoppage – Quebec since 1977, and British Columbia since 1993. Following the introduction of those bans, both provinces experienced a reduction in the length of work stoppages. In Quebec, the average number of work days lost each year to labour disputes dropped from 39 days in 1976 to about 15 today (HRSDC, "Chronological Perspective on Work Stoppages in Canada", Quebec, 1976-2008, www.hrsdc.gc.ca). In British Columbia, the province realized a 50% drop in the year following the introduction of the law (HRSDC, "Chronological Perspective on Work Stoppages in Canada", British Columbia, 1993-1994, www.hrsdc.gc.ca).

3. The use of replacement workers also runs contrary to the notion that the parties to the bargaining process should be responsible for the resolution of their own conflict. The purpose of the Act is to regulate the conduct of unions and employers when employees seek to organize unions, and as the parties negotiate collective agreements. The Act contemplates that if the parties are not able to reach agreement through negotiations, the parties may resort to strikes or lockouts in order to support their demands. However, even when a strike or lockout is in effect, the ultimate objective of the parties is to reach a collective agreement. Replacement workers are strangers to collective bargaining and collective agreements. The use of replacement workers causes employees to focus on the replacement workers, and distracts from attempts to negotiate a collective agreement.

4. A ban on replacement workers is also consistent with Canada's international commitments. International jurisprudence has been clear that replacement workers undermine ILO Convention 87, particularly when serious threats to public health and safety are not apparent. The ILO's legal experts have stated:

> …..the hiring of replacement workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden constitutes a serious violation of freedom of association (See ILO, Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 4th edition, (2002).

5. Given the above, USW submits that the Act should unambiguously and without qualification ban the use of replacement workers during strikes.

Union Dues

1. Mr. Justice Ivan Rand was appointed as an arbitrator to settle a lengthy strike involving Ford Motor Company in 1946. As part of his arbitrated settlement, Mr. Justice Rand imposed a term of the collective agreement that required that all members of the bargaining unit should pay dues to the union for the purpose of, as he put it, "… shoulder(ing) their portion of the burden of expense

for administering the law of their employment, the union contract. In other words, Mr. Justice Rand reasoned that as all employees in the bargaining unit were benefiting from the terms of the collective agreement, they should contribute to the union's cost of negotiating and enforcing the agreement through compulsory payment of union dues. This principle was repeated and supported in the Woods Task Force Report on Industrial Relations in 1968. In recognition of this basic principle of fairness, most jurisdictions in Canada now legislate the Rand Formula or some other requirement to ensure a basic level of union security. Section 36 of the Act is such a provision.

2. Where the payment of dues is made mandatory at the request of the union in bargaining (either through the Rand Formula or compulsory membership), some jurisdictions recognize that a limited exemption from compulsory payment of dues may be appropriate, and employees may divert their dues to a mutually agreed-upon charity if they can demonstrate a legitimate religiously based objection to paying dues. The SLRB and unions in Saskatchewan have recognized such a limited exemption and has applied it when legitimate and honestly held religious beliefs are demonstrated. The requirement to divert dues which would otherwise go to the union to a charity is imposed to deter individuals from seeking exclusion from dues solely to avoid the cost of paying dues.

3. The discussion paper considers a broader basis for exemption from dues, including in cases of financial hardship, status as a student or being a minor. The discussion paper implies that an exemption from dues for one of these new reasons would be absolute, would not require diversion of dues to a charity. This would create an incentive to claim a reason for an exemption. The SLRB would likely be flooded with claims for exemptions which it would have to weigh and consider, thus imposing a significant administrative burden on the Board.

4. A member who objects to paying dues in accordance with the formula established by the Constitution of his or her union and who does not meet the religious exemption test has alternative ways of raising his or her concerns about dues directly with his or her union. S/he may use internal processes, including processes to amend the dues structure or to defeat current elected leaders, or s/he may use legal processes to change a dues structure.

5. There is no principled basis on which students, persons having financial hardship, and minors who are covered by collective agreements and therefore benefit from its application should be exempt from paying dues and thereby sharing the cost of the benefit they receive.

Administration

1. The SLRB currently has a Chair and one Vice Chair, and a number of members representing employees and employers. Previously, there were two Vice Chairs in addition to the Chair to hear applications and complaints that arise before the Board. The Board complement must be restored so that it is adequately resourced to deal with applications and complaints in a timely manner.

2. USW supports the establishment of a procedure for the selection of Vice Chairs which is transparent, which provides unions with an opportunity to participate and have meaningful participation in the selection process for new Vice Chairs.

3. USW submits that it would be inappropriate to make the effectiveness of a collective agreement or an arbitration award conditional upon the filing of the agreement or the award with the Minister. To make important rights dependent on a requirement to file a document or upon the timing of the filing of a document could give rise to uncertainty about the establishment of such rights and lengthy litigation could result.

Scope of the Labour Standards Act

1. The purpose of minimum standards legislation, including the Labour Standards Act ("the Act"), is to establish a floor for minimum terms of employment below which no employer is permitted to go. Minimum standards legislation is remedial and the effect of its broad application and rigorous enforcement is obvious: it ensures that basic protections like minimum wage and hours of work are guaranteed, and it ensures that employers can not compete among themselves to drive down wages and other employment benefits. Strict application and enforcement of minimum standards laws ensures economic stability and protects vulnerable workers.

2. Because minimum standards laws have a remedial purpose, their scope should be described as broadly as possible. Limits or exceptions should be narrowly framed, and only where specific and compelling policy-based justifications can be made.

3. USW submits that the Act should be amended to eliminate all exceptions or qualifications to its application and its scope.

Employment Agencies

1. The current federal government has adopted a policy which facilitates the immigration to Canada of temporary foreign workers. The application of this policy has resulted in an unprecedented number of temporary foreign workers coming to work in Canada. The government continues to amend its policies to make it easier for employers to bring temporary foreign workers to Canada.

2. USW supports increased immigration to Canada. We are a nation of immigrants and our history is built on immigration. The economic arguments in favour of continued increased immigration are irrefutable and Canada's social fabric is enriched by increased immigration.

3. However, USW opposes a policy of immigration which facilitates exploitation of foreign workers and harms workers who are resident in Canada. The federal government's current immigration policy authorizes foreign workers to come to Canada for finite periods, makes it difficult for them to become permanent residents, and limits their employment options. Temporary foreign workers are vulnerable to exploitation by their employers and this creates downward pressure on wages and working conditions for all workers. The federal government should change its program to eliminate the exploitation of foreign workers and the harm to workers who are already resident in Canada. But provincial governments can also take steps, within the scope of their constitutional authority, to eliminate the exploitation of temporary foreign workers. USW supports legislation that protects workers from unscrupulous employment agencies and immigration consultants.

4. The existing provisions in the Act which address employment agencies are outdated and inadequate to meet current needs. The province of Manitoba has established the Worker Recruitment and Protection Act ("WRPA"), which provides a comprehensive code for protection of temporary foreign workers. Among other things, it requires that employment agencies which recruit foreign workers and employers who seek to recruit foreign workers must be licensed and regulated. The law in Manitoba prohibits agencies or employers from charging fees from a worker for finding work for them. It provides that a license to recruit or employ foreign workers may be withheld or not issued if the employment agency or employer contravenes the Act. Employment agencies and employers must keep complete and current records. The Act is enforced through Employment Standards Officer, and penalties for non compliance with any aspect of the law can include significant fines.

5. USW submits that new provisions, modeled upon the WRPA should be included in the Act to protect temporary workers in Saskatchewan.

Hours of Work

1. As stated above, the purpose of minimum standards protection is to ensure that all workers, but in particular the most vulnerable in the workplace, are protected from exploitation. This purpose is undermined when exceptions to those protections can be "negotiated". Workers who are not represented by unions often feel as if they have no choice but to agree to their employer's request that they work excess hours. They are not in a position to negotiate with their employer, because their employer exerts significant economic power over them. Accordingly an agreement between a non represented employee and his or her employer is not an agreement between equal parties and should not be given any weight.

2. Excessive hours of work have been linked to health and safety risks. That is why hours of work are limited. To permit additional "flexibility" with regard to hours of work would increase pressure on all workers, but particularly those without a union, to agree to a work schedule which may jeopardize their health and safety, and put the health and safety of their fellow workers at risk.

Leave Provisions

1. The Act presently provides for the following leaves: maternity leave (18 weeks, unpaid); adoption leave (18 weeks, unpaid); parental leave (37 weeks, or 34 weeks if the employee also takes maternity or adoption leave); bereavement leave (up to five working days); sick leave (after 13 weeks of employment, unpaid leave of variable duration); compassionate care leave (up to 16 weeks, unpaid); reservists leave (for duration of service, unpaid) and jury leave (for duration of jury service, unpaid).

2. Workers today are subject to unprecedented pressures to meet the demands of their workplaces while simultaneously attending to the needs of their families. In many cases, cutbacks to public services and the aging of the population mean that workers with children have child care responsibilities and at the same time, they must care for aging parents and elderly relatives.

Minimum standards legislation must change to meet the changing needs of a workforce struggling to balance family and work responsibilities.

3. As a consequence of the aging population and advances in medical science, there is an increased need for organ donation. As a result, some provinces (Manitoba, Ontario and Quebec) have amended their minimum standards laws to provide for organ donation leave of 13 weeks for a worker who undergo surgery to donate an organ.

4. Saskatchewan and Alberta are the only jurisdictions in Canada which have not amended their minimum standards laws to permit employees to take unpaid family or personal emergency leave. In other jurisdictions, employees are entitled to leave for personal injury or illness, or an urgent matter or injury or illness of a family member. In some jurisdictions, employees are entitled to leave when civil authorities have declared a state of emergency. The inclusion of family or personal emergency leave in the Act promotes a better work/family balance. Workers should not be penalized, or feel they have to make up excuses to take time off work in order to deal with pressing family or personal concerns.

5. Ontario and Nova Scotia grant leave to residents in order to participate in citizenship ceremonies. For any province like Saskatchewan which has a rich history of immigration and which actively promotes itself as a target for immigrants through the Saskatchewan Immigrant Nominee Program, citizenship leave is an important and tangible recognition of the value of immigration.

6. The leave provisions in the Act are not adequate to meet the needs of current residents of Saskatchewan. For the reasons given above, the Act should be amended to add organ donation lave, personal and civil emergency leave, and citizenship leave.

Notice Provisions

1. The Act requires employers to provide notice of termination of employment; however the Act contains no severance pay requirement.

2. Severance pay is required by law in Ontario and in the federal jurisdiction. It requires that employers pay an amount to an employee when s/he is involuntarily terminated from employment. The payment recognizes that employees contribute to their employer's economic success over the period of their employment and it is based on length of service with the employer.

3. In an advanced economy, it is reasonable that an employer must pay severance pay when an employee is involuntarily terminated from employment. In addition to recognizing the employee's valuable contribution to the enterprise, the payment eases the burdens associated with the end of a workers' employment for the worker, and his or her family.

4. USW submits that the Act should be amended to require in addiction to notice of termination of employment, the payment of severance pay of one weeks wage per year of service to employees whose employment is terminated by their employer without cause.

Minimum Wage

1. The discussion paper asks if employers should be permitted to continue to pay disabled workers less than minimum wage. The paper says that this language was originally included in the Act for the purpose of assisting disabled workers from gaining work experience. The objective of encouraging employers to employ workers with disabilities is laudable. However, it can be achieved in a way that does not exploit a group of workers contrary to the spirit and the letter of the Human Rights Code.

2. USW most strongly objects to this provision of the Act. It should be removed. There is no justification for paying any worker less than the statutory minimum wage, including on the ground that they are disabled.

Equal Pay

1. Saskatchewan is among a small minority of Canadian provinces that has not passed pay equity legislation. Rather than amending the Act's equal pay provisions, the government should introduce free-standing pay equity law to ensure that gender based pay differences are eliminated through the application of gender neutral job evaluation systems.

2. Paying men and women different wages to do the same jobs is discriminatory. Laws that require "equal pay for equal work" address this direct and obvious form of discrimination. However, the purpose of pay equity laws is broader: they address the wage gap between men and women that is caused by many years of systemic discrimination which has resulted in many female dominated jobs being undervalued and therefore underpaid when compared to similarly valued (but different) male dominated jobs.

3. Pay equity laws close the wage gap between men and women by requiring employers (and unions, in workplaces where the employees are represented) to evaluate male and female dominated job classes based on gender neutral job criteria. If wage disparities exist between similarly valued male and female job classes because the employees in the female job classes are paid less than those in the comparable male job classes, the rate for the female job classes must be adjusted upwards. Once the wage disparity is eliminated, the equality of pay for the job classes must be maintained.

4. The "equal pay" provisions in the Act are limited in their appreciation to one workplace. Pay equality legislation in other jurisdictions contains mechanisms for comparing male and female dominated job classes where there is no comparator of equal value in the workplace. These mechanisms are known as proportional or proxy comparators.

5. The current provisions of the Act are not adequate. The government should pass comprehensive pay equity legislation in order to ensure that the wage gap which is attributable to systemic discrimination in Saskatchewan workplaces is eliminated, and that pay equality is maintained in the future.

Conclusion

In conclusion, we thank you for this opportunity to provide submissions on behalf of USW, its Local Unions and its proud membership throughout the province of Saskatchewan. We hope that this is the beginning of a meaningful process of consultation about workers' rights in Saskatchewan, and that our union will have further opportunities to elaborate upon its positions as set out in this submission and on other issues as may be necessary.