Bill C-4 and the attack on workers' health and safety

HUMA

Subject Matter of Clauses 176 to 238 (Divisions 5 of Part 3) of Bill C-4

Submission by Unifor
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Unifor welcomes the opportunity to submit our views to the House of Common's Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities. However, it is with disappointment that we take this opportunity to respond to the health and safety provisions in the Economic Action Plan bill C-4.

Unifor represents over 80,000 workers in federally regulated sectors covered by the Federal Labour Code including rail, transportation, airlines, telecommunications etc.

There is a long history of stakeholders (employers and labour) working together to recommend changes to the Federal Labour Code. The proposal to water down a worker's right to refuse unsafe work is a serious deviation from this longstanding practice.

Right to Refuse

The government maintains that 80% of all work refusals are not justified and frivolous. Our experience is that workers are reluctant to exercise a work refusal due to fear of retaliation by the employer, despite legislation purporting to protect that worker.

Far from progressing frivolous complaints to HRSDC, we are of the opinion that workers are reluctant to invoke their right to refuse even in the face of bona fide dangerous work. Therefore, instead of watering down safety rights around unsafe, we should be enhancing them, ensuring workers feel safe from reprisal by reporting unsafe work. In addition, we should be enhancing enforcement and inspection, not rolling back the clock on hard-fought health and safety gains.

Work Refusal Investigation

The additional sections proposed in Bill C-4 to section 128 present an extended formal process to the investigation of work refusals by requiring written reports;

1. The employer will prepare a written report. (New 128. 7.1)
2. The workplace committee will prepare a report (new 128 10.1)
3. The employer may provide further information and request reconsideration (New 128 10.2)
4. The employer shall make a decision (new 128.13)
5. If employer disagrees, it will notify the worker in writing (new 128 15)
6. If worker continues refusal, the employer will notify Minister and provide report (New 128 16)
7. Minister will decide whether to continue.

The new emphasis on the immediacy of the danger to the worker is lost in the new prolonged procedure for addressing that danger. Formerly the legislative process lent itself to taking minutes or hours to determine if the Safety Officer was required, however the new proposals, with its emphasis on written reports, would

appear to take hours or days, especially in cases of 24/7 operations such as railways.

Should the employer choose to act in a manner that is frivolous, vexatious or in bad faith, it could prolong this process almost indefinitely. To make matters worse, the deletion of section 127.1(7) *Stoppage of Activity* would also enable the continuation of the work in question during this entire administrative period even in cases of real and present danger. It is our considered opinion that this kind of delay process will further serve to discourage workers from reporting dangerous and unsafe work.

Redefining "Danger "

Section 122(1), definition of "danger "

Present definition:
"danger" means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system;

Proposed definition:
"danger" means any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered;

The present definition of "danger "enables a worker to determine their destiny using a pragmatic and "reasonable" expectation of injury or illness immediately or in the future.

In the new definition of danger the words "imminent or serious threat" provide an unending opportunity for debating the quantum of risk of the work at hand, supplanting the real issue which is whether or not a danger exists to the worker.

The present definition of danger gives reference to "whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system" thereby recognizing the historical fact that almost all chemical agents found to be harmful to humans were proven using exposed and affected workers as examples. This fact is recognized in the current language.

The proposed definition ignores what is now accepted science as to the effects of hazardous substances on the body and once again challenges the worker to prove a cause and effect in the short term, rather than recognize the latency period of

many illnesses caused by exposure to hazardous substances in the workplace. This is an unacceptable regression in the protection of workers in Canada today.

The Internal Responsibility System

Proposed for repeal is section 127.1 (7) which states:

(7) If the persons who investigate the complaint conclude that a danger exists as described in subsection 128(1), the employer shall, on receipt of a written notice, ensure that no employee use or operate the machine or thing, work in the place or perform the activity that constituted the danger until the situation is rectified.

As previously mentioned in the right to refuse, the deletion of this section removes the joint committee's ability to ensure that the dangerous work will not continue even when the committee has established a danger exists.

If the employer does not agree, the employer may assign the work to other employees without restrictions until the complaint's progression to the Minister under section 129. This period may now be an indeterminate duration in order to comply with the written report provisions of section 128.

It is clear that this amendment to the code will increase the risk of injury and death to workers while preserving the employer's ability to continue the work unabated. There is little doubt that the proposed changes look to enhance what safety experts refer to as paper or process safety as opposed to proactive health and safety that leads to the development of an improved safety culture.

Repeal of references to "Health and Safety Officer "and replacement with "Minister "

Safety officers are seen as independent experts in administering decisions to ensure compliance with legislation and ensure the safety of federal workers.

The replacement of HSO references with "Minister "removes all powers of these experts to act independently outside of the political sphere. The minister now has complete control over the appointment of any person to administer the code and conduct investigations.

To instill confidence in the impartiality of the administration of the act, the reference to Health and Safety Officers must be maintained.

Why we need strong health and safety regulations and laws:

In *R v. Wholesale Travel3*, Cory J stated:

The objective of regulatory legislation is to protect the public and broad segments of the public (such as employees, consumers and motorists to name a few) from the potentially adverse effects of otherwise lawful activity. Regulatory legislation involves a shift of emphasis from the protection of individual interests and the

deterrence and punishment of acts involving moral fault to the protection of public and social interests. While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care.

Justice Cory also noted that "regulation is absolutely essential for our protection and well-being as individuals and for effective function in society. It is properly present throughout our lives. The more complex the activity, the greater the need for and the greater our reliance upon regulation and its enforcement … of necessity society relies on government regulation for its safety".

Certainly, in the case of worker occupational health and safety in high-risk industries - and indeed public safety – strong regulation and enforcement is absolutely critical to both safety of those who in such industries and the safety of the general public.

For example, at CP Rail, despite ever increasing pressures to increase production and perform new work processes, in 2013 to date our membership of 2000 workers under federal jurisdiction progressed two (2) work refusals under section 128, both resulting in directions under Section 145(2)(a) for the employer to stop the dangerous activity.

Therefore, we would argue that any attempt to water down the language in such important legislation is unacceptable. Laws and regulations are only strong as the education and enforcement that go with them and how those laws and regulations are practiced in the workplace and enforced by those charged with the protection of our well-being as workers. We cannot rely totally on employer to make our workplaces safe. Because employers have by their existence a goal that competes with safety – that is to make a profit. We should accept that as a given and build from there. This also why we need vigilant and proactive government involvement this does not happen by watering down rights and in essence the legislative authority those charged with enforcing our safety have.

Conclusion:

Since the year 2000, while lost time injuries in Canada have been steadily declining, fatalities have remained fairly constant, with over 900 deaths each year. It must be noted that the current legislation, with its superior protections for workers, has failed to reduce these fatalities. This begs the question of why we are not instead looking for ways to enhance worker occupational health and safety rather than eroding their workplace safety rights.

Therefore, we oppose the changes to the Health and Safety provisions contained in Bill C-4.