

**Submission to the Additional Hours
Consultation, Saskatchewan Labour**

**Regarding the Most Available Hours
Provision**

of the Labour Standards Regulations

by CUPE Saskatchewan

January 28, 2005



INTRODUCTION

CUPE Saskatchewan welcomes this opportunity to present our views on the government's proposals to proclaim "Most Available Hours" provisions in the *Labour Standards Regulations*.

CUPE represents close to 26,000 workers in public sector workplaces in Saskatchewan. About 29% of our membership in the province has part-time status based on information reported by our locals. This is higher than the 20% of the Saskatchewan workforce that is part-time.

Our membership profile shows that part-time workers are not exclusive to the private sector. A large number of public sector workers work in part-time, casual or seasonal positions. The Statistics Canada *Labour Force Survey* indicates that 22.1% of women in the public sector work part-time and 8.2% of men in the public sector work part-time¹.

The part-time workers who are members of CUPE work in a variety of sectors: health care (part-time and casual), libraries, school boards (especially in rural school divisions), universities (especially teaching assistants, sessional lecturers, food services workers), municipalities (seasonal workers, casual workers and lifeguards), daycares and group homes.

CUPE has been able to address the vulnerability of some of our part-time and casual workers through the collective bargaining process. For example, the provincial health care agreement sets out a process for call-in for relief work based on seniority, which is what the Most Available Hours section of the *Labour Standards Regulations* should address. Under the provisions of the agreement, casual and part-time employees who would like to work more hours can indicate this to the employer and they will be contacted on the basis of seniority when additional hours become available. This process is fair and it works.

The health care agreement also limits the creation of part-time positions and calls for the "maximization of full-time hours." Some of our municipal locals have also addressed the issue of part-time hours for lifeguards in bargaining by creating more full-time lifeguard positions (e.g., City of Saskatoon).

¹ Andrew Jackson, "Gender Inequality and Precarious Work: Exploring the Impact of Unions Through the Gender and Work Database," Research Paper #31, Canadian Labour Congress, September 2004, p.27.

WHY WE NEED MOST AVAILABLE HOURS

- **Protect part-time workers who do not have bargaining clout**

It is important to point out that where we have achieved some protections for part-time workers, it has been in sectors that have significant bargaining strength. Our provincial health care agreement covers 14,000 health care workers; therefore, their ability to bargain protections for part-time and casual workers is greater than in other sectors. Entrenching Most Available Hours in the *Regulations* will provide that minimum floor that unions can improve upon in the collective bargaining process.

We expect that the workers who would benefit most from Most Available Hours protection would be workers in group homes and day cares. Despite increased coordination in this sector, it has been difficult for unions to successfully bargain improvements in wages, benefits and working conditions. The lengthy seven-month strike for a first collective agreement at Deer Park Villa in Ituna had seniority rights as one of the central issues in the labour dispute. This illustrates how difficult it can be to negotiate seniority rights in collective agreements.

Food services workers in the university sector, who often work inconsistent shifts, and library workers who try to make up full time hours by working at different branches, would also benefit from this legislation.

- **Improve the working lives of part-time workers**

The business lobby has been misinforming the public about the impact of this legislation on part-time workers. They have implied that the majority of part-time workers are students or people who prefer to work part-time. They state that this legislation would only benefit 4% of the workforce.

The fact is that this legislation will not impact workers who do not wish to increase their hours of work. Just over 75% of Saskatchewan part-timers chose to work part-time in 2003 because of personal or family responsibilities, going to school or for personal preference. But almost 25% of part-timers in the province did want full-time work².

² Statistics Canada Labour Force Survey, "Part-time employment by reason for part-time work." Obtained from Saskatchewan Labour.

It is also important to point out that the number of part-time workers who would prefer to work full-time has been increasing over the years. Between 1975 and 1994, the number of part-time workers in Canada who wanted a full-time job but could not find one increased from 11 to 35 per cent³. These figures could have increased since that 1998 study was released.

A study by Doug Elliott for Saskatchewan Learning revealed that about 30 percent of Saskatchewan's part-timers hold multiple part-time jobs⁴. This is a significant number of workers who are juggling several jobs to make ends meet.

The majority of part-time jobs are characterized by low pay, no or few benefits, and job insecurity. In 1995, two out of every five part-timers nationally earned less than \$7.50 an hour and less than 20 per cent of part-time workers had access to workplace benefits⁵. One-third of part-time employees work irregular hours and therefore receive paycheques of varying amounts.

The intent of the Most Available Hours provision should be to improve the working lives of part-time workers who want to increase their hours of work, and to assist those who do not want to hold multiple part-time jobs in order to make a living. The intent of this legislation should be to limit employers from creating additional part-time jobs when they already have a significant number of part-timers in the workforce who wish to access additional hours.

- **Improve working conditions and income of women**

National statistics show that more women tend to be concentrated in part-time jobs than men. In 2001, 69 percent of part-time workers were women and 31 percent were men. Men who work part-time are more likely to be younger and employed part-time while they are students: in 2000, over 56 percent of male part-timers were aged 15 to 24, and 76 percent of them said they chose to work part-time because they were going to school⁶.

Only 31 percent of women working part time were in the age 15 to 24 category with 72 percent in this age group saying they chose part-time work because they were going to school. Therefore it is more likely that men working part-time are

³ Grant Schellenberg, "The Changing Nature of Part-time Work", The Canadian Council on Social Development, Ottawa, 1998, page 3.

⁴ Referenced in Dave Broad and Fern Hagin, "Women, part-time work and Labour Standards: The Case of Saskatchewan," Social Policy Research Unit, University of Regina, December 2002, page 11.

⁵ Schellenberg.

⁶ Broad and Hagin, page 5.

doing so because they are students but this is not the case for women. Women working part-time are spread across the age groups. One third of female part-timers aged 25 to 44 said they chose to work part time because of childcare responsibilities. One quarter of all female part-time workers in Canada, however, said they wanted full-time work but could only find part-time work⁷.

The Most Available Hours provision will benefit women who are more likely to be working part-time and wishing to work more hours.

It will also protect women who may be subjected to sexism when decisions are made about the distribution of additional hours in the workplace. In focus groups with part-time workers in the province, researchers Dave Broad and Fern Hagin noted that “a number of participants complained of favouritism in allocation of hours to part-timers, some relating it to problems of sexism and harassment. In some cases this involves giving more hours to males with less seniority than their female co-workers. One woman said: ‘I’d been there for six months and they hired another person. He was working 40 hours a week when I was begging for hours.’”⁸

- **Improve eligibility for unemployment insurance**

Part-time workers are in a precarious situation. They struggle to make ends meet, their employment is often insecure or non-permanent, and if they are laid off, they are less likely to be eligible for unemployment insurance.

In 1997 the federal government changed the rules for unemployment insurance and switched from a weeks-based system to an hours-based system. Between 1990 and 2001, the percentage of unemployed eligible for unemployment insurance dropped from 74% to 39%.

Women and youth, who are more likely to work part-time hours, were impacted the most by the changes to UI rules. In 1996, 17% of unemployed young women aged 15 to 24 received UI and now only 11% are eligible. The percentage of men aged 15 to 24 receiving UI dropped from 25% to 20% between 1996 and 2001. The percentage of men receiving UI in 2001 was 44% compared to only 39% of women.

⁷ Ibid., pp 5-6.

⁸ Ibid., pp. 16-17.

In Saskatchewan, the numbers are more disturbing. Whereas the number of unemployed men receiving UI dropped from 41% to 40% between 1996 and 2001, the number of women receiving UI dropped from 32% to 25% in the same period. Only 17% of Saskatchewan men aged 15 to 24 and 8% of women in that age category were eligible for UI in 2001⁹.

The average workweek of part-time workers, according to the Canadian Labour Congress, is 16.5 hours. The average weekly hours required to be eligible for EI is now 35, thereby excluding the majority of part-time workers from unemployment benefits.

Most Available Hours will allow part-time workers to increase their hours and improve their eligibility for unemployment benefits should they become temporarily unemployed. Workers who temporarily lose their job and are ineligible for UI benefits may have no choice but to turn to social assistance from the province.

The provincial government should also pressure the federal government to reduce the hours required to qualify for unemployment benefits.

CHALLENGING THE CONCERNS RAISED BY EMPLOYERS

We realize that the government is under tremendous pressure by business groups and certain large employers who are opposed to this legislation. We are confident that the Minister of Labour and her staff have the facts and evidence to counter the erroneous claims by the business lobby.

We would like to comment on a few of the concerns that have been raised in the media.

- **Claim #1: This legislation will create red-tape and reduce flexibility of employers:** The application of call-in by seniority in the CUPE/SAHO collective agreement has been administered without tremendous red tape or difficulty. Many other employers in both the public and private sector have established a process of scheduling by seniority. Employers already have to administer payroll, keep track of employee records, and schedule work assignments. The only restriction on the employers will be limiting

⁹ Canadian Labour Congress, "Falling Unemployment Insurance Protection for Canada's Unemployed," CLC, March 2003.

their ability to offer additional hours that become available to staff on a subjective basis.

- **Claim #2: This legislation undermines existing bargaining relationships in unionized workplaces.** The *Labour Standards Act and Regulations*, along with other pieces of labour legislation, establish the minimum rights and working conditions of workers in the workplace. This does not preclude unions and their employers from negotiating better than provisions in a collective bargaining agreement. It is interesting to note that this argument was not made when other improvements to labour legislation, such as the inclusion of harassment free workplaces in the Occupational Health and Safety legislation, were made.
- **Claim #3: This legislation will impact on Duty to Accommodate and Diversity Programs.** The duty to accommodate a disabled employee in the workplace falls under human rights legislation that takes precedence over provincial legislation. To state that this legislation will prevent employers from accommodating disabled employees is completely false. The *Canadian Charter of Rights and Freedoms* and the *Saskatchewan Human Rights Act* take precedence over provincial legislation.

Employment Equity programs are voluntary in the province and statistics from the Human Rights Commission show that many employers have not been committed to improving diversity goals. To suddenly claim that the Most Available Hours provision will hamper their ability to implement employment equity, when their track record is already appalling, is nothing more than a diversion tactic.

- **Claim #4: This legislation will hurt an employer's ability to hire qualified employees.** The *Regulations*, as currently drafted, state that additional hours must be offered to the senior *qualified* part-timer. The person must have the qualifications and ability to do the work. We don't believe that the *Regulations* would require the City of Regina to offer additional hours as a lifeguard to the senior part-timer who happens to be an equipment operator. The senior part-timer would have to be qualified and would have to want to work additional hours.

RECOMMENDATIONS

1. **The *Most Available Hours Regulations* should apply to all workplaces in the province.** The government should remove the threshold of worksites with 50 employees because this will drastically reduce the scope of the *Regulations* and benefit very few part-time workers. For the public sector, workplaces such as group homes would be completely excluded from the legislation if the threshold of workplaces with 50 workers per worksite applies.
2. **The *Regulations* should apply to all public sector workplaces including third party agencies funded partially or entirely by government.** The government as employer and funder should set the highest standards with respect to the improvement and protection of part-time workers' rights and working conditions. In no way should the public sector be exempt or subject to thresholds.
3. **Expand the definition of what constitutes “temporary absence” to short term absences.** The current definition of additional hours in the draft *Regulations* is restricted to hours that become available as the result of:
 - i. the resignation, retirement, temporary absence, termination or death of an employee; and,
 - ii. an increase in the work being done.

The *Regulations* define “temporary absence” as “any employee absence that is expected to exceed two weeks” (such as during an extended illness or educational leave).” Short-term illnesses or absences from the workplace less than two weeks are not included even though shorter-term absences may generate the greatest proportion of ‘additional hours.’ If the *Regulations* define “temporary absence” as a period exceeding two weeks, the number of additional hours that will be made available to part-timers will be significantly reduced.

Temporary absence should be defined as an absence longer than three days.

4. **Protect the full-time complement in the workplace.** The allocation of additional hours to part-time workers should not in any way erode the total

number of full-time positions in the workplace. The *Regulations* should ensure that the hours of a full-time position that become available as a result of resignation, retirement, temporary absence, termination or death of an employee are not carved into pieces to be distributed to several part-timers. If a part-timer who wants full time hours has the seniority and skills to fill the full-time position, it would be more appropriate to then allocate her/his part-time hours to other part-timers to increase their hours of work. We believe that the intent of the legislation is to increase the number of full-time or near full-time positions in workplaces and the *Regulations* should be drafted in such a way to ensure that full-time positions are not eroded.

CONCLUSIONS

The struggle for improved working conditions for workers has never been an easy battle. The struggle for an 8-hour day, minimum wage, or health and safety protections were achieved after workers mobilized and pressured governments. If we were to review the protests of employers over the past century each time workers' rights were improved, we undoubtedly would see that, according to their dire predictions, the economy should have collapsed tenfold by now.

The enforcement of Most Available Hours will not negatively impact on businesses or the provincial economy as the business lobby claims. Major employers such as Canada Safeway, Credit Unions, Casino Regina, Westfair Foods, Sherwood Co-op, Moose Jaw's Temple Gardens Mineral Spa, and the Howard Johnson Hotel have contracts with available hours provisions. The health care agreements between CUPE, SEIU and SGEU and the health regions also have call-in by seniority provisions. This legislation will not force employers to create additional hours for part-timers and any additional costs for scheduling will be negligible. Employers already have to maintain employee lists, administer payroll and schedule workers.

Part-time workers are some of the most vulnerable workers in our society. Their wages tend to be lower, they have no or few benefits, and they often have less job security. The 30% of Saskatchewan part-timers who hold multiple part-time jobs are juggling jobs to make a living. They could have provided years of valuable service to an employer but never get an opportunity to work greater hours because their employer prefers to hire another part-time employee instead. This is unfair.

We applaud the government's intentions to assist part-timers who want to work more hours up to full-time hours. Saskatchewan has the second highest proportion of part-time workers in the country after British Columbia. This legislation will have a significant and meaningful impact on part-time workers who want more hours to earn a better income.

This legislation is about fairness in the workplace. Employers are already offering additional hours to their employees when they become available. What subjective factors are being considered for the decisions as to who is offered those hours? This legislation will establish a system of fairness, in which senior part-timers who want additional hours will be offered the hours. This will eliminate favouritism or discrimination as a factor in those decisions.

It will also challenge employers to create decent jobs instead of part-time McJobs with low pay and no benefits.