

LABOUR MANAGEMENT REVIEW COMMITTEE

April 20, 2011

Honourable Jennifer Howard
Minister of Labour and Immigration
Room 317,
Legislative Building
Winnipeg MB R3C 0V8

Dear Minister:

As requested on January 31, 2011, The Manitoba Labour Management Review Committee (LMRC) would like to thank you for the opportunity to review and provide feedback on proposed legislation to cover essential services during a work stoppage in health care, *The Essential Services (Health Care) Act*.

The LMRC has reviewed the issue and unanimously agrees on the appropriateness of such legislation.

Thank you to the members of the LMRC for their timely consideration on this issue and to the staff in the Department of Labour and Immigration for providing assistance to the Committee on these matters.

Sincerely,

Original signed
Kevin Rebeck
Labour
Caucus Chair

Original signed
Michael Werier
Chairperson

Original signed
Peter Wightman
Management
Caucus Chair

Enclosure

cc: Members of the Manitoba Labour Management Review Committee

REPORT OF
THE MANITOBA LABOUR MANAGEMENT REVIEW COMMITTEE

Review of Proposed Legislation to Cover Essential Services During
a Work Stoppage in Health Care

April 20, 2011

MANDATE OF THE LABOUR MANAGEMENT REVIEW COMMITTEE

The Manitoba Labour Management Review Committee (LMRC) was tasked with conducting a review of proposed legislation to cover essential services during a work stoppage in health care, *The Essential Services (Health Care) Act*.

It is proposed that the health care sector be covered by separate essential services legislation that would provide for a system of negotiated agreements respecting services that must be maintained during a work stoppage. This would create more balance and fairness between the parties in determining essential services to be maintained through negotiation. An overriding principle of the proposed legislation is that no work stoppage would occur in any health care facility that did not have an essential services agreement in place to protect those vulnerable citizens that depend on these services.

A proposal for this legislation was originally made to the Government of Manitoba by employers and unions in the health care sector. Consultations respecting the proposal were initiated in 2008.

HIGHLIGHTS OF PROPOSED LEGISLATION:

Coverage

- The legislation would apply to the following employers involved in the delivery of health services:
 - a person or organization that owns or operates an institution or other facility designated as a hospital by regulation under *The Health Services Insurance Act*
 - a person or organization that owns or operates a personal care home as defined in *The Health Services Insurance Act*
 - a regional health authority established or continued under *The Regional Health Authorities Act*
 - St. Amant Centre
 - CancerCare Manitoba
- Provisions will specify what must be contained in, and what issues must be covered by, an essential services agreement, providing clear guidance to the parties.

Provisions of Agreement

- The Act will clearly specify when an agreement must be negotiated. This emphasizes that each workplace must have an agreement in place before any potential work stoppage.

- The minimum requirements for such an essential services agreement are as follows:
 - it must identify the work functions that constitute essential services
 - it must identify the classifications of employees, and the number of employees in each classification, who will be required at any one time to perform essential services during a work stoppage
 - it must provide for a method by which employees competent to perform essential services will be assigned to perform those services during a work stoppage
 - in order to allow the employer to respond to an unanticipated increase in the need for essential services during a work stoppage, the agreement must set out a mechanism for identifying and assigning additional employees identified within the classification(s) who will be required to perform the work functions that constitute essential services
 - in order to allow the employer to respond to an emergency during a work stoppage, the agreement must set out a procedure for
 - identifying additional work functions as essential services, and
 - identifying additional classifications of employees and the number of employees in each classification who will be required to perform those functions in an emergency

- Under the existing Act, an essential service agreement could be terminated by either party if a collective agreement is in effect. The proposed legislation will require an essential service agreement to be in place at all times.

- The proposed legislation would provide for conciliation services of the Department of Labour and Immigration to be available to the parties to assist in the conclusion of an essential services agreement.

- The employer or the union may request the minister responsible for *The Labour Relations Act* to appoint a conciliation officer under section 67 of that Act or a mediator under section 95 of that Act to assist them to conclude an essential services agreement. In that case, the provisions of *The Labour Relations Act* respecting conciliation and mediation apply, with necessary changes.

- Under the proposed legislation, an essential services agreement is only terminated for purposes of updating or negotiating a new one. This will allow the agreement to take into account any changed circumstances at the workplace.

Arbitration

- The proposed legislation will provide for binding arbitration in those situations where the parties cannot agree on an agreement. This replaces the process under the existing *Essential Services Act* whereby the employer can unilaterally determine issues relating to essential services.

- In the proposed legislation, an arbitrator or an arbitration board will determine the agreement if the parties cannot agree. Under the existing *Essential Services Act*, the employer unilaterally issues a notice to employees of services that the employer determines to be essential.

Application to Labour Board

- Under the existing *Essential Services Act*, where there are concerns regarding essential services, the review mechanism with the Labour Board is very limited. The Board only

has the power to review and vary the number of employees that must work in each classification that the employer has unilaterally designated as essential.

- The new provisions will allow either party to apply for arbitration of any concerns relating to the implementation of an agreement. Where an arbitrator is not available or cannot be agreed upon, the Labour Board can settle any dispute.
- Any decision by an arbitrator or the Board must be made within 48 hours of a party applying. Under the existing Act, the Board has 14 days to determine the issue of number of employees.

Work Stoppages

- The proposed legislation will make it clear that an essential services agreement must be in place before any work stoppage may commence.
- The proposed legislation would require the parties to a collective agreement to provide **7 days** notice of a strike or lockout. The intent is to provide the other party with the time to ensure that they can comply with any requirement of the essential service agreement. Under the existing Act, and *The Labour Relations Act* generally, there is no requirement to provide notice.

The LMRC has reviewed the above proposals and consensus support was achieved.