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Centre for Future Work

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Exploring a *Fair Pay Agreement* Framework for Canada

BACKGROUND: NEW ZEALAND *FAIR PAY AGREEMENT ACT*

Collective bargaining for sectoral
(industry or occupation-wide)
minimum terms of employment

*Reflects “wage board” / “wages
council” / “workers’ board” form of
sectoral bargaining.*

In force December 2022

Rejects low-cost labour model producing ‘race to the bottom’ and stagnating productivity

- Employees benefit:
 - Improve wages and employment conditions
 - reduce employee harm, vulnerability and disparities
 - increase worker bargaining power and strengthen labour market

- Employers benefit:
 - “Level the playing field” for terms of employment

FAIR PAY AGREEMENTS FOR CANADA?

*Informal working group
exploring an FPA framework for
the Canadian context*

Exploratory set of ideas

***Objective:**
develop a “model law” and
supporting rationales for
adaptation by stakeholders to
particular contexts*

Guiding principles:

- Sector standards to be bargained by democratically selected and accountable bargaining agents.
- Must not interfere with existing collective bargaining regimes and rights: serve as a floor for collective bargaining under existing regimes.
- Apply to all workers in an employment relationship – including dependent contractors and gig workers.

Intended to promote negotiated sector-wide standards – to remove key employment terms and conditions from competition.

OVERVIEW OF SYSTEM

KEY ELEMENTS:

- Broad application to workers
- Not apply to sectors with: high union density or existing sectoral bargaining
- Non-majoritarian test for application to initiate sectoral bargaining
- Sector-wide bargaining between union council and employer council for FPA
- FPA is a sector-wide “floor”
- FPA can coexist with collective agreements in sector

ADMINISTRATION:

- Separate legislation
- Ministries of Labour oversee and resource FPA negotiations and aspects of dispute resolution.
- Incorporate supervision of regime into jurisdiction of existing labour tribunals

ACQUIRING FPA BARGAINING RIGHTS: SECTORS

- **Sector** = bargaining unit

Industry or occupation based + geographic dimension.

- **Industry:** applicant union must describe the industry and each occupation in the industry in the proposed sector.

- **Occupation:** applicant union must describe the occupation, including a description of the work, in the proposed sector.

Geographic dimension: preference for larger, but sub-municipal possible.

Presumption in favour of approving sector.

ACQUIRING FPA BARGAINING RIGHTS: TESTS

Threshold test:

Applicant union demonstrates support of the lesser of:

10% of the sector workforce

OR

500 employees in the proposed sector

Public interest test:

For applications not meeting threshold test

Sector characterized by:

- low pay
- poor working conditions
- Precarity
- Low bargaining power

NOTICE AND COMMUNICATION FOR BARGAINING

- **Upon application:** all affected employers and union to receive notice.
- **Following certification:** MOL or equivalent responsible for notice & communications to all sector employees, including workplace and public notices.
- **Post-certification:** Employers required to provide union access to full employee list.
- Bargaining agent has the right to meet with all employees covered by FPA in each affected workplace.

COMMENCING BARGAINING

BARGAINING RESOURCES AND SUPPORTS

- Government provide research support & wage data. Potentially additional bargaining resources for parties.
- Government assistance identifying & communicating with employers and employees in sector during bargaining

LEGAL FRAMEWORK FOR BARGAINING

- Duty to bargain in good faith-with remedy to expand range of items to be sent to interest arbitration
- Employee and employer ratification (electronic) vote for negotiated agreements.

BARGAINING PARTIES

Union Council	Employer Council
Tribunal determines composition & dispute resolution inter se	
<p>Generally : Certifying union(s) + unions with pre-existing certifications in sector, upon application.</p> <p>Parties would have a timeline to organize themselves</p>	<p>Generally: All or some employers in sector</p> <p>Parties would have time to structure the Council</p>
Possibly weighted voting by Council members	

BARGAINING SUBJECTS

Adapt NZ “mandatory to agree” & “mandatory to discuss categories”

Mandatory to Agree

Wage rates, grid, escalations
Pension and benefits
Ordinary hours, overtime, scheduling
Holidays and Vacation
Coverage
FPA term: Initial term: 3 years;
Renewal Agreement: 3-5 years
Union member payments
Governance

Mandatory to Discuss

Layoff and recall
Leave entitlements
FPA objective
Skills & training
Health & Safety
Flexible work

Principle is: key economic terms & conditions

DISPUTE RESOLUTION

BARGAINING

Government mediation, including intensive mediation for first FPA
Rejection of agreement by members/employers

Mandatory interest arbitration

- Decides “mandatory to agree” items
- Upon application may decide “mandatory to discuss” items
- Parties can agree to arbitrate other issues
- Factors to be based on well established Canadian interest arbitration norms

NON-BARGAINING: SCOPE

Disputes over:

Sector scope (accretion, consolidation, status disputes; or

Overlapping FPA coverage;

Decided by labour/employment tribunal

DUES – UNION MEMBER PAYMENT

- Employees covered by FPA have the option to join union.
- If employee joins, employer must make mandatory union payment to employee equal to the amount of union dues.
- Union members receive representation in respect of FPA violations and enforcement and other rights and obligations of union membership.
- Duty of fair representation as a trade-off.
- Rationale is funding bargaining, dispute resolution, enforcement, benefit delivery

UNFAIR LABOUR PRACTICE PROTECTION

- The Model should include ULP protections found in Canadian Collective Bargaining Legislation:
 - Prohibition against interference in the formation of a union
 - Prohibition against discrimination, coercion, threats, or undue influence against employees engaged in union activity;
 - Freeze of terms and conditions of employment once application is filed until FPA concluded.

- ULPs adjudicated by Labour Tribunal.

ENFORCEMENT OF FPA

- Employee complaint, or union can bring enforcement complaint on behalf of employee.
- Complaints filed with MOL or equivalent
- Ministry officer order with appeal to Tribunal
- Costs, financial penalties (repeated/ serious violations), suite of remedies.

RELATIONSHIP TO EXISTING AGREEMENTS

- FPAs Act as a floor from which unions may negotiate better provisions in collective agreements for their members.
- Existing labour relations provisions covering organizing, certification and collective bargaining would remain.
- FPAs should not interfere with collective bargaining.
- FPAs cannot derogate from minimum standards.
- Hopefully friction with existing system diminishes over time.

SOME QUESTIONS AND ISSUES

What will be the main objections to this model?

- For Policy Makers?
- For Employers?
- For Unions?

What is a “sector”?

- Intent is to be flexible; do sub-provincial units create jurisdictional competition? How minimize?

What new resources are required to create and maintain the system?

- Degree of role of Minister and expanded capacity/powers of tribunal – how does state fund/take on role of initial organizing and communication; Does state involvement politicize?

Scope and effect on bargaining?

- Intent is to remove key terms from competition. What are trade-offs here? Do we wish to incent use of LRA?