LEVITT LLP
EMPLOYMENT AND LABOUR LAW

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January 16, 2018

Nancy Healey, CEO
St. John's Board of Trade
34 Harvey Road, 3rd Floor
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Dear Ms. Healey:

You have asked my opinion concerning the tentative collective bargaining agreement reached between the Province of Newfoundland and Labrador and its employees.

I am an author of six books in the field, editor-in-chief of the Dismissal and Employment Law digest, chaired the annual conference on Workplace Law for its first 10 years for the Law Society of Upper Canada and handled more successful cases before provincial Courts of Appeals and the Supreme Court of Canada than any lawyer either living or past. I spoke to the Newfoundland Law Society on my subject area about three years ago. I also have had a Workplace Law column in the National Post since it's inception. Finally I have practiced labour and employment law in eight provinces throughout my career and spend most of my time outside of Ontario, including collective bargaining and labour arbitrations.

You have delineated various concerns in your email of January 13, 2018 and asked whether those concerns are valid. Unfortunately, they are.

In negotiating an amendment to a collective agreement, the parties have two choices:

1. To change the collective agreement itself which means that that provision is permanently in place unless negotiated out in return for concessions from the other party in subsequent rounds of bargaining; or

2. Having it as a provision in a Letter of Understanding, separate from the collective agreement itself, such that it only has duration for the lifetime of the particular collective agreement in question.

The parties in this case have chosen the former for the layoff provision which means that those clauses have no sunset provisions and remain in the agreement permanently. Given their high value to the union, the union would require dramatic concessions from the employer in order to remove them, if they agree to remove them at

all. One would note, however, that a provision preventing layoffs would be of such overwhelming importance to union membership, once obtained, that leadership would never be permitted to negotiate that provision out of the agreement in subsequent rounds of bargaining. Only a long strike could potentially provide the government with sufficient bargaining power to remove it. But, of course, that begs the question as to why it would be negotiated in the first instance.

A number of the amendments, such as Article 15.04, the Letter of Understanding re: temporary employee conversion, and Post-Employment changes Benefits Eligibility could represent a significant cost increase to the employer. However, since I do not have the pre-existing agreement, I cannot comment upon them with any certainty.

The most egregious aspect of these amendments, which is entirely unprecedented in my experience of 39 years of practicing labour relations law across this country, is the Memorandum of Understanding re: Layoffs during the duration of the collective agreement.

Although it states that it is "During the duration of the collective agreement" in the title of the memorandum, the placing of that article in the agreement itself, without specifically delinineating that it expires at the expiry of the collective agreement in question (which it does not), ensures that then it will continue in each agreement's succeeding renewal. This article prevents any layoffs unless there is both a lack of work or the abolition of a position in a business as usual context **and** the province's motive is not to assist in reducing spending. In other words, unless work actually reduces or work changes such that a position is no longer required, government is ceding the flexibility to reduce the number of civil servants to deal with even the most crippling of deficits. Such guaranteed job security is unheard of. In addition to being unecomonic, this would be a message to potential lenders that the government of Newfoundland is fiscally irresponsible, is beholden to labour unions and, in any event, will likely not be in a position in the future to repay its debts. This will cripple the ability of the Province to borrow money at a reasonable rate.

The other item which is extraordinary in these amendments is paying severance to employees who have not been severed. Needless to say, this is not severance pay at all but a gratuitous gift to all civil servants with one or more years of service. It means that employees who ultimately resign to take other positions, retire or are terminated for cause will still have received severance. In all cases, it means that employees will receive severance potentially years before they actually would have been entitled to it, resulting in an increased unwarranted deficit in the period from April 1, 2018 to March 31, 2019. I have never seen such a provision.

It is difficult for me to envisage what could have led to these agreements as they make no labour relations sense and even less fiscal sense.

The Union may argue that it has taken a four year wage freeze in return. It hardly bears mention that the government would be dramatically better off offering even 2% increases in each year than providing the extraordinary benefits that it has. As well, after the four year wage freeze, there will be pent up demand for major increases in the next round of bargaining.

I would be pleased to discuss this further at your request.

Yours very truly,
Levitt LLP

Howard Levitt
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