Ontario Tories open door to 60-hour workweek

By a correspondent
30 March 2002

Recent changes to Ontario's labour standards have emboldened employers to press for a lengthening of the workweek, giving rising to a series of strike struggles.

Under Bill 147, which came into force last September, Ontario's Tory government removed longstanding limits on the length of the workweek. In the name of providing greater flexibility and choice, the Tories have given employers the right to ask workers to labour up to 60 hours a week without the need for special Ministry of Labour permission, and changed the way in which overtime pay is calculated to the detriment of workers. Under the Tories' "averaging" provision a worker could work 60 hours in a given week and not receive a dime in overtime pay.

Last December, 92 workers at ADM Agri-Industries of Windsor, Ontario, went on strike after the company demanded a 60-hour workweek. Then in January, workers at the Bath, Ontario, cement plant of Lafarge Canada Inc. struck over company overtime demands, including a requirement that they all carry pagers so management could summon them to work in the event of production difficulties. According to the president of Local 219-O of the Communications, Energy and Paperworkers Union, the average employee at the Bath plant currently logs three to four hundred hours of voluntary overtime a year—that is annually performs overtime equivalent to seven-and-a-half to ten additional 40-hour workweeks.

The Ontario Tories' Employment Standards 2000 Act rolls backs decades' old provisions that provided workers with limited, but nonetheless significant regulatory protection from employer demands and sets a precedent for similar attacks by other state and provincial governments across North America.

Legislation limiting the working day was a fundamental conquest of militant labour struggles going back to the early part of the 19th century. The first Canadian legislation giving protection to unions emerged in 1872 in the aftermath of an unsuccessful agitation for a nine-hour day—a common demand of the 1860s and 1870s in both Europe and North America. The eight-hour day was primarily a result of the struggles of the 1920s and 1930s.

That the eight-hour day is now under attack testifies both to the ferocity of the present big business offensive, and to the impotence and connivance of the trade unions and social democrats.

Under the new act, a business and its employees can "agree" that the mandatory workweek—that is the number of hours an employee must put in when requested or face possible disciplinary action—is 60 hours. Previously, a special permit was required if the mandatory workweek exceeded 48 hours. As before, overtime pay is to apply to hours in excess of 44 per week. However, this is subject to a barrage of exceptions and special arrangements.

Averaging agreements are the first of these exceptions and special arrangements. According to this section of the act, if the employer and the employee "agree" to do so, the employee's hours of work may be averaged over a period of not more than four weeks for the purpose of determining the employee's entitlement, if any, to overtime pay.

Each averaging agreement will have an expiry date not more than two years after the time of agreement—a date before which the agreement cannot be revoked unless both parties (employee and employer) "agree."

To add insult to injury the bill includes a section providing that employees may be compensated for each overtime hour by an hour-and-a-half of paid time off work at some point within 12 months of the workweek in which the overtime occurred. In other words, the

employer is free to ask (and the employee "free" to "agree") for the withholding of payment for labour until up to a year after the time the labour in question was performed!

A few examples: A worker might work 60 hours one week, 50 hours the next, 35 in the third week and 30 in the fourth week, and "agree" under the "averaging provision" to receive no overtime pay, instead of 22 hours overtime pay. A worker working 60 hours a week for three weeks, followed by a fourth week without work, might "agree" to receive only three hours worth of overtime pay (as opposed to 48!), and might also "agree" not to receive that pay for up to 12 months (at which point it will come in the form of paid time off).

Why would someone agree to be paid less? Bill 147 is based on the fiction that the contractual relationship between employer and employee is one between equals and into which the two parties "freely" enter. In the real world, of course, the employer and the employee stand on distinctly unequal ground: the worker who does not work goes without food, or is evicted, or becomes homeless; the capitalist, meanwhile, has a vast pool of persons at his disposal whose only means of livelihood is the sale of their labour-power.

Bill 147 gives employers a green light to use everything from suggestions that business is difficult or a promotion may be in jeopardy to the threat of layoffs and firings to coerce workers into "agreeing" to a mandatory 60-hour workweek and the "averaging" of overtime hours.

Furthermore, it should be remembered that the Tories have made these changes at a time when job security is largely nonexistent and the protection once afforded by unemployment and welfare benefits has been greatly eroded.

The Tories' gutting of Ontario's employment standards legislation is at a piece with their dismantling of the protections accorded workers under the Occupational Health and Safety Act.

Last summer, in an act that they portrayed as a piece of housekeeping legislation (Bill 57 or "The Government Efficiency Act") the Tories took a wrecking ball to the regulations governing workplace health and safety. There is no longer any requirement that government officials make on-site inspections when workers complain of unsafe working conditions. Under Bill 57, inspections can be carried out by telephone. Also, abolished is a requirement that an employer inform the Ministry of Labour whenever a new chemical or biological agent is introduced into the workplace. Bill 57 strips the provincial director of occupational safety of the power to order health and safety assessments of new chemicals. Last but not least, much of the regulatory regime governing occupational health and safety has been replaced by non-binding "codes of practice."

In an open letter to Premier Mike Harris, Ontario Federation of Labour President Wayne Samuelson warned that Bill 57 "will result in an increased number of deaths, injuries and illnesses." He also noted that the bill had been proclaimed law the very day that Harris had been called to testify at the inquiry into the Walkerton tragedy, which was a direct consequence of the government's dismantling of the regulatory regime governing water-testing. However, the pledges of Samuelson and other union leaders to mount a struggle to defend the gains in occupational health and safety, which were won as a result of worker mobilizations in the 1960s and 1970s, proved to be empty bluster.

Other recent Tory legislation, Bills 31 and 139, attacks the right of workers to organize in trade unions. Among other things, Bill 139 requires that notices be put up in all unionized workplaces describing the procedure by which employees can initiate the decertification of their union. Predictably, the amendments do not stipulate that signs describing the process by which a union is formed and certified be placed in non-union workplaces.