

October 4, 2011

Mr. Juan Somavia  
Director-General  
International Labour Organization  
International Labour Office  
4, route des Morillons  
CH-1211 Geneva 22  
Switzerland



Dear Director-General Somavia:

I am writing you on behalf of the National Union of Public and General Employees (NUPGE) and our Ontario Component, the Ontario Public Service Employees Union (OPSEU/NUPGE). It is our understanding that the ILO Committee on Freedom of Association will again be considering our complaint against the Government of Ontario (Case No. 2430 – Canada) at its November 2011 meeting.

We would like to provide the Committee an update as to the status of the certification applications for the two bargaining units of part-time staff of Ontario Colleges and to ask the Committee to again consider the complaint which was originally filed in June 2005.

The last reference the ILO Committee on Freedom of Association made to this case was in its 358<sup>th</sup> Report of which was adopted by the ILO Governing Body at its 309<sup>th</sup> Session in November 2010 (paragraphs 37 to 42).

In paragraphs 41 and 42 of its report, the Committee noted the potential impediments to the workers' abilities to organize as a result of the employer raising a challenge under section 31 of the Act to the number of cards union members had signed. The Committee also pointed out that litigation and mediation of these disputes could take months or even years to resolve.

The Committee requested the Government initiate consultations with a view to addressing these concerns. Since the date of the Report, the Government, despite requests of the union, has refused to engage in any such consultations.

The result has been that another full year has passed and the litigation process at the Ontario Labour Relations Board (OLRB) is still continuing. In fact, since the Committee's report last year, the OLRB has issued seven separate decisions – five with respect to the application for academic staff and two with respect to the support staff application. The process is hopelessly mired down in legal arguments with no prospect of an end in sight.

The ballots cast by the workers remain uncounted.



We note that the Government, in its response to the Committee in October 2010, has alleged that it would be inappropriate for it to intervene as the matters are before the OLRB which is an independent quasi-judicial tribunal.

While we agree that it would be inappropriate for the Government to intervene and direct the OLRB to issue any particular decision, the Government's position ignores the fact that the employer, the Colleges Compensation and Appointments Council, is an agency of the Government and the Government has the express statutory power to direct the Council as to how it should act and as to the positions it should take before the OLRB.

Sections 4 and 5 of the *Ontario Colleges of Applied Arts and Technology Act* states:

*Policy directives*

4. (1) The Minister may issue policy directives in relation to the manner in which colleges carry out their objects or conduct their affairs. 2002, c. 8, Sched. F, s. 4 (1).

*Binding*

(2) The policy directives are binding upon the colleges and the colleges to which they apply shall carry out their objects and conduct their affairs in accordance with the policy directives. 2002, c. 8, Sched. F, s. 4 (2).

*General or particular*

(3) A policy directive of the Minister may be general or particular in its application. 2002, c. 8, Sched. F, s. 4 (3).

*Non-application of Legislation Act, 2006*

(4) Part III (Regulations) of the Legislation Act, 2006 does not apply to the policy directives. 2009, c. 33, Sched. 25, s. 3.

*Intervention*

5. (1) The Minister may intervene into the affairs of a college or a subsidiary of a college in such manner and under such conditions as may be prescribed, if the Minister is of the opinion that,

- (a) the college is not providing services in accordance with this Act or the regulations or with any other Act that applies to the college;
- (b) the college fails to follow a policy directive under section 4; or
- (c) it is in the public interest to do so. 2002, c. 8, Sched. F, s. 5 (1).

*Public interest*

(2) In determining whether an intervention is in the public interest, the Minister may take into consideration, among other things,

- (a) the quality of the management and administration of the college;
- (b) the college's utilization of its financial resources for the management and delivery of core education and training services;
- (c) the accessibility to education and training services in the community where the college is located; and
- (d) the quality of education and training services provided to students. 2002, c. 8, Sched. F, s. 5 (2).

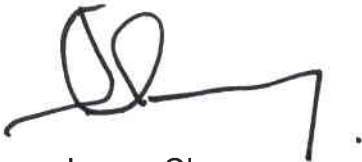
Using the powers under these sections, the Government could direct the Council and Colleges to withdraw the objections filed under section 31 of the Act. The Government could issue the following directive:

*"Pursuant to the Minister's authority under s. 4(1) and s. 5(1) of the Ontario Colleges of Applied Arts and Technology Act, 2002 the Minister hereby orders the colleges and the Colleges Employer Council to withdraw their objections under s. 31 of the Colleges Collective Bargaining Act, 2008 to two applications for certification filed by the Ontario Public Service Employees Union."*

Taking this simple action would end the litigation before the Board, permit the ballots cast in both Applications to be counted and permit the workers to decide for themselves whether or not they wish to be unionized.

We submit that the ILO Committee on Freedom of Association should strongly recommend the Government take this action.

Sincerely,



James Clancy  
National President

- c.c. Warren (Smokey) Thomas, OPSEU President & NUPGE Ontario Vice-President  
Dalton McGuinty, Premier of Ontario  
Charles Sousa Fonseca, Ontario Minister of Labour  
John Milloy, Ontario Minister of Training Colleges & Universities  
Tim Hudak, Leader of the Opposition and the Ontario PC Party  
Andrea Horwarth, Leader of the Ontario NDP Party  
Kenneth Georgetti, CLC President  
Barb Byers, CLC Executive Vice-President  
Peter Waldorff, PSI General Secretary