

PRESENTATION

BY

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Benefits for retired members: stresses, strains and solutions

First, let me tell you something about the Congress of Union Retirees of Canada. Our founding convention was held in 1993 and was the result of a resolution passed at the previous CLC Convention. Our organization structure parallels that of the Congress and we have provincial federations of union retirees and area councils at the local and regional level. Our membership is made up of retirees from unions affiliated to the CLC and numbers about 500,000 affiliated members. I represent CURC on the Executive of the CLC.

Retiree benefits, including those in collective agreements, are increasingly under strain. This is particularly true

since the implementation of changes in corporate accounting rules four years ago. Overnight this sent shock waves throughout the corporate world and this is true, as well, with unions and their staffs.

Retiree benefits, even where there is a collective agreement, are only available to about a third of union retirees after the age of sixty-five. Faulty logic, at best, that the public system will take care of them. Whatever benefits have been negotiated have been paid for by the employee during his or her working life, a deferred wage - in fact, it would be more correct to call it a purchase, not a benefit.

A recent survey of 174 large Canadian employers by Hewitt Associates indicated that 54 percent of employers

planned to reduce or eliminate retiree benefits over the next three years. The survey found that 13 percent of companies had already reduced coverage or increased deductibles of retirees. James Bates, co-panelist director of sales and marketing in Toronto for Green Shield Canada, was quoted: “we are seeing many of the larger firms talking to us about their options and usually want to make a change within a year or two”. Part of this trend is driven by a rule that was introduced in January 2000 by the Canadian Institute of Chartered Accountants requiring firms to account for post-retirement benefit plans as liabilities in their financial statement even in public and non-profit organizations.

Some will remember when we used to call these “fringe benefits”. This was never a good description, especially so

now when benefits represent a larger percentage of overall compensation - in the 15 - 20% range. Some components of the benefit package are growing very quickly - particularly drug costs.

Principles of benefits from a union point of view

** A benefit should be a benefit - this seems to be hardly worth the saying; however, as I said before, you cannot really call an employee paid benefit a benefit at all. When a member has to pay for a benefit, they are really just buying something - it is a purchase, not a benefit.

** Adequacy - examples of benefits meeting 'adequacy' goals would be 'up-to-date' dental fee schedules, earnings-replacement rates in the 70 - 80% range in long-

term disability programs, etc.

** Maximum certainty - benefits should be part of the contractual obligation referenced or incorporated into the collective agreement.

** Consistency - seemingly a small example, but we have to make sure insurance contracts jibe with member booklets distributed to employees (and, of course, jibe with our collective agreements). Surprisingly, unions can still have trouble even getting hold of the insurance documents.

** Full access - inclusion of all employees, including part-time employees; need to push back the eligibility periods for coverage (e.g. avoiding two years' wait).

** Equal treatment - here the most important issue is the establishment of 'same sex' benefits.

** Comprehensiveness - for example, on health coverage, there should be a continuity of coverage from very short-term sickness to weekly indemnity to long-term disability; on dental, for example, we should see coverages ranging from preventive to minor and major restorative to orthodontic.

Of course, it should come as no surprise that another principle that I would encourage - given that I represent CURC here - is that benefits should be available to all retirees, with the exception of the obvious few pertaining to the workplace.

The status of benefit bargaining is currently a 'hot' issue in relations between management and labour. I'm afraid the 'salad days' are no longer with us; i.e. the historical role of unions as setting new standards with created pressure to provide public programs for all and thereby cover the non-union as well as union sector. Although we are still making advances, we are now in a more defensive mode.

With public programs being cut back, we are running hard to negotiate improvements simply to offset the impact of these cuts and maintain overall coverage from a combined public-private system. Some unions have negotiated interesting language to the effect that any cut-back in a public program - e.g. dropping a previously covered drug under the public system - will be compensated for in the private plan.

It is not unusual these days to see a “benefit” strike rather than a “wage” strike. And this is sometimes a fight to protect retiree coverages.

Two of these strikes that come to mind are Locals 6500 and 677 of the United Steelworkers of America in Sudbury and Kitchener, Ontario. In both instances, one with INCO, the other Michelin, the bargaining units spent time on picket lines, showing solidarity with their pensioners, and they preserved pensioners’ benefits.

There will be increasing pressure on unions bargaining to forego these benefits for pensioners in order to preserve or enhance benefits for the active members. There have been instances in the past decade where this has happened.

Too often our members forget that they are endangering their own future benefits for short term gains. Too often retirement seems to be so far away. Believe me, it catches up with you quicker than you think!

Unions and management should be aware of the increasing involvement in the courts of retired persons who feel that they have not been fairly treated. One such case - as reported in the Globe & Mail on May 19, 2004, - on the issue of protecting retiree benefits is that of Barbara Kranjcec. She is a former employee of the Ontario Health Insurance Plan, now retired for eleven years, who was notified of drastic cut-backs in her medical and dental benefits. She will be the representative case for a group that could include up to 60,000 retired Ontario public servants. The Ontario Superior Court has agreed to hear

the claim on the basis of a violation of the Canadian Charter of Rights and Freedoms. The case is likely to set a precedent for what is expected to be a rising tide of actions against employers trying to cut benefits for retirees. In a November 2002 article in *Benefits, Canada*, Hugh O'Reilly (of Cavaluzzo, Hayes, Shilton, McIntyre and Cornish) made the following comment: "retiree rights or 'grey power' may be the next wave of pension and benefits litigation. In allocating resources between active and retired employees, employers will do well to remember those who are no longer in the workplace." Of course, this latter comment applies to unions as well.

The most important court decision on the retiree benefits issue was the landmark Supreme Court judgement in *Dayco (Canada) Ltd. Vs. CAW* in 1993. In this case, the

plan shut down and the employer gave notice that retiree benefits would cease six months later. The union grieved and the Supreme Court had to rule on the arbitrability of the grievance - particularly given that the collective agreement had died. Without quoting at length, a key section from the court decision is as follows:

“To summarize, I am of the view that retirement rights can, if contemplated by the terms of a collective agreement, survive the expiration of that agreement.

Moreover, although it is not strictly necessary to decide the point in this appeal, I would also find that these surviving rights vest at the time of retirement, and would survive subsequent collective bargaining that purported to divest such rights. As such, I have concluded that the arbitrator’s general propositions in this respect were

correctly stated, and the arbitrator had jurisdiction to hear the union's grievance. Of course, I make no comment on whether the terms of the agreement between the company and the union do in fact create such a vested right. That is a question for the arbitrator to decide when the arbitration hearing proceeds on the merits."

Having the rights reflected in the Dayco vs. CAW decision, and having the ability to enforce them, are two quite different things. Employers have sometimes implemented small cuts here and there, rather than wholesale elimination of benefits. This "death by a thousand cuts" approach can be difficult to fight - especially if individual retirees are on their own without financial means to go to court. One recourse is the class action route. Here a representation case is designated to

represent all members of a class, such as previously mentioned.

Population demographics indicate increasing numbers of retirees, while the work force in diminished numbers will be required to support pensions and benefits. This results in stresses on both the collective bargaining process and the taxation system at all levels of our society. Meanwhile, health care costs are extracting a larger share of the tax pie.

The fastest growing cost of the latter is the price of prescription drugs. CURC has been campaigning for the past ten years to make it easier for the quicker patent release of drugs to allow greater access of generic to consumers. Despite the marketing and advertising

campaigns of the multi-national drug firms which imply otherwise, generic are the equivalent of the regular patented drug. The multi-nationals have too much influence withing the present government; otherwise the Liberals would have amended or done away with the present regulations which allow the multitis to stall marketing of generic drugs by continuous automatic injunctions.

The stresses on benefit negotiations would be greatly alleviated if employers and unions joined forces with retiree groups to tackle the problem. Remember the example of medicare when this happened, resulting in the lower cost public system. This could alleviate the stress on present drug plans.

The employers presently respond to the more or less “open market” variations by attempting to cut off retiree benefits - a temptation to younger bargaining units. How often have we heard “Give it to me now; I’ll take care of the future.” Alas, how often do we remember also having the fix pension and benefits for these self-same people?

Should there not be provisions within a legislative structure to protect benefits similar to what is now in existence for pensions, as weak they are? Since the new accounting procedures have come into force, this seems apparent. We also need a “Plan Text”, similar to pensions, which outlines details of benefits, funding requirements and other relevant details. Finally, committees should be established under the legislation which would guarantee active employee and retiree participation.

A by-product of this would be the requirement for access to insurance information and more transparency, which is presently lacking. And more courses for active and retiree members - there are some regarding pensions but I haven't heard of too many with respect to benefits.

Finally, active and retiree members of unions should be working together to reach these goals. Everyone in this room will be a retiree - sooner or later - something that is often forgotten. You ignore this at your own risk!!

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