STATEMENT OF EVIDENCE
to the
COMMITTEE ON FREEDOM OF ASSOCIATION
of the
INTERNATIONAL LABOUR ORGANIZATION

against the

Government of Ontario (Canada)

in respect of

Agricultural Employees Protection Act S.O. 2002, Chapter 16

submitted by the

United Food And Commercial Workers Union Canada (UFCW Canada)

on behalf of

Agricultural Employees in the Province of Ontario

March 2009

INTRODUCTION

The United Food and Commercial Workers Union (UFCW Canada) is filing this complaint on behalf agricultural employees in the province of Ontario . The complaint is against the *Agricultural Employees Protection Act, 2002 (AEPA)* which denies collective bargaining rights to all agricultural employees employed by any agricultural business operations in the province of Ontario.

Denying collective bargaining rights to agricultural employees is a violation of their fundamental human right to freedom of association.

It also is contrary to the basic principles of the International Labour Organization (ILO) as embodied in the ILO Constitution, ILO Convention No. 87– Freedom of Association and Protection of the Right to Organize (1948), ILO Convention No. 98 – Right to Organize and Collective Bargaining (1949) and the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work*.

AGRICULTURAL EMPLOYEES PROTECTION ACT

Agriculture Employees are excluded from collective bargaining under the *Agricultural Employees Protection Act, 2002 (AEPA).* Under the *AEPA,* agricultural employees can join or form an association but are excluded from collective bargaining. (See the statutory references from Section 1 and Section 5 of the *AEPA* which are set out in the attached Appendix). "Employees" are those persons who employee" means an employee employed in agriculture; ("employé"). "Employees' association" means an association of employees formed for the purpose of acting in concert; ("association d'employés")

As a result, agricultural employees do not have the right to participate in collective bargaining under the *AEPA*.

In addition, those employees cannot unionize under the *Ontario Labour Relations Act (OLRA)* as that Act does not apply to an employee within the meaning of the *Agricultural Employees Protection Act.* (see section 3, (b1), of the *OLRA* which are set out in the attached Appendix).

HISTORICAL CONTEXT

In Ontario the rights to unionize and bargain collectively have been guaranteed for workers generally since the *1943 Collective Bargaining Act*. The rights remain guaranteed for virtually all Ontario workers today under the *Ontario Labour Relations Act, 1995 (OLRA).* Ontario workers who are subject to sector specific labour relations statues have essentially the same statutory protection for collective bargaining as workers under the *OLRA*, with some modifications

primarily substituting interest arbitration for the right to strike. By statue, agricultural workers in Ontario have been and continue to be explicitly denied the right to unionize and bargain collectively.

For a brief period in 1994-1995, Ontario's agriculture workers were granted rights in line with agriculture workers in the rest of Canada. In 1994, the Ontario government enacted the *Agricultural Labour Relations Act. S.O. 1994, c. 6, (ALRA)* which gave agricultural workers the right to unionize and bargain collectively under a comprehensive statute administered by the Ontario Labour Relations Board. The *ALRA* incorporated much of the *OLRA*, including democratic representation, protection from unfair labour practices, the duty to bargain in good faith and the right to grievance arbitration. It included special provisions to address the situation of family members working on farms. Instead of strikes and lockouts, the *ALRA* substituted final offer selection to resolve bargaining disputes.

The *ALRA* was the product of a broad 2-year consultation conducted by the Task Force on Agricultural Labour Relations with employer groups, government and labour representatives which led to a consensus that unionization and collective bargaining was viable in the agricultural sector.

The *ALRA* was in effect from June 1994 to November 1995. During this time one bargaining unit of agricultural workers was certified at a mushroom factory with UFCW Canada as their bargaining agent. UFCW Canada and the employer commenced bargaining but had yet to reach an agreement when the legislation was repealed.

After a provincial election in June of 1995, a new provincial government repealed the ALRA in November of 1995 terminating existing representation rights. A new *Ontario Labour Relations Act, 1995* was enacted which again denied farm workers the right to unionize and bargain collectively.

The repeal of the *ALRA* and farm workers' exclusion from the *OLRA* was the subject of a *Supreme Court of Canada Decision, Dunmore V. Ontario*. In December 2001, the Court ruled that under the *Canadian Charter of Rights and Freedoms*, the government had a duty to enact legislation that provides the protection which is necessary to ensure farm workers can meaningfully exercise their freedom of association. The Court gave the government 18 months to remedy the legislation.

In response to the *Supreme Court of Canada* Dunmore decision, the government enacted the *AEPA* which came into force on June 17, 2003. The *AEPA* was enacted with no government studies or consultation papers that refuted the recommendations of the Task Force on Labour Relations which had reached the consensus that unionization and collective bargaining was workable in the agricultural sector.

In introducing the *AEPA*, The Minister of Agriculture and Food stated that "the proposed legislation does not extend collective bargaining rights to agriculture workers."

The *AEPA* excludes agricultural workers from the *OLRA*. The *AEPA* states that agricultural employees have these general rights: (a) the right to join or form an employees' association"; (b) the right to participate in the lawful activities of an employees' association; (C) the right to make representations to their employers, through an employees' association, respecting the terms and conditions of their employment.

The *AEPA* further states that "the employer shall give an employees' association a reasonable opportunity to make representations respecting the terms and conditions of employment of one or more of its members who are employed by that employer". Where an employee association makes representations, the employer only has an obligation to "listen to the representations if made orally, or read them if made in writing." No further action is necessary.

The *AEPA* does not impose any obligation on an employer to bargain in good faith – or to bargain at all – with an employees association. An employer has no obligation to attempt to reach any agreement. Employees have no right to a legally binding collective agreement. There is no mechanism to resolve disputes about terms of employment and conditions of employment and no arbitration process to enforce any terms and conditions of work**.**

In 2004, UFCW Canada on behalf of 300 agricultural workers who work at Rol-Land Farms a mushroom factory in Kingsville Ontario, launches a court challenge against the *AEPA* after a significant majority of employees vote to have UFCW Canada as their bargaining agent but the employer refuses to engage in a collective bargaining process**.**

THE SUPREME COURT OF CANADA B.C. HEALTH SERVICES DECISION

In June 2007 the Supreme Court of Canada ruled against British Columbia provincial legislation Bill 29 otherwise known as *the Health and Social Services Delivery Improvement Act – 2002.* In this landmark ruling the Court declared collective bargaining a constitutional right for all Canadians. The Court was quite clear that Canada has not only a moral, but a legal, obligation to live up to its international commitments as spelled out in ILO Conventions and Declarations ratified by Canada.

To quote directly from the Supreme Court ruling:

> *"The Charter should be presumed to provide at least as great a level of protection as is found in*

> *international human rights documents that Canada has ratified," the historic ruling declared.*
>
> *"The interpretation of these Conventions [ILO], in Canada and internationally, not only supports the proposition that there is a right to collective bargaining in international law, but also suggests that such a right should be recognized in the Canadian context under s.2(d) [freedom of association]."*

On November 17, 2008 the *Ontario Court of Appeal* rules in favour of the UFCW Canada challenge to the *AEPA* on behalf of the workers at Rol-Land Farms and declares the *AEPA* unconstitutional. Taking from the *B.C. Health Services Decision* finds the *AEPA* to be unconstitutional in that it substantially impairs the right of agricultural workers to bargain collectively because it provides no statutory protections for collective bargaining.

On January 14, 2009 the McGuinty Government in Ontario challenges the *Ontario Court of Appeal* decision which declared the *AEPA* to be unconstitutional by seeking leave to appeal to the *Supreme Court of Canada*.

WHY DISCRIMINATE AGAINST AGRICULTURE WORKERS IN ONTARIO?

The vast majority of Ontario's workforce has some opportunity to address their working conditions by participating in collective bargaining.

Workers in most other parts of private and public sectors, can all join unions and bargain collectively. There is no good justification for treating agricultural workers differently.

STANDARDS SET BY THE COMMITTEE ON FREEDOM OF ASSOCIATION

The basis for UFCW Canada's ILO complaint against the government of Ontario and its *Agricultural Employees Protection Act* is based on several standards established by the ILO's Committee on Freedom of Association in many of the rulings it has made over the years.

These standards are:

- Measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

(See 256th Report, Case No. 1391, para. 82; and 295th Report, Case No. 1771, para. 494.)

- The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programs.
  (See the Digest of 1985, para. 583.)

The standards contained in Convention No. 87 apply to all workers "without distinction whatsoever", and are therefore applicable to employees in the agricultural sector.

It is the contention of UFCW Canada that the provisions in the *Agricultural Employees Protection Act* which restrict agricultural employees from joining a union and participating in collective bargaining violate all of these standards.

We also note that the Committee on Freedom of Association has already reached a similar conclusion in similar cases involving the Government of Ontario. Case 1900 dealt, in significant part, with the exclusion of other groups from collective bargaining. The Committee ruled that such exclusions violated ILO standards and held:

- (c) As concerns the denial of machinery for collective bargaining and the absence of provisions protecting against anti-union discrimination and employer interference for agricultural and horticultural workers, domestic workers, architects, dentists, land surveyors, lawyers and doctors, the Committee requests the Government to take the necessary measures to guarantee access for these workers to machinery and procedures which facilitate collective bargaining and to ensure that these workers enjoy effective protection from anti-union discrimination and employer interference.

CONCLUSION

We trust that the above Statement of Evidence clearly sets out the concerns of the UFCW Canada. We view this legislation to be contrary to the basic principles of the right to organize and collectively bargain as set out in the ILO Constitution, ILO Convention No. 87, ILO Convention No. 98, as well as the right to freedom of

association as set out in the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work*.

It is our hope the Committee will concur with our analysis as set out in this Statement of Evidence. We, therefore, respectfully request that the ILO Committee on Freedom of Association strongly criticizes the government of Ontario for denying agricultural workers in the province of Ontario their fundamental right to freedom of association which includes the right to organize and bargain collectively. We further request that the Committee strongly encourages the Ontario government to repeal the AEPA and enact legislation so that all employees in the agricultural sector are able to exercise their right to freedom of association in a meaningful way.

APPENDIX

Agricultural Employees Protection Act, 2002

S.O. 2002, CHAPTER 16

2. (1) In this Act,

"agriculture" includes farming in all its branches, including dairying, beekeeping, aquaculture, the raising of livestock including non-traditional livestock, furbearing animals and poultry, the production, cultivation, growing and harvesting of agricultural commodities, including eggs, maple products, mushrooms and tobacco, and any practices performed as an integral part of an agricultural operation, but does not include anything that was not or would not have been determined to be agriculture under section 2 of the predecessor to the *Labour Relations Act, 1995* as it read on June 22, 1994; ("agriculture")

"employee" means an employee employed in agriculture; ("employé")

"employees' association" means an association of employees formed for the purpose of acting in concert; ("association d'employés")

"employer" means,

(a) the employer of an employee, and

(b) any other person who, acting on behalf of the employer, has control or direction of, or is directly or indirectly responsible for, the employment of the employee; (“employeur”)

Status of associations, organizations

(2) An employees’ association, an employers’ organization or any other entity that may be a party to a proceeding under this Act shall be deemed to be a person for the purpose of any provision of the *Statutory Powers Procedure Act* or of any rule made under that Act that applies to parties. 2002, c. 16, s. 2 (2).

RIGHTS OF AGRICULTURAL EMPLOYEES

Representations

5. **(1)** The employer shall give an employees’ association a reasonable opportunity to make representations respecting the terms and conditions of employment of one or more of its members who are employed by that employer. 2002, c. 16, s. 5 (1).

Same

(2) For greater certainty, an employees’ association may make its representations through a person who is not a member of the association. 2002, c. 16, s. 5 (2).

Reasonable opportunity

(3) For the purposes of subsection (1), the following considerations are relevant to the determination of whether a reasonable opportunity has been given:

1. The timing of the representations relative to planting and harvesting times.
2. The timing of the representations relative to concerns that may arise in running an agricultural operation, including, but not limited to, weather, animal health and safety and plant health.
3. Frequency and repetitiveness of the representations. 2002, c. 16, s. 5 (3).

Same

(4) Subsection (3) shall not be interpreted as setting out a complete list of relevant considerations. 2002, c. 16, s. 5 (4).

Same

(5) The employees' association may make the representations orally or in writing. 2002, c. 16, s. 5 (5).

Same

(6) The employer shall listen to the representations if made orally, or read them if made in writing. 2002, c. 16, s. 5 (6).

Same

(7) If the representations are made in writing, the employer shall give the association a written acknowledgment that the employer has read them. 2002, c. 16, s. 5 (7).

Labour Relations Act, 1995

S.O. 1995, CHAPTER 1
SCHEDULE A

Non-application

3. This Act does not apply,

(b.1) to an employee within the meaning of the *Agricultural Employees Protection Act, 2002*;