Response to

A Fine Balance, Safe Pensions, Affordable Plans, Fair Rules

Report of the Expert Commission on Pensions

By

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

(United Steelworkers)

The United Steelworkers represent over 280,000 workers across Canada in virtually every industrial sector. Our membership includes not only steelworkers, mine and smelter workers but also workers in universities, light manufacturing, retail, banking healthcare and private sector industry. A significant number of our member participate in registered pension plans and we welcome this opportunity to comment on the work of the Expert Commission on Pensions and the report "A Fine Balance," particularly at this time of great economic uncertainty .

In our view the report is serious and well balanced and meets the general needs of both plan sponsors and plan members. We also concur with the report that different plan designs may require different regulatory rules.

The economic times that we find ourselves in today have changed significantly since the initial consultation paper was released by the expert commission on pensions and the completion of their report. Given these changes in economic circumstance we believe that the government should move forward promptly with implementing the recommendations contained in the commission's report. However, given the nature and complexity of many of the recommendations we believe that broad consultation with respective stakeholders should form part of the government's implementation strategy.

The rapid decline of equities during the last quarter of 2008 has created a considerable outcry from plan sponsors for funding relief. While we acknowledge that the current economic crisis has created certain issues for plan sponsors we hope that the Province maintains a balanced approach when meeting these challenges as funding and benefits security are key issues for both plan sponsors and plan members. In our view simply addressing plan funding issues without addressing benefit security issues would be counterproductive for plan members and the legislative reform process.

In the interest of maintaining a fair and balanced approach for both plan sponsors and plan members we would like to respond to specific recommendations of the commission. The commission's report contains some 142 recommendations. We do not plan on responding to each individual recommendation. Our response will categorize these recommendations by referring to each related chapter in the commissions report.

Chapter 4 - Funding

We agree with the commission's view that tweaking, rather than transforming, the present funding rules would be the wisest approach. Recommendations 4.1 through 4.7 primarily deal with increasing transparency and the regulator's powers concerning actuarial standards of practice and assumptions used. In general terms we concur with these recommendations. However, the key to the success of the recommendations contained in this report will depend on Superintendent being provided with proper and adequate resources to develop the capacity to monitor the pension system as outlined in recommendation 4.6.

Recommendation 4.3, calls for going concerns valuations to no longer permit the exclusions of promised indexation benefits and for solvency valuations to no longer permit the use of smoothing practices or the exclusion of benefits, could prove to be problematic for both plan sponsors and plan members.

In our view the inclusion of promised indexing benefits, particularly those that are provided on an ad hoc basis, could create significant funding obligations for plan sponsors in both going concern and solvency of valuations.

The elimination of solvency smoothing is also problematic as many plans have moved to using smoothing rules over the last several years in order to offset volatility in the equity markets. We believe it would be more prudent to develop comprehensive smoothing rules that would not allow the smoothed value of assets to be greater than a predetermined percentage of the market value of assets. For example, the smoothed value of assets could not exceed 105% of the market value of assets.

Recommendations 4.8 thru 4.24 primarily deal with plan funding. We agree as stated in recommendation 4.8 that SEPPs, MEPPs and JSPPs should have separate funding rules given their different characteristics in plan design. We also agree with recommendations 4-9 thru 4-11 as we believe these recommendations balance the needs of both plan members and plan sponsors while taking into account the differences in plan structure and membership risk associated with participation in SEPPs, SMEPPs, JSPPs and MEPPs. We believe that the SOMEPP regulation should be continued for specified multi-employer plans, jointly sponsored plans and multi-employer plans. The continued requirement for solvency valuations will provide important information to trustees, trade unions and plan sponsors about the financial health of the plan. As such we believe these recommendations provide enough balance to eliminate solvency funding requirements for these types of plans.

Recommendations 4.14 and 4.15 establishing a 5% security margin and increasing the solvency amortization period to 8 years for plans that are funded above 95% will provide additional benefit security with a relatively small increase in risk.

We are somewhat concerned about recommendations 4.17 and 4.18 as these recommendations would allow plan sponsors to reduce or omit their contributions in any year in which the plan is funded at 105% or more of solvency liabilities and withdraw surplus from ongoing plans provided they remain funded at 125% of solvency liabilities or 105% of solvency liabilities plus two years of current service costs. In our view the threshold of 105% to begin taking contribution holidays is to low and the withdrawal of ongoing surplus is problematic particularly in the cases were plan members are not represented by a union.

As you may know current contribution holiday limits established under the Income Tax Act allow plan sponsors to take contribution holidays when the plan's surplus exceeds the greater of:

A. 10% of the actuarial liabilities or

B. Two times the current service cost, or 20% of the actuarial liabilities, whichever is less.

In recent years the current limits noted above have proven to be to low. We have witnessed a number of plan sponsors take contribution holidays for a number of years and then find themselves with a plan deficiency because of poor investment returns. Plan sponsors quickly forget the years were they made no contributions to the plan and they have difficulty adjusting to the fact that they now have to make minimum required contributions forcing some plan sponsors to terminate plans or seek increased member contributions. In our view contribution thresholds should be no less then 110% and preferably closer to 120% of solvency liabilities before contribution holidays can be considered. Clearly moving to a threshold above 110% would require amendments to the Income Tax Act.

We also believe that the OPBA should be amended to require that contribution holidays be shared between plan members and plan sponsors and that membership approval should be obtained before contribution holidays begin.

For the reasons stated above and the current economic crisis we believe that the withdrawal of surplus from an ongoing plan is inappropriate. However, if such withdrawals are to occur the plan sponsor should be required to obtain approval of 100% of plan members as is currently required under Ontario legislation (OPBA Regulation 10)

Recommendations 4.22 and 4.23 deal with irrevocable letters of credit and asset pledges to provide as security towards plan liabilities. While these approaches may be appealing in theoretical terms we cannot see them working in practical terms for several reasons. First we are not convinced that letters of credit would provide any real benefit security during insolvency as it is likely that such letters would be revoked once a company defaulted on any covenants required by the letter. Second, asset pledges only provide a certain level of security at the point in time the pledge is made. There may be little value to those assets in the future. Third, we are concerned about the regulators ability to adequately monitor letters of credit and asset pledges.

Chapter 5 – Pension Plans in a Changing Economy

The establishment of an Ontario Pension Agency (OPA) (5-12) whose objective would be to receive, pool, administer, invest and disburse stranded pensions is long overdue in our view. We believe that providing plan members with a viable alternative to the current RRSP industry would be met with a positive response. Another equally important role for the OPA is to provide a central agency were pension monies owing to plan members who could not be located (5-7) at the time of plan termination can be deposited. Far too often our union is contacted by plan members who participated in a pension plan ten or more years ago who want to start their pension. While assisting these members we often learn that the company in question is no longer in business, that the pension plan had been

wound-up and for a variety of reasons the plan member was not located. Often tracking down the annuities payable to these members becomes near impossible. A central agency such as the OPA would greatly assist plan members in located their lost pensions.

Providing grow-in provisions to all terminating SEPP members (5-8) is also long overdue. In our view the Commission's recommendation recognizes the importance of ancillary benefits and that a member's right to those benefits should be expanded.

Many of our members participate in pension plans that provide unreduced early retirement and bridge benefits. The Commissions recommendation acknowledges that, during a working lifetime, an employee/plan member accrues an entitlement to early retirement and other ancillary benefits as well as to the normal retirement benefit. When that accrual is interrupted as a result of termination, that accrual should be recognized based on the employee's seniority and age and included in the termination benefit.

Currently grow-in benefits are only provided to workers laid off as a result of corporate restructuring or plant/office shutdown that result in a pension plan wind-up.

For a plan member, providing grow-in rights can have a profound impact on the member's commuted value. In general terms grow-in rights are provided to terminating employees whose age and service total 55 or more. These members are entitled to receive the portion of any early retirement benefits that they had earned prior to termination at the date that they would have received them had they continued to work for the employer.

For example, consider a 48-year-old employee with 20 years of service in a pension plan with 30-year retirement that terminates with grow-in rights. In this case, the employee would have been eligible to retire after 30 years of service, at age 58. The employee would be eligible to receive the pension earned as of the date of termination; beginning at the earliest date that he or she would have been eligible to retire had employment not terminated, in this case age 58. This employee would also be eligible to receive the proportion of any early retirement bridging benefit earned up to the date of termination. Without the grow-in rights, the employee would be eligible only for the basic pension benefit beginning at age 65.

Although the description of the benefit can sound quite technical, its significance for individual plan members can be substantial. In the hypothetical case cited above, for example, a normal retirement benefit of $40 per month per year of service and a bridging benefit of $20 per month per year of service would be worth less than half as much without grow-in rights as it would be with grow-in rights.

We are concerned that grow-in rights are limited to "involuntary terminations". It is unclear to us how the regulator would differentiate between voluntary and involuntary terminations and in our view this would lead to future litigation and appeals. Given the imbalance of power between plan sponsors and plan members we believe that such a possibility and cost of such litigation would increase the inequity that already exists

between these parties. Therefore, we believe that grow-in rights should be applied to all terminating plan members.

The implementation of phased retirement (5-10) would be consistent with legislation found in other jurisdictions. Furthermore phased retirement can be a useful tool to assist employers with skills training. However, we believe that if phased retirement is introduced certain parameters would have to be in place to ensure that abuse of the system does not occur. In our view, phased retirement should last for no more than 12 months, be tied to the plan member having a reduction in hours worked and tied to skills training.

We believe that such parameters are required because we have seen instances where employers have wanted to provide select employees with phased retirement for an indefinite period of time and no required reductions in hours worked. In our view this is not the spirit or intent under which phased retirement has been contemplated.

We are also in favour of providing plan members with immediate vesting (5-11). There is arguably little justification left for requiring employees to participate in a plan for two years before they are guaranteed a pension from their plan. However, we believe immediate vesting is better suited to SEPPs and JSPPs and may not be in the best interest of MEPPs. Multi-employer plans are unique in there design and many of these plans have been established with relatively small employer contributions. In such cases the administrative cost of providing termination benefits may vastly exceed the contributions received by the plan on behalf of the member. As a result providing immediate vesting in these circumstances would create a significant administrative and financial burden on MEPP plans.

Recommendation 5-12 thru 5-22 deal with surplus, plan wind-up, mergers, asset transfers and plan conversions. In general terms we concur with the recommendations with the following exceptions.

Recommendation 5-14 states that the Superintendent should declare a wind-up only when 40% of the active members of the plan are terminated within a two year period. We view the current proposal as problematic. In our view the 40% threshold is too high.

Under current legislation full or partial wind-ups can be ordered if a significant number of plan members have terminated or the place of business closes. It is conceivable under the proposed recommendation to have one business location close, in a multi location pension plan, without triggering a partial wind-up as the affected plan members at the closed business location represent less then 40% of the active plan members. Furthermore recent FST decisions would indicate that a significant number of employees could be considered to be 12% of active members. Therefore, we would suggest that establishing a hard threshold for declaring plan wind-ups to be problematic. We also acknowledge that the arguments made above are moot if recommendation 5-8 is implemented.

If the full use of surplus on plan merger and splits by the plan sponsor is contemplated than it is imperative that the approval process outlined in recommendation 5-19 be replaced with the surplus approval process provided for in recommendation 4-16.

Chapter 6 – When Plan Fail

The recommendations contained in Chapter Six aim to provide the regulator additional powers to deal with plans deemed to be at risk, priority payments and benefit security. In general terms we concur with the recommendations with the following exceptions.

We have some concerns with recommendations 6-4 and 6-5 which would create a priority payment that would exclude any benefit improvements that have occurred in the last 5 years and provide the Superintendent with the ability to rescind benefit improvement or prohibit benefit improvements until a plan is funded at a specified level.

The rationale for the recommendations is based on the premise that plan sponsors and unions were complicit in negotiating benefit improvements at a time when funding was inadequate to support such improvement. While this may be correct in rare instances it is seldom the case in reality.

Often unions find themselves in bargaining using pension plan actuarial information that can be up to 3 years old which may indicate that the plan is funded sufficiently well. At the same time employers have much more up to date and accurate data on which they base their pension proposals. Furthermore, smaller bargaining units typically don't engage bargaining in a sophisticated manner and as a result don't have any pension information at all.

In general terms most solvency deficiencies are created when plan improvements are applied to past service. However, declining investment returns and low fixed interest rates has exacerbated this problem over the last several years.

The vast majority of our members participate in flat rate defined benefit plans. Flat benefit plans do not have the automatic inflation protection that earnings-related plans have. They also do not take into account increases in productivity that is reflected in wage increases. Because of this, the value of benefits is eroded if they are not regularly improved for both past and future service. Because flat benefit plans are funded at the current level of benefits, when improvements for past service are negotiated, they result in an unfunded liability and a good possibility of a solvency deficiency. A continuous process of creating and retiring unfunded liabilities is central to the structure of these plans.

The ability to amortize these unfunded liabilities over a period of 5 to 15 years is an essential feature of the institutional framework of bargaining for flat benefit plans. Without the ability to pay these off over an extended period of time, employers will be reluctant to negotiate past service improvements to these plans. And, without the ability

to regularly bargain improvements in past service, plan members would be ill advised to stay in a flat benefit plan.

Recommendation 6-4 proposes to introduce a provision by which the Superintendent could void plan amendments that reduce the plan's solvency ratio below a specified level. The union opposes this recommendation in general because it would effectively undo the results of collective bargaining in certain cases. Further, employers who entered into bargaining with a poorly funded pension, deliberately or not, would in effect escape having to negotiate pension improvements. The union does not believe that regulations that threaten the power of collective bargaining are a productive way to regulate the sponsor's funding of obligations to its members.

Recommendation 6-5 & 6-9 proposes to introduce provisions that would allow pension plans with deficits upon termination to give lower priority to plan improvements made in the last five years. Again, the Steelworkers oppose this plan in general because it would undermine the collective bargaining process. But in the case that such a plan were to be implemented, the Steelworkers would argue that 5 years is an excessive amount of time to have to wait for pension plan improvements to be given equal priority with pre-existing benefits.

We support recommendation 6-7 calling for the government of Ontario to support federal bankruptcy legislation and initiate further discussions to extend coverage to special payments. Our union has witnessed a number of companies enter into and exit from the CCAA process during which time no special payments have been made to the pension plan. Not making special payments creates several problems. First, we have witnessed the funded status of these plans decline during the CCAA process and second, assuming pension plan liabilities is a major issue for prospective purchasers. So we often find ourselves in the CCAA process trying to find a prospective purchaser who will assume a pension liability that is continually increasing with time.

Recommendations 6-13 thru 6-19 deal with the Ontario Pension Benefits Guarantee Fund. It is our view that the OPBGF should continue in its present form with proposed improvements. However, it is our view that a review process should be used to enhance the fund and not as a process to determine if the fund should be terminated. In our view the OPBGF is an important safety net for SEPP pension plans.

We strongly agree with recommendation 6-17 calling for an increase in the OPBGF from the current level of $1,000 to $2,500. The current level has been in place for more than 20 years and inflation over that time has significantly eroded the value of this protection to the point where it represents less then half of a member's accrued pension. We strongly believe that this recommendation must be implemented at the same time as any relaxing of the current solvency funding rules. Failure to do so will significantly reduce benefit security for plan members.

We would also suggest that an additional improvement not included in the commissions report be considered, the introduction of an indexing formula based on inflation to

increase the OPBGF benefit on an annual basis. Such a move would eliminate the impacts of inflation going forward and maintain an appropriate level of coverage. Similar protection exists in the Pension Guarantee Fund in the United States.

Chapter 7 – Regulation

The commission's recommendations in this chapter propose significant changes in the current practices of oversight, enforcement and the appeals process. In each of these areas it is important to maintain a balance between the interests of plan sponsors and plan members. In our view some of the recommendations if implemented would be in the best interest of plan sponsors and detrimental to plan members.

Recommendation 7-3 proposes that the PBA should be drafted to provide both rules based and principle based approaches were appropriate. In our view rules based regulation provides the best protection for plan members.

We are concerned that the commission has suggested that investment, plan governance and funding requirements could be dealt with using a principle based approach. It has been concluded by many that the lack of regulation and oversight was a significant factor in the recent collapse of the equity markets. In our view a rules based approach is far more desirable in these areas.

We endorse recommendations 7-13 and 7-14 calling for the establishment of a complaints officer and establishing the rights of trade unions and other member representatives to participate in regulatory proceedings.

We also endorse recommendations 7-20 thru 7-31 calling for a new Ontario Pension Regulator and the establishment of a separate Pension Tribunal of Ontario (PTO), each with their own budget and resources.

We are however somewhat concerned about the new pension regulator's ability to actively monitor enhanced risked based regulation as suggested under recommendation 7-24. We believe that such an approach would require significant additional staffing and training to allow the new regulator to assess creditworthiness and many other performance indicators and such resources would not be made available to the new regulator and as a result would significantly undermine the approach to risk based regulation.

We are also concerned with the parameters that the Commission has placed around the new PTO. In general terms the Commission proposes that the new PTO be created with 5 members all of whom are retired from their respective legal and actuarial fields. It is believed that such an approach would minimize conflict of interest and speed up the appeal process. In our view a 5 member panel would be too small to effectively operate as conflicts of interest would still exist for PTO members.

Limiting the panel to retired members of the legal and actuarial profession is also problematic for several reasons. First, the legal and actuarial profession has an active working relationship with plan sponsors and seldom interacts with plan members. We believe this prior working relationship would likely tilt the decisions from such a tribunal in favour of plan sponsors. In our view the new PTO should be established with a larger number of members with backgrounds from legal, actuarial and labour groups.

Chapter 8 – Governance

The USW is a strong supporter of good governance policies that improve the flow of information and thereby reduce the imbalance of power between plan sponsors and plan members.

We endorse the principles contained in recommendations 8-1 thru 8-30. However, we would like to raise specific concerns we have with some of the recommendations.

We are concerned with recommendation 8-8 which would allow certain plans an exemption from certain investment rules. We are unclear how the regulator would determine that a jointly governed plan has the requisite capacity to make complex investment decisions. In addition such determination would require ongoing review by the regulator and as expressed earlier we do not believe that the regulator would be provided with adequate resources to effectively administer such a provision.

Recommendations 8-11 thru 8-16 deal primarily with the consultation process between the Pension Champion and stakeholders. It is imperative that the consultation process and any advisory committees that may be established thru the implementation process of the Commissions report include substantial representation from the labour movement.

We also have some reservations with recommendations 8-16 and 8-17 which deal with the knowledge and ongoing educational requirements of plan members involved in plan governance. While we are strong supporters of providing education to plan members involved in plan governance, we also recognize that considerable knowledge in the pension field can be obtained outside the traditional educational environment. We are concerned that these recommendations may lead to a formalized accreditation process that by and large will exclude a vast majority of plan member representatives.

We also firmly believe that any costs associated with the ongoing training of members involved in plan governance should be born by the plan or plan sponsor as both of these entities have significantly more resources at their disposal than the average plan member.

Chapter 9 – Innovation in plan design

Expanding pension plan coverage is a key social policy issue to be considered by the government. Clearly the declining coverage rates of pensions and the failure of defined contribution plans ability to provide retirement security the government needs to take some action.

In our view the first approach to expanding coverage should be to start discussions with the federal and provincial governments to expand the mandate of the Canada Pension Plan.

We note that the Ontario, Nova Scotia and British Columbia and Alberta pension review process have called for the addition of a supplemental provincial pension plan. Given the general consensus amongst these reports that coverage needs to be increased we believe the logical approach would be to expand coverage of the Canada Pension Plan, which in our view is a national multi-employer plan that provides pension benefits to virtually every Canadian. We don't see the value in re-inventing the wheel in an effort to expand pension plan coverage.

If expanding the existing Canada Pension Plan is not attainable then we could possibly support an Ontario-wide target benefit occupational pension plan provided the plan:

- did not undermine the Canada Pension Plan,
- was publically administered on a cost recovery basis,
- would accept stranded pensions,
- would accept transfers from group RRSPs and other defined contribution plans,
- would pool capital and risk, and
- would not accept transfers from defined benefit pension plans

We believe that such a plan would have the ability to increase benefit security for plan members through increased economies of scale in administration and money management costs, and through risk pooling.

Chapter 10 – The future of defined benefit pensions and pension policy in Ontario

The USW believes that maintaining and expanding the current DB pension system is fundamental to ensuring the long term retirement security of Ontarian's and Canadians'. However, we also acknowledge that growth in the DB pension system will only occur when plan sponsors choose to maintain or establish new plans.

Recommendation 10-7 raises the issue of harmonization of provincial pension legislation. The USW believes that uniformity in pension legislation may reduce some administrative burden. However, it may not be in the long-term best interest of plan members. Having different jurisdictional legislation allows for innovations in policy that would be

impossible with uniform legislation. For instance, Ontario has implemented provisions for grow-in rights and the Pension Benefits Guarantee Fund. This ability to develop different policies in each jurisdiction has lead to improved protection for plan members, and greater political autonomy for each jurisdiction. Uniformity will greatly reduce the ability of governments to be proactive with legislative reforms. The requirement that each jurisdiction approves an amendment would mean a minor change in legislation to improve the protection of plan members will take years (if it can be done at all) to implement.

In conclusion we concur with recommendation 10-8 and 10-9 that the government should maintain momentum in pension reform by moving as rapidly as possible with implementing the recommendations within this report.

As we initially stated the 142 recommendations contained in the Commission's report provide a balanced approach to pension reform. It is imperative that the government maintain a balanced approach moving forward. The scope and depth of the Commissions report will require considerable consultation from stakeholders going forward and the United Steelworkers look forward to participating in that process.