

The truth about the “employer’s capacity to pay”

It is obvious that the Brunswick News dailies have taken on the task of driving home the message that the provincial government’s Bill 13 (*An Act to Amend the Industrial Relations Act*), introduced last November in the Legislature, carries the solution to what it considers to be unbearable financial pressures brought on by public sector contract negotiations. For example, at the end of last year, an issue of the *Daily Gleaner* (20 December) contained opposite-page (editorial, p. A-8, and columnist Ken McGeorge, p. A-9), identical calls demanding that the “employer’s capacity to pay” (ECP) be part of the factors considered by an arbitrator when determining wage increases for public sector employees. More recently, two Fraser Institute’s researchers were provided space to argue that public sector wages and benefits are too high compared to those of the private sector and the former must to be lowered accordingly (1 February, p. A-10); an editorial doubling down on that very idea appeared two days later (3 February, p. A-8).

Bill 13 is the second attempt, in recent years, on the part of a New Brunswick government to specify the factors to be taken into consideration by an arbitrator when deciding on a wage award under the *Industrial Relations Act*. One will remember omnibus Bill 24 (*An Act to Implement Strategic Program Review Initiatives*), adopted in 2016. The award arbitration provisions of that bill had a wider employment sector scope including, among others, police and fire services as well as public universities. Fortunately, those provisions were removed from the bill prior to its adoption, following the denunciation by the unions of the province of their foreseeable drawbacks.

The concept of ECP is always presented in a vague manner by public officials, but with the unflinching belief that it is a practical solution in the present circumstances. It would be helpful to the discussion if the government could explain where, when and how the ECP has been added to the legislation and with what results. But the silence is deafening when it comes to proving its efficiency.

Here are the facts. To begin with, nothing has ever prevented employers from invoking their capacity to pay before an arbitrator, whether or not it is a legislated provision, and many have done so. Second, arbitrators and judges have never been particularly impressed by this argument; on the whole, 40 years of Canadian jurisprudence considers that it is not up to public service employees to subsidize a government’s unwillingness to collect sufficient revenue for the provision of adequate services.

Furthermore, the attempt at undermining unions in New Brunswick through Bill 13 is predicated on the misunderstanding and mischaracterization of unionism’s contribution to the well-being of the population and the economic wealth it helps generate. Let us look at the available evidence. For starters, the Québec-based *Institut de recherche et d’informations socio-économiques* recently conducted a review of the reliable studies pertaining to the influence of unions on socioeconomic inequalities. The authors found that, no matter how the data are cross-checked,

or which jurisdiction is observed, a larger proportion of unionized employees sees a narrower gap between richer individuals and those who are less well-off. The same review debunks, with supporting evidence, numerous falsehoods constantly disseminated pretending that unions are detrimental to productivity, investments, economic growth, and jobs. To the contrary, all available evidence points to the fact that stronger unions, with an unhindered capacity to negotiate collective agreements, including the unhindered option to resort to arbitration, play a significant role in the promotion of an all-round healthier economy.

A 2013 study by the *Laboratoire d'études socio-économiques* (Université du Québec à Montréal) concluded that countries with a higher proportion of unionized workers fare significantly better than countries with a lower proportion. Areas of comparison included socioeconomic indicators such as life expectancy, infant mortality, number of hospital beds, health care expenses, number of doctors, poverty and inequality. It is crucial to underscore the following observation from that study: the creation of collective wealth does not suffer as a consequence of a strong union presence; to the contrary, the creation of public wealth is closely related to stronger unions. Lastly, a 2012 study by the Canadian Centre for Policy Alternatives also concludes that socioeconomic inequalities are narrower as a function of a stronger union presence.

The New Brunswick government should promote all measures susceptible of helping to narrow the inequality gap and improve the well-being of the population of the province. Instead, with Bill 13, the government seeks to undermine the capacity of unions to achieve just and equitable contract negotiations.

That being said, one can legitimately be concerned with respect to the public revenue aspect of the equation: where is the money needed to pay for those services supposed to come from?

The Panama Papers (2016) and the Paradise Papers (2017) contained troubling revelations with regard to illegal tax evasion, as well as tax avoidance, by the wealthy. These revelations should be more than enough to motivate any responsible government, aware of its duties toward the population it serves, to immediately take steps to rectify such problems. We can no longer afford to simply listen to the steady stream of anti-tax rhetoric served by successive provincial and municipal governments. Furthermore, as decades of legal jurisprudence has underscored, it should not fall onto workers providing essential services to subsidize the tax-aversion electoral strategies of politicians.

Bill 13 is nothing but an attempt at forcing collective bargaining into a race toward the bottom. For the reasons stated above, it must be rejected. One can only look forward to the day when the real problems of New Brunswick will be discussed using concrete evidence and identifying the real solutions.

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