Proposed Changes
to the
Pension Benefits Act

Presentation
to
The Pension Commission of Manitoba

JANUARY 14, 2003

Summary

Pension Plan legislation has, as its primary purpose, the protection of benefits for plan members, in this case, Manitoba's workers.

We applaud the Commission for the progressive stance that it has taken with regards to many of the recommended changes that have been proposed.

However, we urge the Commission to resist the temptation to make pension benefit changes that are detrimental to the interests of plan members. CUPE strongly encourages the Pension Commission and the Government of Manitoba to take a lead and develop an Act that provides Manitoba workers with the retirement security needed and contributes to a dynamic future economy.

For example, we believe the *Pension Benefits Act* should:

* Include same sex couples in the definition of spouse.

* Create a pension benefits guarantee fund. While hopefully such fund would never be needed, its creation would provide an important protection for plan members in Manitoba.

* Adopt a grow-in benefit for employees who terminate employment before normal retirement age if age plus years of membership in the plan equals 55. Clearly such a benefit would be in the best interests of plan members.

* Appoint a Pension Plan administrator by the Commission to carry out plan wind-ups if the plan sponsor has taken no action or insufficient action.

* Require that all public sector and non-profit sector pension plans be 'defined benefit' in nature.

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INTRODUCTION

The Canadian Union of Public Employees represents over 500,000 working people throughout the country and approximately 24,000 in Manitoba. Our experience on the national stage has given us valuable experience in assessing various proposed amendments in Manitoba, and it is our hope that this experience will be of use here.

As a starting point for our presentation, our experience supports the prevailing view in Canada that pensions are deferred wages, not merely a benefit provided by an employer to recruit and retain employees. This view is consistent with our philosophy that pensions are much more than cashable assets. Therefore they must be regulated to ensure that income in future years is sufficient to meet the needs of plan members.

Over the last several years, legislation regarding pensions has been reviewed and amended in many provinces. Regrettably, not all of these reviews have resulted in improved pension benefits for working people, the very individuals these plans were designed to protect. However, once a change has been made in one province, whether beneficial or not, it creates pressure for 'harmonization' in other provinces. One theme that will run through our submission is that this pressure to standardize with other provinces must be strenuously resisted if it results in lowered pension benefits or diminished protections for plan members.

Further, CUPE strongly encourages the Pension Commission to take a lead and develop a progressive *Pension Benefits Act* that contributes to a dynamic future economy. With an aging population, the impact of pension incomes on the economy is bound to increase. As more baby boomers reach retirement years, they will rely on pensions as their primary source of income. As such, protecting and enhancing pension benefits makes good long-term economic sense for Manitoba.

It is therefore with mixed reviews that we receive this set of recommendations. On one hand, there are some areas where plan members will benefit from the recommended changes. On the other hand, there are areas where proposed changes will (or could) be detrimental to plan members.

Rather than a lengthy commentary on every proposed amendment, we will limit our comments to areas where we feel that the recommendations do not go far enough, where we are against the proposed amendment, or where we strongly support the changes. The absence of commentary on any particular amendment should be considered agreement (albeit grudgingly in some cases) on our part. We will comment in the order that the proposals were made in the December 2002 document provided by the Pension Commission.

RESPONSE TO PROPOSED AMENDMENTS

Pension Plan Eligibility and Membership

Currently the legislation provides that all employees of a class of employees for which a pension plan is offered, can join the plan voluntarily upon completing a service condition of not greater than two years. Further, all full-time employees must join after completing the service condition. All part-time employees must join if they complete two years of service and earn 25% of the Year's Maximum Pensionable Earnings during two consecutive years of employment. This ensures that part-time employees are entitled to pensions at roughly the equivalent full-time percentage as their full-time colleagues.

We are not in favour of increasing the threshold for mandatory part-time participation to 35% of the YMPE and submit that the proposed 700 hours be reduced to 500 hours of employment with the employer.

CUPE represents several thousand members within the province who would be adversely affected by this proposed amendment but would benefit from our proposal. Part-time and seasonal support workers within school divisions, healthcare facilities, social services, with the City of Winnipeg, and sessional staff at the University of Manitoba, are examples of such individuals. While we recognize that plan texts could address the matter and individuals still have the right to join voluntarily, the reality is that this is unlikely to occur if the regulatory requirement to do so is absent.

Vesting

We support the Commission's recommendation that immediate and full vesting of basic pension benefits be retroactive to July 1, 1976. This is consistent with the view of pensions as deferred wages, should have the effect of simplifying pension plan administration, and is in the best interest of most plan members. However, we would suggest that vesting occur immediately upon employment rather than the current two years of service or plan membership.

Fifty Percent Rule

Most provinces provide that a plan member's contributions plus interest cannot exceed one half of the commuted value of a defined pension benefit. While it can be argued that the current legislation provides for this under Section 21 (11), we are supportive of the greater clarity that the package of proposed amendments make.

Joint and Survivor Pension

We disagree with the proposed amendments that deal with the issue of joint and survivor pensions.

Currently, the legislation provides that, as a minimum, pension payable to the spouse or common-law partner of a plan member be 'joint and 66 2/3% survivor'. The pension is reduced to this rate on the death of either the member or the spouse/common-law partner. This right can only be reduced or waived entirely upon the joint request of both the plan member *and* the spouse/common-law partner. Other jurisdictions provide a 60% survivor benefit and require only the signature of either the plan member *or* the spouse or common-law partner.

The reasoning behind the current state of affairs is quite straightforward. Upon retirement, pension incomes are almost invariably substantially lower than incomes from employment. In fact, most experts suggest that people attempt to attain 70% of pre-retirement income from all sources, a situation that many of our members never reach. Reductions in the event of the death of either a plan member or a spouse are intended to reflect the lowered cost of certain expenses (food, clothing, entertainment, etc.) while recognizing that other expenses may remain constant (housing, utilities, property taxes, etc.).

In addition, the requirement that both partners indicate their intent to waive this minimum protection ensures that some measure of planning has occurred and provides some measure of protection for both partners against the negative effects of unilateral actions.

The proposals to make survivor pensions 60% of the total pension and require only the plan member *or* spouse to waive this right are, in our view, unnecessarily regressive and are likely to impact women unfairly. Our view is that the primary motivation behind such a proposal is the pressure to 'harmonize' with other provinces, and we therefore oppose it.

We are in favour of retaining the requirement that both partners sign in the event of intention to reduce or fully waive this minimum pension provision. If anything, we would urge the Commission to study methods of ensuring that full pension benefits continue to be payable regardless of which partner predeceases the other, such as requiring this to be one mandatory optional form of pension.

Locking-In

We are pleased to see that the Commission is recommending that pensions be used exclusively for retirement, i.e. that they be 'locked in' immediately when contributions begin. This action is consistent with the view of pensions as an asset to ensure future income rather than assets to be used in some other fashion.

Phased Retirement

We are not in favour of this particular form of phased retirement.

This proposed amendment has the effect of permanently reducing a plan member's future benefit as the contribution rates are reduced during the period of reduced hours of employment. Additionally, it is unnecessary as most employers have the capacity to hire part-time employees should the need arise without the need to amend their pension plans.

Further, the Canada Customs and Revenue Agency allows for individuals in receipt of pension benefits to receive employment earnings up to a certain level without any effect on their pension levels. While there may be tax implications, we believe that most individuals would prefer this to a reduced pension.

Finally, only two jurisdictions have any such provision in their legislation. Therefore, we believe that the pressure to 'harmonize' is minimal. However, if legislation required a phasing in of pensions without negative impact on future benefit levels, we would be prepared to re-examine this matter.

Flexible Pension Plans

Clearly our preference would be for negotiated ancillary benefits to be provided on a fully funded basis for all plan members. At a minimum, however, we submit that, should a plan member make optional ancillary contributions, these contributions plus interest, in addition to the commuted value of their pension, should be the minimum payable to the member upon termination from a pension plan. We also support the 'yearly statement concept' as an attempt to ensure that there is no overpayment into these benefits.

Multi-Unit/Employer Pension Plans

We commend the Commission for legally recognizing the existence of Multi-Unit and Multi-Employer Pension Plans. We would urge the Commission, however, not to create the artificial distinctions between the two, that exist in other jurisdictions.

We further recommend that both MUPPs and MEPPs provide the same safeguards as other pension plans, including, but not restricted to:

- a requirement for plan sponsors to fund any deficiencies and a prohibition on benefit reductions;
- the capacity for MEPPs and MUPPs to address deficiencies over five or fifteen years as the situation requires, and;

- the same requirements regarding membership, eligibility, vesting, portability, locking in, access to information, governance structure, forms of pension, fifty per cent rule and other safeguards as other forms of defined benefit plans.

Pension Committee

We are philosophically supportive of creating pension committees to function as plan administrators for most plans. We believe that the "certain exceptions" referred to in the first recommendation are intended to address very small plans or certain exceptional plans such as executive compensation arrangements, etc. Such exceptions must be listed in an exhaustive fashion.

Further, plan sponsors must provide for sufficient training to ensure that the committee members are trained to a level that enables them to fulfill their duties as administrators.

Division of Pension Benefits

We are inclined to favour the proposed Proportionate Share Deferred Settlement Method of calculation, on the understanding that it is clearly presented as an option only. Also, plan administrators should be required to clearly document the anticipated pension income under both this method and the Lump Sum Settlement Method using similar actuarial assumptions. Not to do so would fail to recognize the anticipated investment income from the lump sum method and may result in an unfair skewing of anticipated income.

Surplus

In general, we view the recommendation to broaden the list if individuals who can get access to pension related information, as a positive step. Further we agree that adding information regarding contribution holidays taken by an employer is beneficial to plan members.

Pension fund surpluses belong to the members of the plan - not to the employer. However, should the Union, 2/3 of plan members (where there is no union) and an employer agree, we believe that legislation should allow for pension surplus sharing. Any surplus sharing should be legally required to contain some form of provision to ensure indexing for current and future

retirees. An arbitration model should be legislated to address the matter of surplus sharing in the event that no agreement is reached

Further, we would recommend that the concept of surplus sharing be specifically addressed in the fashion noted above and do not agree to simply granting the employer access to surpluses. Again, this would be consistent with the concept of pensions as deferred wages rather than simply pools of capital.

We would further recommend that surpluses be targeted specifically to persons entitled to benefits in the event of a partial plan wind-up.

Tests for Solvency

In general terms, funding tests are desirable in our view. Tests that ensure that there are sufficient resources available to meet pension benefit obligations are consistent with the view of pensions as deferred wages, are reasonably objective, and are in the best interests of the plan members.

We recognize however, that certain tests, for example the requirement to do solvency valuations every three years on public sector plans, may create excessive expenses to the plan. Therefore, in the public sector where plans are not going to wind up, we would suggest that such tests be done less frequently, if at all.

We further recognize that mature plans, where the bulk of income is from investment, may be insolvent at a fixed point in time but in a surplus position a short time later if investment markets change. In this circumstance, as with the public sector situation noted above, we would suggest such options as a longer window to meet the test of solvency and perhaps testing based on less conservative actuarial assumptions.

RECOMMENDATIONS FOR FURTHER AMENDMENTS

There are certain areas where we believe that amendments should be made that were not contained in the December 2002 document from the Pension Commission. These include:

1) The inclusion of same sex couples in the definition of spouse. While it can be argued that the current definition of common-law spouse does not specifically refer to heterosexual couples and the resolution of the matter in other legal arenas provides for such coverage, we would prefer to see specific language ensuring such coverage.

2) The creation of a pension benefits guarantee fund. Such a fund exists only within the jurisdiction of the Province of Ontario. The fund is created by contributions made by plan sponsors and is designed to protect plan members to certain minimal levels in the event that due diligence is not done within their own pension funds and/or plans wind up while in a deficit position. It is hoped that such fund would never be needed, however, its creation would clearly be in the best interests of plan members within Manitoba.

3) The adoption of a grow-in benefit for employees who terminate employment before normal retirement age if age plus years of membership in the plan equals 55. Such a benefit exists in Nova Scotia and Ontario and provides that a plan member who would have been eligible for enhanced early retirement had the plan continued has the right to receive his or her pension accrued up to the point of plan termination on the enhanced basis. Clearly such a benefit would be in the best interests of plan members here.

4) Provisions for the appointment of an administrator by the Commission to carry out plan wind-ups if the plan sponsor has taken no action or insufficient action.

5) A requirement that all public sector and non-profit sector pension plans be defined benefit in nature.

CONCLUDING REMARKS

We appreciate this opportunity to make this presentation to the Pension Commission as we believe that a comprehensive review of the Act is long overdue.

It is our view that pension legislation has, as its primary purpose, the protection of benefits for plan members, in this case, Manitoba's workers. We applaud the Commission for the progressive stance that it has taken with regards to many of the recommendations proposed. However, we urge the Commission to resist the temptation to make changes that are detrimental to the interests of plan members for any reason, including any perceived pressure to "harmonize" with other jurisdictions.

We ask that the Commission consider implementing some of the progressive amendments that we have proposed in addition to the proposals the Commission has suggested. Together, the Act will then provide Manitoba workers with the retirement security needed and contribute to a dynamic future economy.

BE/cbc/opeiu 491
10-Jan-03