Brief to the Standing Committee on Industry, Science and Technology

Brief of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Service and Allied Workers International Union ("USW" or "Steelworkers")

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We are the Steelworkers

The United Steelworkers (the "Union" or "Steelworkers") is an international union with over 220,000 members in Canada.

Steelworkers are women and men of diverse social, cultural and ethnic backgrounds who work in all industries and all types of jobs.

From its beginnings in major industrial sectors such as mining and steel, the USW has become the most diverse union in Canada, representing employees in all areas of manufacturing, including electronics, auto parts, rubber, aluminum and glass, plastics, appliances and paints.

It also has members in the service industry, including call centres, retail stores, hotels, banks, nursing homes, security agencies, universities and trucking companies. We remain the predominant union in the mining sector.

We are committed to ensuring that all employees in Canada, whether they are our members or not, are treated with dignity, respect and fairness in workplaces and communities across the country.

We negotiate strong collective agreements that provide good wages to improve the economic lives of our members and their families and ensure dignity and respect in the workplace. We make a special effort to ensure the retirement security of our members. We make it a priority to negotiate good pension plans and secure health and welfare benefits for our members so that they have financial stability in retirement. In addition, we fight to maintain these pensions and benefits when employers try to take them away.

In addition to making retirement security a priority during collective bargaining, we strive to protect the economic security of our members and all Canadian workers during retirement through our political action and activism.

We have been successful in working with our sisters and brothers in the Canadian Labour Congress and the Quebec Federation of Labour to increase benefits under the Canada Pension Plan and the Quebec Pension Plan. We have advocated with other allies for the prohibition of disparate treatment clauses in pension and insurance plans in Quebec legislation, making it illegal to create two-tiered pension plans that disadvantage new workers.

We are also actively lobbying for better protection of pension plans and health benefits for retirees and former workers when a company goes bankrupt.

Introduction

The USW would like to inform parliamentarians of the great importance it attaches to Bill C-253, which seeks to protect retirees and former workers in the event of corporate bankruptcy.

This issue has been discussed on Parliament Hill for almost 20 years in a succession of multi-party bills, government consultations, and even recently in the 2019 Budget Statement, which led to a government consultation.

On several occasions over the past 5 years, Union workers have travelled to Ottawa to educate MPs and senators on the importance of protecting pensioners and pension plan beneficiaries in a bankruptcy. They did this for their brothers and sisters at Cliffs Natural Resource who suffered

the horror of having their pensions taken away in 2016, but also for all workers and pensioners who have been or will be affected by such an injustice.

The adoption of legislation to protect workers and retirees in the event of bankruptcy is a moral duty to the men and women who have given the best years of their lives in the service of a private company. They expect protection under Canadian law to ensure that their rights are not violated in the event of the bankruptcy of the company for which they have worked.

I The tragedy of former Cliffs employees

The Union has experienced first-hand the problem that Bill C-253 seeks to address.

Former unionized steelworkers at Cliffs Natural Resources, formerly Wabush Mines, bore the brunt of the bankruptcy of the company's Canadian arm in 2015. This situation also echoes what has been experienced by retirees and former workers from several other companies, including Stelco, Nortel, AbitibiBowater, Sears, Timminco, Greenbriar, Trimag, Smoky River Coal and many others.

We would like to share with you the most recent example in our ranks, which illustrates the importance of putting pension plan claims first in a bankruptcy.

A life turned upside down

In 2015, the lives of hundreds of retirees from Cliffs Natural Resources (formerly Wabush Mine), the Pointe-Noire mill and the Scully Mine in Labrador were turned upside down.

These retired workers and their spouses, many of whom were widows, found themselves in a state of uncertainty overnight as to the future of their pensions. Workers who lost their jobs or left before retirement age also saw their nest eggs shrink in a very sad way.

The Cliffs bankruptcy affected some 1,700 retirees, former workers and surviving widows in Quebec and in Newfoundland and Labrador. The Canadian subsidiary of the company had placed itself under the protection of the *Companies' Creditors Arrangement Act*. As a result, it ceased contributions to the pension plan and the insurance plan.

As of March 2016, pensions were to be cut by 21% due to the pension plan's underfunding. This was in addition to the loss of $10,000 worth of life insurance as well as drug coverage.

For Rose and Aurelien Bernatchez, the latter of whom retired from the Pointe-Noire iron pellet plant in 1998, this was a loss of $400 a month. "At our age, we can't say we're going back to work. We have to live with what we have left," explained Ms. Bernatchez. This casts doubt on the couple's ability to move to a seniors' care residence when their health is more fragile.

Retired from Cliffs in 2008, Bernard Thériault saw his pension cheque decrease by $550 per month. The "young retiree" initially returned to work repairing bicycles at Canadian Tire, then reluctantly counted on the sale of the house to replenish the family finances.

"That money was ours; it was already paid. We thought we were going to be able to enjoy retirement. Now, if they cut it again, what's going to happen? How long will we have money for?" said Louiselle Roy, whose husband retired in 2007. At the time, she estimated that the couple had to dip into their savings by about $15,000 a year to make up the shortfall.

A committee of retirees was quickly formed to wage a legal and political battle to recover the money owed. *"It's money that was stolen from us, it's money that we had put there, we had deprived ourselves of our salary in order to have a nice retirement until we died. We had to fight,"* explained René Richard, one of the retirees on the committee.

Many of these retirees did not hesitate in 2017, despite their precarious health and advanced age, to travel the 1,100 km separating the North Shore of Quebec and Ottawa by bus to ask elected officials to better protect retirees and health benefits.

A sense of injustice

The Cliffs bankruptcy and its disastrous consequences for pensioners and all pension plan beneficiaries were felt to be a great injustice, especially since it appeared to be a financial sleight of hand. It only affected the Canadian subsidiaries of Cliffs, as the parent company was doing very well.

One of the main creditors of Cliffs' two Canadian subsidiaries was none other than...Cliffs. The parent company, through Cliffs Quebec Iron Ore, managed to pay itself off in bankruptcy thanks to its status as a "secured" creditor.

In the second quarter of 2017, shortly after the liquidation of its assets in Canada, Cliffs reported a 15% increase in revenue and a net profit of $77 million.[1] Now that would have solved the pension plan deficits with ease!

Every bankruptcy is different. The realities of subsidiaries, creditors and pension plan solvency vary from company to company. At Sears, the shareholders were the ones who pocketed the big bucks in the period leading up to the sale. The generous dividends were a scandal as dozens of workers and retirees saw their retirement savings melt away.

A long and difficult legal battle

The Union supported the 1,700 Cliffs Natural Resources retirees, along with the retirees' committee, in various legal actions to recover as much as possible of the money owed to them at the time of the Cliffs bankruptcy in Canada.

It registered as a creditor in the bankruptcies of the Wabush Mine and the Chemin de fer Arnaud, two different entities under Cliffs Natural Resources. Fortunately, fewer priority creditors were registered in the Chemin de fer Arnaud file than in the Wabush Mine file, which allowed the pension plan beneficiaries to recover some of the missing amounts.

In the end, the Steelworkers were able to recover $18 million out of a total of $28 million to replenish the pension plan. This was mainly due to the unusually low number of creditors of the Chemin de fer Arnaud.

[1] CLEVELAND-CLIFFS INC., “Cliffs Natural Resources Inc. Reports Second-Quarter 2017 Results,” 27 July 2017, online: <http://www.clevelandcliffs.com/English/news-center/news-releases/news-releases-details/2017/CliffsNatural-Resources-Inc-Reports-Second-Quarter-2017-Results/default.aspx> (viewed on 12 May 2021).

In the end, retirees' pensions were still reduced by 8.5%, while the actuarial value of the former workers' pension plan was reduced by 10%.[2]

There have also been lawsuits in the U.S. for the loss of insurance plans by retirees. These lawsuits resulted in a settlement that provided a lump sum payment to retirees as compensation for the loss of their insurance plans.

Municipalities and school boards next in line

The municipality of Sept-Îles was in a better position on the list of creditors, among the preferred or priority creditors, than the former workers or retirees, who were at the very end of the list of creditors under the current legislation.

This municipality had a claim of approximately $10 million, most of which has been paid. Ironically, this is the same amount that was needed to cover the losses of the Cliffs retirees and former workers.

Had the pensioners been listed as creditors ahead of entities such as cities, they would have been able to avoid having their pensions reduced.[3]

II About Bill C-253

The USW fully supports Bill C-253. It would provide protection for tens of thousands of the members we represent across Canada. In total, it would benefit more than 1.2 million Canadian workers in the private sector[4] who rely on a defined benefit pension plan. An even greater number of pensioners and their surviving spouses would have their pensions protected, at least in part, by such a bill in the event of the bankruptcy of the company for which they worked. It would also provide some protection to retirees against the loss of health benefits.

At zero cost to the Canadian government, this bill protects real people who live here, who spend in our communities, who contribute to the economy here, who have paid taxes all their lives and who are still paying taxes today.

Full support...

The Union fully supports Bill C-253 and urges parliamentarians to pave the way for its speedy passage. The issue has dragged on long enough and the fate of many citizens, including many seniors, depends on it.

Finally, this bill would give "super priority" status to pension plan claims. Finally, the real world, men and women who have given the best years of their lives, some even giving up their health for a private employer, would have their pensions and health benefits protected.

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[2] CISION, “Faillite de Cliffs Natural Resources – Les retraités et anciens travailleurs de Cliffs au Québec sauvent en partie la mise,” 26 February 2019, online: https://www.newswire.ca/news-releases/faillite-de-cliffs-natural-resources-les-retraites-et-anciens-travailleurs-de-cliffs-au-quebec-sauvent-en-partie-la-mise-872871822.html (viewed on 12 May 2021).

[3] Le Soleil, Saturday, 19 November 2016, Dur coup pour Sept-Îles, Fanny Lévesque.

[4] Based on data provided by the Superintendent of Financial Institutions, online: https://www.osfi-bsif.gc.ca/eng/oca-bac/fs-fr/Pages/rpp_rpa_2019.aspx (viewed on 12 May 2021).

There is no reason for them to go "under the table" after banks and other financial institutions. Nor is there any reason for "real people" who eat and consume here to take a back seat to paper creditors such as parent companies that pay themselves back after bankrupting their subsidiaries and negligently underfunding their workers' pension plans.

The bill prevents a bankruptcy from ending without former workers and retirees receiving the money they are owed, whether in terms of pension benefits or compensation for lost health benefits. The Union fully supports these provisions.

A different notion of risk

The notion of risk is not the same for workers or an elderly couple as it is for banks, a financial institution, or even a municipality.

Workers do not have the same ability to diversify risk and investments. Pension plans are often their only savings and they do not control the investments. The bankruptcy of their employer or former employer can mean difficulty in buying groceries at the end of the month, having to sell the house, not being able to pay for end-of-life home care or pay for certain medications or medical care.

As for the bank or financial institution, it makes an informed investment and adjusts the terms of the loan based on the risk of the investment. Workers and retirees do not have the same opportunity.

In the event of bankruptcy, the consequences are, on the whole, limited. This is reflected in the provisions for bad debts that are generally already included in the balance sheet. For elderly pensioners who have no chance to bail out, their life savings go up in smoke.

The parent companies of bankrupt subsidiaries have even less reason to put themselves ahead of workers and pensioners. They are often responsible for the bad times that led to the bankruptcy, either because of poor decisions or because of a propensity to favour shareholder returns at the expense of pension plan funding.

In the case of the Cliffs bankruptcy in Canada, the Cliffs company in the United States is still in a very good financial position. It would not have been affected in any way if it had had to bail out the pension plan or if it had been deprived of a portion of its claim for the benefit of retirees and former workers.

In the same spirit, it seems logical to us that former workers and retirees should be given priority over other preferred creditors such as municipalities and school service centres (formerly school boards). The latter have the taxing power to cushion losses over several years and a broader tax base to soften the blow.

Deferred wages

In collective bargaining, pensions and insurance plans are negotiated in the same way as wages. This is what is known as the monetary aspect of a negotiation, distinct from the normative aspect (other working conditions).

In negotiations on "the monetary side," the different aspects of remuneration, i.e., wages, pension plans and insurance, are closely intertwined. Workers will often agree to lower wage increases and prefer that the money in the monetary envelope go to a larger increase in pensions. Pensions

are effectively deferred wages: rather than being paid immediately, they are funded for payment later.

An employer who fails to properly fund the pension plan is at fault in the same way as an employer who fails to pay workers their agreed-upon wages. In this line of reasoning, it seems logical to us that pension plan claims should have the same rank, in super priority, as unpaid wages at the time of a bankruptcy, i.e., before secured and privileged (or priority) creditors.

The same logic applies to health benefits, such as disability insurance, life insurance and other health insurance. These are negotiated benefits with monetary implications. The withdrawal of these benefits by the employer must be adequately compensated at the time of a bankruptcy.

High volatility

The passage of Bill C-253 is particularly important given the current volatility in the financial markets as a result of the COVID-19 crisis, at a time when the financial health of many private companies may be at risk.

It is also important to note that, despite the recent recovery in financial markets, which has allowed many pension plans to wipe out a good portion of the funding declines experienced since the beginning of the pandemic, a significant portion of Canadian defined benefit pension plans are still not fully solvent.

For example, Mercer reports that approximately one-third of its clients' pension plans were not fully solvent at the end of 2020, although the picture has improved significantly since January 2020, when more than half of its clients' plans were not fully solvent.[5]

Similarly, the funded ratio of the major pension plans of the companies in the Toronto Stock Exchange (S&P/TSX) index yo-yoed during the year. While it closed 2020 at 91.2%, up 0.4 points from the previous year, it hit an all-time low of 80% in late March, during the worst of the health and financial crisis.[6] In short, prioritizing pension liabilities is essential to protect workers and retirees who are otherwise at the mercy of the stock market and their employers' lack of commitment to pension funding.

Ensuring a balance

In recent years, various laws governing pension plans have been streamlined to make the requirements more flexible. This is notably the case in Quebec, where a reform that came into effect in 2016 shifted the calculation from a solvency basis (in the event of plan closure) to a funding basis, which makes it possible to replenish shortfalls over a longer period.[7]

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[5] MERCER, “Pension plans end a wild 2020 as well-funded as they began it,” 4 January 2021, online: https://www.mercer.ca/fr/salle-de-nouvelles/regimes-de-retraite-terminent-2020-comme-ils-lontcommencee.html#:~:text=Le%20ratio%20de%20solvabilit%C3%A9%20m%C3%A9dian,au%20d%C3%A9but%20 de%20l’ann%C3%A9e (viewed on 12 May 2021).

[6] AON EMPOWER RESULTS, "Canadian defined benefit pension plans’ financial health improves in 2020: Aon Pension Risk Tracker," 4 January 2021, online: https://www.aon.com/canada/media/4jan2021-aonpensionrisktracker.jsp (viewed on 12 May 2021).

[7] MORNEAU SHEPELL, “Quebec: Bill respecting the funding of defined benefit pension plans,” online: https://www.morneaushepell.com/ca-en/insights/quebec-bill-respecting-funding-defined-benefit-pension-plans (viewed on 12 May 2021).

More recently, adjustments have been made to help companies get through the pandemic period.[8] Ottawa has placed a temporary moratorium on solvency payments for federally regulated plans and on pension plan contributions. Several provincial laws have also announced temporary adjustments.[9]

These new flexibilities come at a time when financial market volatility is at its peak and the financial health of certain companies is particularly precarious. They even open the door to abuses by certain multinational companies with several subsidiaries and the human tragedies that ensue.

This is especially true since large companies tend to favour shareholders over the funding of their employees' pension plans. In fact, a study by the Canadian Centre for Policy Alternatives found that the 39 companies in the Toronto Stock Exchange index that have defined benefit pension plans spent four times more in 2016 on shareholder dividends and share buybacks than it would have taken to pay off their respective pension fund deficits.[10]

It would be the right thing to do to pass legislation to restore a better balance and protect retirees and former workers in the event of bankruptcy.

This has gone on long enough: we must act!

For at least 17 years now, various bills have addressed this issue. In the last five years alone, three bills, all perfectly valid, have been discussed in Parliament.

The government itself signaled its intention to provide greater "peace of mind" on pensions in its 2018 budget statement, launching a consultation in the process, which has not been acted upon.

The Union is now urging parliamentarians to move forward without delay to better protect pensioners and former workers in the event of bankruptcy.

While the solution put forward in Bill C-253 clearly appears to be the best one, it would be unfortunate if the subject were to be completely removed from the parliamentary agenda for lack of complete agreement between the various political parties. The status quo is not an option. We urge parliamentarians to discuss this bill seriously and to consider all options.

Should a consensus strong enough to move forward not emerge from the discussions, we encourage the various political parties to explore compromise options that would at least improve matters in the short term. For example, a joint solution that would give priority to the pension plan and health benefit claims of workers and retirees, notably before those of other institutions such as municipalities, would be a step in the right direction.

Conclusion

"*We need you!*" This is the message that Union activists have come to deliver to parliamentarians on several occasions since 2016. They have met with hundreds of MPs and senators.

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[8] GRAMMOND, Stéphanie, "Les retraités avant les actionnaires," La Presse, 26 April 2020, online: https://www.lapresse.ca/affaires/finances-personnelles/2020-04-26/les-retraites-avant-les-actionnaires

[9] BLAKES, "Update: Considerations for Pensions and Benefits During COVID-19," 1 May 2020, online: https://www.blakes.com/insights/bulletins/2020/update-considerations-for-pensions-and-benefits-du (viewed on 12 May 2021).

[10] CANADIAN CENTRE FOR POLICY ALTERNATIVES, "The Lion's Share – Pension deficits and shareholder payments among Canada's largest companies," 21 November 2017, p. 5, online: https://www.policyalternatives.ca/lionsshare (viewed on 12 May 2021).

It is a sentiment shared by private sector workplaces across the country. It is also what more than three-quarters of Canadians (76%) want, who believe that the government should "*force bankrupt companies to pay retirees before funders*."[11]

Several equivalent drafts of this bill have been presented to parliamentarians since 2017. It is time to move forward, to settle this issue once and for all, here and now, before the next election. Cynicism towards politicians is growing in our ranks.

The adoption of Bill C-253, by several political parties, would give hope in the ability of parliamentarians to put aside partisan backroom games to take concrete action in the interest of workers and retirees.

The tragedy experienced by the former employees of Cliffs and so many other companies that have gone bankrupt must not be repeated.

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[11] Survey conducted by The Vector Poll in January 2018.