

Labour Adjustment Benefits

I suggest the minister should listen; I am not rising to speak because I like to listen to myself at 9.32 p.m.

Mr. McDermid: That is a change.

Mr. Deans: I am rising to speak because I happen to think, despite the fact the hon. member for Brampton-Georgetown (Mr. McDermid) is intervening from his newfound front seat, which no doubt is temporary, that the minister might consider the consequences of the word "may". If an employee goes before the board and is able to prove that he would normally meet the requirements of the act for benefit, and if he were able to show that the only reason he was disentitled from receiving benefit was illness, disability or lay-off during the period under consideration, or any other good cause whatsoever, I contend that the word "may" ought not to be there. Surely the board shall find, in cases where it is proven to the satisfaction of the board that the employee would otherwise be entitled, except for illness, lay-off, disability or another cause which the board determines is a good cause, in favour of the employee. I think the employee is being put in double jeopardy. He must go before the board to try to prove, on the one hand, that there is good and justifiable reason why he should be eligible. On the other hand, having once proven it even to the satisfaction of the board, he must then await the board's determination as to whether or not it will accept the circumstances. There is far too much latitude involved.

If I appeared before the board as an employee, and if I were to show that I complied with the employment requirements of the act, that I was employed for the appropriate length of time to qualify for benefit but that as a result of having been disabled, ill or laid off, in a technical sense, the time of my employment would be reduced to a point where I might otherwise not be eligible; if the board, having heard my argument, were to accept that I was legitimately laid off, ill, disentitled by way of injury or for any other good reason, then it ought not to be a decision of the board whether it may or may not decide to give me the benefit. Surely, having once accepted that I have given justifiable reason and therefore would otherwise be eligible, the board shall grant the entitlement under the bill.

I suggest that it is a simple word change, but if the board were given the authority to make a decision with regard to the evidence I placed before it, there must be a concurrent responsibility on the board to find in my favour, if my argument is sustained, not simply to say in the end, "Yes, we agree with your argument; yes, I think you should be getting the money; however I have decided, since it is discretionary on the part of the board, not to give it".

Mr. McDermid: Can it work the other way?

Mr. Deans: No, it cannot work the other way. Unfortunately it cannot because the requirement on the employee is to give proof. The trouble is that it indicates that the employee is qualified to receive labour adjustment benefits, if he shows that he is in substantial compliance with the requirement and that he does not meet such requirement by reason only of

illness, disability, lay-off or any other good cause whatsoever. The onus is placed quite squarely on the shoulders of the employee to prove the good cause. Having once proven that, surely the entitlement should be automatic, not discretionary.

I know the minister is both listening and talking at the same time. I realize ministers develop that rather unique talent immediately after being appointed. However, I suggest that this kind of discretion vested in the board can only cause great hardship in the future. It will cause decisions to be made which cannot be used as precedents because the board will always have discretionary power. For example, it is not inconceivable that in one case an employee could argue that he was disabled but in receipt of workmen's compensation benefits and therefore technically still in the employ of the employer. In so doing, if he could prove to the board that he has a period of employment which would otherwise qualify him for entitlement under the act, he could win because the board might, in exercising its jurisdiction, say, "Yes, I accept it and therefore grant the payment". However, another employee appearing before a differently-structured board with different members could not really use that argument to sustain his case, because the discretion is solely the discretion of the board and the board may or may not grant entitlement.

My argument simply is that that is bad legislation. It does not deal adequately with the concerns of the House of Commons. If it is to set out the criterion under which an employee will receive benefits, once the employee has met the criterion, the benefits should be automatic. I see a head or two on the government side of the House nodding in the affirmative. It should not be discretionary on the part of the board.

Therefore, I ask the Minister of Labour if he would accept that very small word change which would clear up the amendment to the satisfaction of the House of Commons and, in addition, would make it much better in terms of dealing with employees in the future. Will the minister accept the change from "may" to shall?

● (2140)

Mr. Caccia: Mr. Speaker, when the hon. member was making such kind remarks about the behaviour of the Minister of Labour, he was listening to him as well as to some good advice coming from my colleague, the hon. member for Scarborough West (Mr. Weatherhead).

Mr. Deans: I agree.

Mr. Caccia: I listened very carefully to the representations made by the hon. member. But I would like to draw to his attention that Clause 12 begins with:

The commission may determine—

And the paragraph carries all subparagraphs further down on the same page. But the major point in reply to the hon. member is that the word "may" following the words "The commission" gives the commission the full scope to carry out an inquiry without being preconditioned in one direction or another. It is good drafting. Clause 12 is carried with the word "may". It is a way of carrying out the principle into the