FETCO submission

RELATING TO

Bill C-58: An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012

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Senate Standing Committee on Social Affairs, Science and Technology (SOCI)

June 12, 2024

Summary

- The current government's proposal to introduce legislation banning the use of replacement workers will lead to serious supply chain and service disruptions, and the potential shutdown of the critical infrastructure services that Canadians depend on every day, such as telecommunications (phone, internet, television, radio), mail/shipping (air, truck, train, marine vessel) and transportation (air, land, sea).

- It is important to fully understand what is meant by the term "replacement worker." These are not workers hired 'off the street' to take the job of others. Replacement workers are typically either other current employees of that same organization or contractors with a long-term relationship with the organization, who step in to fill the role of a bargaining unit employee on a temporary basis only (until the work stoppage ends).

- When such legislation has been introduced elsewhere, as the evidence shows, two things happen. One, there are more strikes. Two, these strikes last longer. To date, not a shred of evidence has been presented by government, or any other stakeholder, of any demonstrable benefits a replacement worker ban will bring to the system of federal labour relations. This decision appears firmly rooted in partisanship and not good government policy.

- A ban on replacement workers gives small bargaining units (with hundreds of employees), located in large vertically integrated organizations (with thousands of employees), enormous power to shut down the entire organization for extended periods of time (examples include major airlines, marine ports, railways and telecommunications firms). This extraordinary power, in the hands of the few, will affect Canadians who rely on robust supply chains.

A Brief History

- Tripartite agreement has already been reached on the issue of replacement workers, nearly 30 years ago.[1] Balance in the labour relations systems is sought via the following agreement:

    - Workers have the right to engage in legal strikes.
    - Employers may use replacement workers temporarily during a strike.
    - Striking employees may be entitled to get their jobs back after the strike ends.
    - Employers are prohibited from using replacement workers to undermine unions.

- Since 2000, some 15 similar anti-replacement worker bills and/or motions have been put forward (nearly all as private member's bills). Not one has received the approval of the Parliament of Canada. The majority of Liberal and Conservative MPs have always overwhelmingly voted NO. There are currently more than 100 Liberal MPs who have voted against this concept in recent years, some twice, including the current Minister of Labour.

- The persistent attempts to advance legislation to ban temporary replacement workers undermines the effective legislative process and good relationship that labour and management in the federal jurisdiction have achieved through independent analysis, consultation, and constructive dialogue. The tripartite approach to labour relations in the federal system – under the *Canada Labour Code* – is working.

- Legislation banning temporary replacement workers currently exists only in the province of Quebec. While British Columbia does limit the right to use temporary replacement workers, there are broad exceptions to this ban. No ban on replacement workers exists in the remaining eight provinces or the three territories, nor does it exist in any US jurisdiction.

[1] See Andrew C. L. Sims, *Seeking a balance : Canada Labour Code, Part 1, Review, 1995*

No Evidence Supporting Replacement Worker Bans

- Proponents of such legislation allege the presence of a ban on the use of replacement workers reduces strike activity. Their belief is that it would force the parties back to the table, as the employer would clearly want to continue conducting its business, which would be halted by the strike activity. In turn, the union would want its workers to get back to work. However, no empirical evidence has been produced to support these allegations.

- There is evidence demonstrating the opposite is true:

  - The CD Howe Institute, in its study on labour legislation in Canada (*The Laws of Unintended Consequence,* June 2010)[2], found that a ban on replacement workers increased both the number (10 per cent more) and the duration (60 per cent longer) of strikes.

  - The CD Howe study also saw a strong correlation between the incidence of anti-replacement worker legislation and reduced job investment. The study noted that the "removal of current temporary replacement worker bans would increase employment by 47,000 jobs in British Columbia and by 80,000 jobs in Quebec."

  - The study said the following:

  - *Bans on temporary replacement workers were designed to reduce picket line violence. In this respect, there is only anecdotal evidence that they may have been successful. We found, however, that these bans have significant negative consequences. Although wages do increase at first, the longer-term effect is to reduce wages, perhaps as a result of long-term decreases in employment or investment because of the negative long-term effect of such bans on the economy. Bans also increase the length and likelihood of strikes.*

[2] www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/commentary_304.pdf

- Esteemed labour economist and professor Morley Gunderson, in an earlier study (*Bans on Strike Replacement Workers: Pouring oil on the fire,* 2008)[3], came to mostly consistent conclusions. Most notable, Gunderson concluded that bans on replacement workers double the likelihood that a strike will occur and increases the length of a strike by some 50 per cent.

- According to Gunderson: "What is clear is that bans do not reduce strike activity; in fact, quite the opposite is the case. They increase both the incidence and duration of strikes. Bans also reduce employment." Further, adds Gunderson: "If the objective of banning temporary replacement workers is to reduce the frequency and duration of strikes, then the policy is a failure."

Anti-Replacement Worker Legislation Is Bad Policy

- Federally regulated organizations – including airlines, courier companies, marine ports, railways and telecommunications firms, for example – provide critical infrastructure support for the industrial and commercial activities of businesses across the country. They are of national significance. Disrupting these connections can immediately have widespread implications.

- Denying organizations the ability to use replacement workers – many of whom are actual employees of that same organization – to keep providing a basic level of service during a work stoppage would affect the entire economy, at a time when it is particularly fragile. In addition, replacement worker bans have led, in the longer term, to reduced business investment and job creation.

- The proposed anti-replacement worker legislation would exacerbate work stoppage activity throughout the Canadian economy, by providing an incentive to strike, rather than relying on mature, effective collective bargaining practices that are proven under the *Canada Labour Code*. A ban on replacement workers is legislative over-reach and not needed.

- FETCO urges Parliament to reject Bill C-58 in its entirety. Additional material is available at https://fetco.ca/news/ (EN) and https://fetco.ca/fr/nouvelles/ (FR). In the event it unfortunately proceeds, amendments that will limit the far-reaching damage of this bill are proposed in Appendix 1.

[3] https://www.aims.ca/site/media/aims/LabourSeries4.pdf

Appendix 1 – FETCO Proposed Amendments to Bill C-58

1. **That section 9(5) of the legislation be expanded to allow an employer to use contractors during a work stoppage if they used the services of the contractor prior to the date on which Notice of Dispute is delivered.**

   Proposed Text:

   9(5) If, before the day on which notice ~~to bargain collectively was given~~ of dispute was sent, an employer or person acting on behalf of an employer was using the services of a person referred to in paragraph (4)(b) and those services were the same or substantially similar to the duties of an employee in the bargaining unit, they may continue to use those services throughout a strike or lockout not prohibited by this Part involving that unit ~~so long as they do so in the same manner, to the same extent and in the same circumstances as they did before the notice was given~~.

2. **That section 9(6) of the legislation be amended to allow a unionized employee to choose to go to work if he or she sees fit.**

   Proposed Text:

   Option 1:

   ~~9(6) Subject to subsection (7), during a strike or lockout not prohibited by this Part that, with the exception of work performed for the purpose of compliance with section 87.4 or 87.7, is intended to involve the cessation of work by all employees in the bargaining unit, no employer or person acting on behalf of an employer shall use the services of any employee in that unit for a purpose other than compliance with those sections.~~

   Option 2:

   9(6) ~~Subject to subsection (7),~~ during a strike or lockout not prohibited by this Part that~~, with the exception of work performed for the purpose of compliance with section 87.4 or 87.7,~~ is intended to involve the cessation of work by all employees in the bargaining unit, no employer or person acting on behalf of an employer shall use the services of any employee in that unit ~~for a purpose other than compliance with those sections~~ for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives.[4]

[4] This language is taking from the existing wording in section 94(2.1) of the *Code* prohibiting the use of replacement workers.

Consequential amendment under either option:

9(7) An employer or person acting on behalf of an employer who uses the services of a person referred to in paragraph (4)(a) or (b) ~~or of an employee referred to in subsection (6)~~ does not contravene subsection (4) ~~or (6)~~ if…

3. That section 9(7) of the legislation be expanded to allow an employer to use a prohibited worker when there is an imminent or serious threat to the national interest or national economic security.

Proposed Text:

(7) An employer or person acting on behalf of an employer who uses the services of a person referred to in paragraph (4)(a) or (b) or of an employee referred to in subsection (6) does not contravene subsection (4) or (6) if

(a) the services are used solely in order to deal with a situation that presents or could reasonably be expected to present an imminent or serious

(i) threat to the life, health or safety of any person,

(ii) threat of destruction of, or serious damage to, the employer's property or premises, or

(iii) threat of serious environmental damage affecting the employer's property or premises; or

(iv) threat to the national interest or national economic security; and

(b) the use of the services is necessary in order to deal with the situation because the employer or person acting on behalf of an employer is unable to do so by any other means, such as by using the services of a person that is not referred to in paragraph (4)(a) or (b) or in subsection (6).

4. That all references in section 9 of the legislation be amended to replace the term "notice to bargain" with "notice of dispute."

Proposed Text:

"Notice to bargain" replaced with "notice of dispute" in sections 9(4)(a) and 9(5).

5. **That section 87(4) of the *Canada Labour Code* be expanded to prevent imminent harm to the national interest or national economic security.**

   Proposed Text:

   87.4(1) During a strike or lockout not prohibited by this Part, the employer, the trade union and the employees in the bargaining unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public, or imminent harm to the national interest or national economic security.[5]

   ....

   87.4(6) Where the Board, on application pursuant to subsection (4) or referral pursuant to subsection (5), is of the opinion that a strike or lockout could pose an immediate and serious danger to the safety or health of the public, or imminent harm to the national interest or national economic security. the Board, after providing the parties an opportunity to agree, may, by order,

   (a) designate the supply of those services, the operation of those facilities and the production of those goods that it considers necessary to continue in order to prevent an immediate and serious danger to the safety or health of the public or imminent harm to the national interest or national economic security.;

   (b) specify the manner and extent to which the employer, the trade union and the employees in the bargaining unit must continue that supply, operation and production; and

   (c) impose any measure that it considers appropriate for carrying out the requirements of this section.

6. **That section 18 of the bill be reverted to its original text as follows (see Note):**

   18 This Act comes into force on the day that, in the ~~12th~~ **18th** month after the month in which it receives royal assent, has the same calendar number as the day on which it receives royal assent or, if that ~~12th~~ **18th** month has no day with that number, the last day of that ~~12th~~ **18th** month.

   Note – both the Minister of Labour and the Chair of the Canada Industrial Relations Board noted, in their previous testimony, that Bill C-58 will result in a massive change management exercise that requires substantial time – like the 18 months in the original bill – to undertake.

[5] "Imminent harm to...national economic security" is used in Bill C-33, and the term "national interest" is used in section 90(1) of the *Canada Labour Code*.

7. That section section 9(4) of the bill be amended by deleting clause (c).

Clause C was added to this bill when it was reviewed at the House of Commons HUMA Committee and was not part of the original vision of the bill. This new restriction will pose serious risk to parts of the country where critical services (ex: telecom) will be severely interrupted if an employer has no management employees in that location to provide critical work. This risk will be higher in rural and remote parts of Canada. An ability to temporarily relocate select staff to a location that is under a work stoppage will avoid critical service disruptions to Canadians, services that do not meet the exceptionally high threshold required under a Maintenance of Activities Agreement.