

Labour Relations Amendment Act (Bill 16)

October 2020



On the bill overall

- This bill will significantly change collective bargaining rules in Manitoba and tip the scales against workers and unions.
- Manitobans are the most fair-minded people in the country, and we value the ability to work together and build a stronger province.
- Unfortunately, we have a Premier who doesn't value fairness, who doesn't treat working people in our province respectfully.
- This bill is a cynical and petty attack on working people and the unions that fight for them.
- It places onerous red tape on the same public sector unions that took him to court and had his wage freeze legislation struck down as unconstitutional. These changes are certainly inspired by his friend Stephen Harper, who tried to bury unions under red tape when he was Prime Minister.
- This bill makes it easier for bad employers to fire workers who go on strike – that's not a fair system.
- And this bill will lead to more strikes and lockouts and longer labour disputes in this province. Right now we have a made in Manitoba approach to ending strikes or lockouts that last 60 days: a neutral arbitrator is brought in to settle an agreement. Manitobans don't want labour disputes that go on for months and months – if one party isn't being reasonable, they want a neutral arbitrator to come in and fix things.
- Manitobans know that if something isn't broken, there's no need to fix it. This made in Manitoba

approach has provided both employers and workers with certainty around labour disputes for a long time, and it has served our province well.

- This law makes significant changes that both business and labour have said they don't want and don't support. The Pallister government doesn't listen or care about keeping labour peace, and these changes will increase conflict and unbalance a fair set of rules. Manitobans deserve better.

On financial disclosure

- Unions are already accountable to the people they serve and are funded by: their members. Unlike a lot of businesses, unions don't receive taxpayers' money.
- There are already rules in place requiring unions to disclose financial information about their operations to their members, and unions are in full compliance.
- We checked with the Manitoba Labour Board and it has not received a complaint about a union's financial disclosure anytime in the last decade, because unions are already open and transparent and following the rules. This new law is solving a problem that doesn't exist.
- These new rules will just place unnecessary and onerous red tape on public sector unions – the same unions that Brian Pallister lost to in court. This is cynical and petty response by Pallister to public sector workers and their unions standing-up for their rights. It sets up one set of rules for unions, but does not place the same requirements on businesses.

On eliminating rules around binding arbitration (ADR)

- After 20 years of relative labour peace, Brian Pallister wants to eliminate one of the most important tools that workers and employers use to prevent strikes and lockouts from occurring, and to reduce the length of labour disputes when they do occur.
- Employers and labour (through the Labour Management Review Committee) were united in telling this government to keep this made in Manitoba tool in place. Why would we do something that will increase the number of strikes and lockouts, and make them last longer? We all saw how long the Co-op refinery lockout lasted this year in Saskatchewan – that kind of thing just doesn't happen in Manitoba because we've had the tool of binding arbitration if the parties can't reach a deal on their own.
- What special interest lobby group is telling Brian Pallister to do away with a tool that has served workers, employers, and our province as a whole very well for 20 years? This isn't about solving a problem – it's about Brian Pallister tipping the scales against working people and the unions who fight for them.
- The Pallister government specifically asked business and labour what we thought of changing the rules, and both sides told him not to. This law shows we have a Premier who doesn't listen or care about what's fair and working.

On making it easier to fire workers during a labour dispute

- Brian Pallister wants to make it easier for bad

employers to fire workers who are standing up for their rights, pure and simple. At a time when workers like the ones at Stella's are standing up and saying they deserve to be treated with respect in the workplace, Brian Pallister just wants to make it easier for their bosses to fire them.

On the removal of a notice period for advising workers of technological change in their workplace

- This rule was put in place for a good reason, to give workers fair notice (90 days) of new technology that could significantly change the kind of work they do, or displace their jobs. There is no reason to get rid of a fair notice period.

On prohibiting employers from paying the salary of workers on leave as full-time union executives

- Brian Pallister can't stop himself from interfering in free and fair collective bargaining, just like he did when he tried to legislate wage freezes for 120,000 public sector workers. Collective agreements should be negotiated by employers and unions to work for both parties – government should not be meddling with what terms parties can negotiate.

On lowering the threshold to hold a decertification vote

- This bill is all about attacking workers and unions, and this is just an attempt to go after unions further. And it comes on the heels of the Pallister government making it harder for Manitobans to join a union by signing a union card.



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Prior to introducing Bill 16, the government tasked the Labour Management Review Committee (LMRC) with providing advice on some proposed changes to The Labour Relations Act. The LMRC is a long-standing committee, comprised of labour and employer representatives, and it has served to provide advice to government on labour relations issues for decades. The LMRC was unanimous in recommending against a number of government proposals, which, contrary to the LMRC's advice, have been included in Bill 16, such as:

- Eliminating Alternative Dispute Resolution (ADR) – binding arbitration after 60 days of a strike or lockout;
- Adding costly, burdensome and unnecessary red tape requirements to public sector unions; and
- Making it easier to fire striking workers.

Proceeding with ideologically-motivated changes that neither employer nor workers want shows that the Pallister government doesn't listen to anyone, and doesn't care about what's good for jobs, working families and our economy.

Prohibiting employers from paying union compensation

Bill 16 would prohibit, on a go-forward basis, a union and employer from negotiating collective agreement language that would have an employer pay the salary (or any other compensation) of an employee who is on leave from their normal job duties in order to serve as a full-time public sector union executive. (Note: this restriction does not apply to employer contributions to support a pension, health, other welfare trust fund).

This provision only applies to “an employee who

takes or is given full-time leave from their normal duties in order to hold an executive position in a public sector union”.

It is unclear from the legislation whether or not it will be permissible for an employer to continue paying the salary of an employee who on leave to serve as a full-time union executive in arrangements where the union fully reimburses the employer. This question may be answered in subsequent Regulations, or the government may be prepared to provide an interpretation if requested earlier.

This prohibition effectively dictates – through legislation - what a union and employer can bargain.

Making it easier for bad employers to fire striking workers

Bill 16 would make it easier for an employer to fire a worker for strike-related activities.

Currently, an employer only has the right to refuse to reinstate a worker after a strike if that worker is charged and convicted of a criminal offence for misconduct.

Bill 16 would remove the requirement for a criminal conviction, enabling an employer to fire a worker based solely on the employer's assessment of “just cause” (the Manitoba Labour Board would also have to be satisfied of the cited “just cause”). This change would leave workers far more vulnerable to bad employers trying to retaliate against strike leaders and union organizers.

In addition to being a very serious risk for individual workers, strike firings can significantly worsen labour relations and prolong labour-management conflict after a work stoppage.

Redefining the workforce for a certification vote

Bill 16 would require the Manitoba Labour Board (the Board), in the context of determining the threshold for a union certification vote, to carry out an assessment of whether or not the number of employees at the time of the application fairly represents the “regular or anticipated” number of employees. If the Board determines that the current number is not representative, it may delay the vote or dismiss the application altogether.

This means that if the Board concludes that the regular or anticipated workforce is greater than at the time of application for certification, a union’s application may be dismissed outright, or the union may be required to obtain more union cards before the Board will order a vote, providing more time and opportunity for the employer to interfere and pressure employees to vote against unionizing.

This change is expected to cause major problems and delays for union drives in the construction sector, in particular, where employment numbers swing up and down significantly based on project phases and schedules.

Making it easier to decertify a union

Bill 16 would make it easier to decertify a union from representing workers.

Bill 16 reduces the threshold for triggering a decertification vote from 50% to 40%, and the threshold for triggering a displacement vote from 45% to 40%. This means that when 40% or more of employees petition for decertification or displacement of a union, the Manitoba Labour Board will then hold a secret ballot vote of all employees, which will be determined on the basis of

simple majority (50% + 1).

(The proposed new 40% threshold to trigger a secret ballot decertification or displacement vote matches the existing 40% threshold to trigger a secret ballot union certification vote.)

In its first year in office, the Pallister government passed a separate amendment to The Labour Relations Act (Bill 7), which made it more difficult for workers to join a union by banning card check certification. As a result, workers and unions are now required to go through a more lengthy, conflictual and difficult two-vote process whereby employees must vote once by signing union cards, and then vote again through a secret ballot vote, providing more time and opportunities for employers to interfere and pressure employees to vote against unionizing. Bill 16 continues the Pallister government’s campaign against unionization.

Making it easier for employers to apply to have employees removed from the bargaining unit

Bill 16 would allow an employer (or a union) to apply to the Manitoba Labour Board (the Board) at any time except for during the last three (3) months of the term of a collective agreement to have the Board make a “determination that a unit of employees is no longer appropriate for collective bargaining”. After review, the Board would then be empowered to include or exclude employees or classes of employees from the bargaining unit, create one or more new units for collective bargaining, or determine the existing unit is appropriate and leave it as is. This has the potential to significantly disrupt the size and charter of a union’s bargaining unit.



Terminating or limiting successor rights

Bill 16 would empower the Manitoba Labour Board (the Board) to terminate or limit the successor rights and obligations acquired by a new employer pursuant to the sale of an existing unionized business if the Board is satisfied that the “character” of the business has changed “substantially” from that of the predecessor business.

New power for employers to be able to trigger intermingling votes

Currently, when a business is sold, resulting in intermingling of predecessor employees with employees of the new owner, unions have the power to seek a ruling from the Manitoba Labour Board to determine the appropriateness of bargaining units. Bill 16 would extend this same power to employers, thereby putting employers in the driver’s seat for difficult and challenging intermingling situations and, potentially, divisive and costly intermingling votes.

Eliminating notice protection for workers of technological change

Bill 16 would completely eliminate current protections for workers that require employers to give 90 days’ notice of technological change that would affect how workers do their jobs or would threaten to displace workers’ jobs. Employers would not be required to give any notice under the provisions of Bill 16.

As a one-time transitional (“grandfathering”) measure, protections related to technological change in the current (pre-Bill 16) Labour Relations Act will continue to apply to collective agreements that do not have provisions dealing with technological change, but only up until the

next collective agreement is negotiated. Unions will need to negotiate collective agreement language to preserve notice periods for technological change going forward (unions will no longer be able to rely on The Act).

Delaying settlement of a first collective agreement

Bill 16 would enable the Manitoba Labour Board (the Board) to delay the settlement of a first collective agreement if the Board determines that the party requesting the settlement has not bargained in good faith and has not bargained “sufficiently and seriously”. Currently, the Board has only needed to be satisfied of good faith bargaining. This change would seem to be geared at delaying first collective agreement arbitration.

Eliminating Alternative Dispute Resolution (ADR)

Bill 16 would fully eliminate Alternative Dispute Resolution (ADR), a made-in Manitoba approach that has contributed to Manitoba having the fewest days lost to strikes and lockouts over the last decade.

ADR currently allows either party of a strike or lockout to request binding arbitration to settle a dispute after 60 days. ADR reduces days lost to strikes / lockouts in two main ways: (1) it provides an incentive for parties to be reasonable at the bargaining table and try to reach a deal through negotiations, rather than risking a less favourable outcome imposed by a third-party arbitrator, and (2) it reduces the lengths of strikes and lockouts by allowing either side to trigger binding arbitration to end a strike or lockout after 60 days.

Under Bill 16, binding arbitration would only be



available in the case of a first contract, but would no longer be available to labour or employers to deter and shorten strikes and lockouts.

Burying public sector unions in red tape

Bill 16 would impose new, unnecessary and costly red tape financial and reporting requirements on “public sector unions” - the same group of unions that took the Pallister government to court over the government’s wage freeze legislation and won, having Bill 28 struck down as unconstitutional interference with free and fair collective bargaining.

A “public sector union” is defined by Bill 16 as “a union certified to act as the bargaining agent” for employees who work for a list of specified employers, including (but not limited to) the government, government agencies, RHAs/Shared Health, a reporting organization under The Financial Administration Act, a CFS authority or agency, a Manitoba university and MITT, a school district or division and any other employer set out in Regulation.

Depending on the exact wording of a unit’s bargaining certificate, Bill 16’s definition of a “union certified to act as the bargaining agent” apply to a union local, a provincial union, or a national / international union.

[It is unclear whether Bill 16’s red tape requirements will apply to unions that represent provincial public sector workers in cases where the union has been ‘voluntarily recognized’ by an employer as the bargaining agent for a group of employees, as opposed to ‘certified’. The applicability (or non-applicability) of Bill 16 to cases such as these may be clarified in Regulation.]

Bill 16 would require public sector unions to obtain

independently audited financial statements on their annual operations (based on the union’s fiscal year) and to provide a copy to every member of the union, not just those members who request a copy. [Currently, the Act already provides for unions to provide financial statements to any member who requests them. The current system is working well – the Manitoba Labour Board has received no complaints from union members concerned about access to financial statements over the last ten (10) years – unions are already transparent and accountable to their members].

Bill 16 would also require these same public sector unions to prepare an annual list of any/all union employees who received compensation (direct or indirect) of \$75,000 or more (indexed), and provide this compensation statement to every member of the union (again, all members, not just those requesting this information). The union’s compensation statement must be certified to be a true copy by the union’s treasurer (or other responsible officer).

Under Bill 16, a union’s very first compensation statement would need to include comparative information on the compensation earned by employees in the preceding year.

Bill 16 specifies acceptable means of providing union members with the required statements as: personally giving the statements to the members, mailing them, posting them in the workplace, posting them online on a secure website to which members have access, or any other manner that ensures the members receive them.

It is likely that Regulations will be passed specifying more details about the exact timing of these disclosure requirements.



It's important to appreciate that while “sunshine lists”, which require the disclosure of employee salary levels, are common for entities that receive public sector funding (tax payer dollars), public sectors unions receive NO tax payer dollars whatsoever. The Pallister government is not imposing the same requirements on businesses (even those that receive lucrative tax breaks) – they are only singling out the unions that beat them in court. Bill 16's compensation disclosure requirements are clearly intended to interfere in the relationship between unions and its members.

Other

Bill 16 would prohibit the Manitoba Labour Board (the Board) from releasing the names of employees who sign union cards or who sign decertification or termination petitions.

Bill 16 would provide the Board with the power to order a party to pay costs (including costs of the Board and / or costs of the other party) where the Board deems that party has brought forward a matter that is without merit.

Bill 16 clarifies the power of the Board to conduct votes electronically or by telephone (in addition to in-person).

Caution: Amendments or regulatory changes could be made to clarify, expand upon or modify provisions of Bill 16.

