

Manitoba's new anti-scab law:



work in progress

FACT SHEET

Introduction

Manitoba's new NDP government has introduced legislation that will provide important new protection against some forms of scab labour during a strike or lockout. The legislation also establishes a new framework that applies to both the public and private sector to identify 'essential services' that bargaining unit members will be required to continue providing in the event of a labour dispute. These measures are included in **Bill 37**, the government's budget bill, which is expected to pass into law in the fall.

Securing any form of protection against scab labour is an important Manitoba first, and a win for workers and unions in our province. Workers shouldn't have to worry about being replaced when they're standing up for their rights at work. Employers shouldn't get to carry on like 'business as usual' when workers are on the picket line and going without a pay cheque – both sides should have an incentive to reach a fair deal. Using scab labour poisons worker-employer relations and makes labour disputes drag on longer, which is bad for everyone.

But Bill 37 doesn't provide full anti-scab protection and falls well short of meeting the new standard set by unanimously supported federal anti-scab legislation.

Manitoba's unions are calling on our new government to finish the job on anti-scab, and amend Bill 37 before it becomes law to match protections included in new federal anti-scab legislation, which was spearheaded by Jagmeet

Singh and the NDP in partnership with the Canadian Labour Congress. Federal Bill C-58 has set a new standard for anti-scab protection, having recently passed third reading in the House of Commons with unanimous support from all political parties and every single elected Member of Parliament in Canada.

Manitoba's Bill 37 contains a serious loophole, which allows employers to recruit scabs from within the ranks of union members to cross the picket line and work outside of a union-negotiated and member-ratified collective agreement.

Hiring internal scabs is a deliberately divisive and hostile employer tactic. It seeks to weaken worker solidarity, divide the bargaining unit, and force concessions and acceptance of weaker collective agreements. The use of internal scabs extended the length of several strikes in the final year of the PC government, and severely damaged labour relations to an extent still being felt today.

Federal anti-scab legislation (Bill C-58) does not have this loophole: it bans employers from hiring external replacement workers as well as scabs from within the bargaining unit.

Manitoba's anti-scab bill is also weaker than the new federal standard when it comes to penalties and enforcement.

Whereas both the federal and Manitoba bills establish violation of the ban on scab labour as an *unfair labour practice* (something that labour supports as the best way to empower the Labour Board to provide targeted remedies

in the case of a violation, including the potential for compensation to unions and their members), federal Bill C-58 goes further in also making violation of the law an *offence*, subject upon summary conviction to a *fine of up to \$100,000 per day*.

Manitoba's unions want to make sure that the penalties for breaking the law are serious enough that employers will have a strong financial incentive to comply. We can't set-up a situation where employers with deep pockets make calculated business decisions to accept a slap on the wrist for using scabs, rather than follow the law.

The purpose of this Fact Sheet is to explain Bill 37's anti-scab and essential services provisions in more detail, including where the bill falls short and should be amended. Manitoba's unions have always been clear that we need a full ban on scab labour, not anti-scab light. With the new anti-scab standard set by unanimously supported federal legislation, now is not the time for half-measures. **Manitoba workers deserve the same protection as their federal counterparts and a fair chance to fight for their rights.**

Our new government has made time to listen to our concerns, and we are hopeful that amendments will be made to finish the job on anti-scab in Manitoba. Stay tuned for more information and next steps.

Bill Summary

Anti-scab

- Bill 37 bans employers (and persons acting on behalf of an employer) from using external replacement workers during a strike or lockout.
- Employers are not prohibited from using members of the bargaining unit during a strike or lockout, except if they were hired after notice to commence bargaining was given.
- Bargaining unit members performing

'essential services' set out in a formal Essential Services Agreement are required to continue providing those services during a strike or lockout.

- Any employer who violates the ban on using scab labour commits an unfair labour practice.
- Bill 37 provides an exception to the ban that allows employers to use scab labour for services needed to deal with situations that present:

- a) a threat to life, health and safety of any person;
- b) a threat of destruction or serious damage to employer property; or
- c) a threat of serious environmental damage,

but only in cases where the employer is unable to deal with the situation by any other means.

- A further exception in Bill 37 allows employers to continue using the services of a person outside the bargaining unit to perform the same or substantially similar work as the bargaining unit to the same extent and in the same circumstance as they did before notice to bargain was given.

Essential services / pre-conditions to strike

- Bill 37 repeals Manitoba's two existing unconstitutional Essential Services Acts and replaces them with a new essential services framework (contained within *The Labour Relations Act*), which applies to both the public and private sector.
- Under Bill 37, unions and employers are required to continue the supply of essential services and are not permitted to authorize a strike or lockout unless an Essential Services Agreement (ESA) is in place and filed with the Manitoba Labour Board.

- In cases where there are no essential services that need to be continued during a labour disruption, a 'nil' ESA still needs to be filed with the Labour Board. (In other words, a formal ESA is required in all cases regardless of whether there are any essential services that need to be continued or not.)

- Under Bill 37, unions and employers are required to negotiate and finalize ESAs by no later than 90 days prior to the expiration of a collective agreement. If this deadline is not met, either party may apply to have the Labour Board settle the dispute. The Labour Board has 30 days to do so.

- Bargaining unit members are to perform required essential services.

- Under Bill 37, essential services are defined as services required to:

- a) prevent a threat to health, safety or welfare of residents of Manitoba;
- b) maintain the administration of justice; and
- c) prevent a threat of serious environmental damage.

(This is much narrower definition of essential services than under existing Essential Services legislation.)

- Interference with the delivery of essential services is not permitted and constitutes an *unfair labour practice*.

- Strikes and lockouts involving essential services require three (3) days notice and cannot be initiated unless/until an ESA is in place. A new notice period of three (3) days is required if a strike or lockout does not occur as per the original notice.

- If a union or employer believes that an ESA substantially interferes with meaningful collective bargaining, they may apply to the Labour Board to make such a determination. If the Labour

Board agrees, the Board would initiate binding arbitration to resolve all matters in dispute.

Bill Details

Ban on replacement workers

During a legal strike or lockout, employers and persons acting on behalf of an employer are not permitted to use the services of a person who is hired or engaged after the date on which notice to bargain is given to perform:

- the work of an employee in the unit that is on strike or locked out, or
- the work normally performed by a person who is performing work of an employee in the unit that is on strike or locked out. (In other words, employers cannot hire someone to do the work of Managers while Managers are carrying out the normal duties of members of a bargaining unit who are on strike or locked out).

Prohibited replacement workers

During a legal strike or lockout, employers are not permitted to use external replacement workers – defined as:

- A person who ordinarily works at another workplace of the employer (not including those who primarily perform management or confidential labour relations functions);
- A person who is transferred to the employer's workplace after the date on which notice to bargain was given;
- A person who is employed, engaged or supplied to the employer by another person (i.e., contractors); or
- A person who is an employee at the employer's workplace where the strike or lockout is occurring but belongs to a unit other than the one on strike or locked out.

With respect to internal bargaining unit scabs, employers are only prohibited from using those who are hired or engaged after the date on which notice to commence collective bargaining is given; employers are permitted to use internal scabs who were hired before notice to bargain was given.

Exceptions to the ban

Exceptions to the ban on replacement workers are provided in two instances:

1. Firstly, employers are permitted to continue to use the services of a person outside the bargaining unit to perform the same or similar work of the bargaining unit that is on strike or locked out to the same extent and in the same circumstance as they did before notice to bargain was given. (In other words, if sub-contracting or performance of bargaining unit work by non-unit members was taking place before notice to bargain was given, this is permitted to continue in the same way.)
2. Secondly, employers are permitted to use replacement workers if:
 - (a) the services are used solely in order to deal with a situation that presents or could reasonably be expected to present:
 - (i) a threat to life, health and safety of any person;
 - (ii) a threat of destruction of or serious damage to the employer's property or premises; or
 - (iii) a threat of serious environmental damage; and
 - (b) the use of the services is necessary in order to deal with the situation because the employer is unable to do so by any other means.

(The bill is clear that employers can only rely on the latter exception for the purposes specified above, and not for the purpose of continuing the supply of services, operation of facilities or

production of goods.)

Unfair Labour Practice

An employer (and person acting on behalf of an employer) who violates the ban is guilty of committing an *unfair labour practice*.

Essential Service Agreements

Unions and employers must settle an Essential Services Agreement (ESA) no later than 90 days before the collective agreement expires. ESAs will set out the supply of services, operation of facilities or production of goods that are necessary to continue in the event of a labour disruption, and the manner and extent to which they need to be continued, including the number of bargaining unit members required.

In situations where there are no essential services that need to be continued in the event of a strike or lockout, the union and employer must jointly advise the Manitoba Labour Board and submit an ESA with no essential services listed. (Essentially, they must submit a 'nil' ESA.)

Employers, unions and employees are required to comply with ESAs. Contravention of an ESA is an *unfair labour practice*.

ESA dispute resolution

If a union and employer fail to enter into an ESA by the deadline of 90 days before the expiration of the collective agreement, either party may apply to the Labour Board to settle the ESA.

The Board must determine such an application within 30 days (however, a late order by the Board is still valid).

A union and employer may still negotiate and file an ESA with the Board after an application for dispute resolution is made but before the Board has made a determination.

Review and alteration of an ESA

The Minister may ask the Labour Board to review an ESA, and if the Board determines that an ESA is not sufficient to ensure the continuation of essential services, the Board may alter it.

The Board may also review an ESA upon application by an employer or union, and similarly make alterations if, in the Board's judgement, the circumstances warrant it.

Essential services must be addressed before a strike or lockout can be initiated

Unions and workers cannot strike and employers cannot lockout workers unless an ESA (even if it's a 'nil' ESA specifying that no essential services need to be continued) is in place and filed with the Manitoba Labour Board. This applies across the board, including in the public and private sector (except where a union does not have the right to strike - e.g. teachers).

Required notice for strikes and lockouts involving essential services

In cases involving essential services, three (3) days written notice is required for a union to strike or for an employer to lockout workers. A new notice of three (3) days must be given if the intended strike or lockout did not occur in line with the initial notice.

Binding arbitration where there is substantial interference with collective bargaining

Unions and employers may apply to the Labour Board for a finding that an ESA substantially interferes with meaningful collective bargaining. If the Board makes such a finding, the Board may order all matters remaining in dispute between the parties to be settled, as per the existing provisions of *The Labour Relations Act* with respect to Settlement of Subsequent Agreements: 87.3(1) (a) to (c) and 87.3(2) to (7), with necessary changes.

Existing essential services legislation repealed / continuation of existing ESAs

Manitoba's two existing and unconstitutional Essential Service Acts – *The Essential Services Act (Health Care)* and *The Essential Services Act (Government and Child and Family Services)* – are repealed.

Notwithstanding, any ESA entered into under either of these existing Acts continues in force.

Coming into force

Bill 37 will come into force on the day it receives royal assent. Because of the PC Opposition's delay tactics in the Legislature this spring, Bill 37 is not expected to pass and receive Royal Assent until the fall (likely in early November 2024).

WHERE MANITOBA'S ANTI-SCAB FALLS SHORT OF NEW FEDERAL STANDARD

Anti-scab loophole

- Manitoba's unions would like to see Bill 37 amended to close the serious loophole that allows employers to use internal scabs. As has been said many times at many union and NDP conventions: **a scab is a scab is a scab**. No scab labour of any kind should be permitted during a legal strike or lockout.
- When employers recruit and use internal scabs, they are effectively entering into individual employment arrangements with workers outside of a union-negotiated and member-ratified collective agreement. This is a deliberately divisive and hostile tactic, which seeks to dilute worker solidarity, divide the union and force the acceptance of concessions and weaker collective agreements.
- Leaving this loophole open would make Manitoba's ban on scab labour much weaker than the new standard set by unanimously supported federal anti-scab legislation. Manitoba workers shouldn't have to accept less protection than their federal counterparts.
- Manitoba's unions are urging the government to amend Bill 37 to close the loophole and give workers a fair chance to fight for their rights.

Penalties need to be strengthened

- Manitoba's unions would also like to see Bill 37's penalty/enforcement framework strengthened to match the new federal standard.
- As currently drafted, Manitoba's Bill 37 establishes an employer violation of the ban on

scab labour as an *unfair labour practice*. Labour believes that *unfair labour practices* are the best way to provide targeted remedies in the case of a violation, including the potential for employers to have to financially compensate unions and their members.

- But the consequences for breaking the law must be strong enough to make employers comply. Federal Bill C-58 not only makes violation of the law an *unfair labour practice* but also an *offence*, subject upon summary conviction to a *fine of up to \$100,000 per day*.
- Manitoba's unions are urging the government to amend Bill 37 to adopt the federal two-track penalty and enforcement system. Any employer violation of the ban of scab labour should be treated as both an *unfair labour practice* and an *offence* subject to high penalty fines. It's imperative that Manitoba not allow employers with deep pockets to make a calculated business decision to accept a slap on the wrist instead of following the law.

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