

Unifor Submission on Bill C-58:

**An Act to amend the Canada Labour Code and the Canada Industrial
Relations Board Regulations, 2012**

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Unifor is Canada's largest union in the private sector, representing 315,000 workers in every major area of the economy. The union advocates for all working people and their rights, fights for equality and social justice in Canada and abroad, and strives to create progressive change for a better Canada. The work to review and improve labour standards in the federally regulated private sector falls directly into this mandate.

Unifor is also Canada's largest union in the federally regulated private sector, representing more than 66,000 workers in the federally regulated private sector (FRPS) including transportation, media, telecommunications, and financial services.

Unifor bargains a collective agreement nearly every day of the week across the country and the vast majority of these negotiations conclude with a bargained settlement. In rare cases of labour disputes, many employers engage respectfully with unions, including by refusing to use replacement workers or scabs. Still, there are employers who refuse to respect the rights of workers in Canada and behave as though workers do not have a Charter-protected right to strike by actively deploying or using the threat of deploying scabs.

The case for a ban on replacement workers is clear. Scabs fundamentally undermine the right to strike by limiting the impact of workers' withdrawal of their labour and the disruption of normal business activities. While employers argue that scabs are needed to "keep the lights on", they conveniently overlook the fact that no ban on replacement workers has ever been implemented without a clause mandating the maintenance of essential services.

The real reason employers deploy scabs is simple: to break the power of the union and keep business going as usual.

In May 2021, Unifor released a discussion paper called [Fairness on the Line: The case for anti-scab legislation in Canada](#) (FR: [Le bien-fondé d'une loi anti-briseurs de grève au Canada](#)). In that paper, we laid out the case that strong and fair anti-scab legislation that bans the use of scabs during both legal strikes and lockouts will help lead to shorter labour disputes, safer workplaces, and less acrimonious and conflict-ridden picket lines.

In *Fairness on the Line*, we also provided data and analysis on our union membership's experience with labour disputes between 2013 and 2020. This information is critical to the current debate about Bill C-58, where the question of the impact of replacement workers on the frequency and duration of labour disputes has become a central question.

Unifor would like to thank the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) for providing the opportunity to offer our feedback on Bill C-58, both in person and through this written submission, which will complement the witness statement by our National President, Lana Payne, delivered March 21, 2024.

In this brief, we will provide a summary of *Fairness on the Line*, set the record straight regarding the arguments presented by some employers and employer groups, and refute the proposals they have made as Bill C-58 moves through the legislative approvals process.

On behalf of our members, we are pleased that Bill C-58 received unanimous, multi-party support at Second Reading, and we look forward to its speedy passage and implementation.

Fairness on the Line: The Case for Anti-Scab Legislation in Canada

In our experience, and based on the research conducted for our discussion paper, *Fairness on the Line*, the use of scabs during strikes and lockouts:

- Undermines the collective power of workers;
- Unnecessarily prolongs labour disputes;
- Removes the essential power that the withdrawal of labour is supposed to give workers to help end a dispute, that is, the ability to apply economic pressure;
- Contributes to higher-conflict picket lines;
- Jeopardizes workplace safety;
- De-stabilizes normalized labour relations between workers and their employers; and
- Removes the employer incentive to negotiate and settle fair contracts.

In *Fairness on the Line*, we analyzed our own internal data regarding Unifor labour disputes between 2013 and 2020, and we found that:

- Labour disputes occurred in approximately 2.1% of Unifor contract negotiations, a figure that tracks with other studies on the subject;
- The number of disputes where scabs were used was relatively low (less than 10% of labour disputes), but the impact of the use of scabs was high (in terms of the negative impacts listed above);
- The three longest labour disputes involved the use of scabs; and
- The average length of a dispute was six times longer when the employer used scabs, compared to disputes when scabs were not used.

Combing Through the Empirical Evidence

Despite our findings, employers' groups often reject the evidence raised by labour unions as being "anecdotal." Instead, they have repeatedly advanced the myth that there is broad-based empirical consensus within academic literature on the harmful impacts of replacement worker bans. A central claim made by FETCO, for example, is that "no empirical evidence has been produced" to demonstrate that a ban on replacement workers would have a salutary effect on labour relations and that the literature reveals "the opposite is true."

This argument is demonstrably false and a misrepresentation of the literature.

In their brief on Bill C-58, FETCO relies on two sources – a study on labour legislation conducted by the C.D. Howe Institute in 2010¹ and a three-page commentary by Morley Gunderson in 2008 published online by the Atlantic Institute for Market Studies, which later merged with the Fraser Institute.²

Gunderson (2008)

The short commentary by Gunderson (2008) mainly cites studies that Gunderson himself conducted during the 1990s with his colleagues, a body of work which has often been cited by employers' groups to advocate against replacement worker bans.

Those studies which used historical evidence to model the effects of replacement worker bans, such as Cramton, Gunderson and Tracy (1999),³ relied on work stoppage data prior to 1993. This means that they drew their conclusions solely upon Quebec's experience with banning replacement workers after 1977.⁴ Data on work stoppages was also limited to strikes and lockouts in the private sector involving more than 500 workers.

The researchers acknowledged the obvious limitations of such a narrow dataset, stating that "the limited variability of the replacement ban policy variable makes it difficult to pin down its marginal effect on bargaining outcomes" (p. 7).

C.D. Howe Institute (2010)

The study conducted by the C.D. Howe Institute met with similar limitations, using contract data for private sector bargaining units containing at least 500 workers and relying heavily on Quebec data. The authors acknowledged that findings from Quebec were muddled by the "effect of investor flight from Quebec in response to the sovereignty movement" (footnote 19, p. 11). When Quebec was excluded from their model, the replacement worker ban variable lost statistical significance.

¹ Dachis, B. and Hebdon, R. (2010). "The Laws of Unintended Consequence: The Effect of Labour Legislation on Wages and Strikes." *C.D. Howe Institute Commentary*, no. 304. Online: https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/commentary_304.pdf

² Gunderson, M. (2008). "Bans on Strike Replacement Workers: Pouring Oil on the Fire." *AIMS Labour Market Commentary Series*, #4. Online: <https://www.aims.ca/site/media/aims/LabourSeries4.pdf>

³ Cramton, P., Gunderson, M. and Tracy, J. (1999). "The Effect of Collective Bargaining Legislation on Strikes and Wages." *The Review of Economics and Statistics*, 81(3). Working paper online: <https://cramton.umd.edu/papers1995-1999/99restat-effect-of-collective-bargaining-legislation.pdf>

⁴ Replacement worker bans were introduced in British Columbia and Ontario at the start of 1993, although Ontario's ban was repealed three years later.

Crucially, the C.D. Howe Institute's study underscored the difficulty of teasing apart the impacts of replacement worker bans from other labour relations policies since, "if multiple laws change at the same time, our empirical analysis cannot determine which law is responsible for the changes in wages or strikes" (p. 10).

Duffy and Johnson (2009)

In stark contrast, the work of Paul Duffy and Susan Johnson (2009)⁵, a peer-reviewed academic study which appeared in *Canadian Public Policy*, has been completely ignored by employers, despite the fact that their research used a larger and more robust dataset from 1978 to 2003 and attempted to control for province-specific effects, which previous studies failed to do.

Duffy and Johnson found that the incidence of work stoppages increased in the first two years after anti-scab legislation, but this effect disappeared once the legislation had been in effect for two or more years. Notably, there was an immediate and significant reduction in the length of work stoppages. The authors found no increase in the number of days lost to work stoppages once replacement worker bans were introduced due to the overall reduction in work stoppage length.

Absence of Empirical Consensus and Research Challenges

In its submission to the HUMA Committee, the Canadian Chamber of Commerce (CCOC) echoes FETCO's inaccurate and misleading characterization of the empirical evidence regarding the impacts of scab use. Like FETCO, the CCOC would have us believe the empirical data on the impact of scab use on the frequency and duration of labour disputes settles the question once and for all. But if strong claims require strong evidence, the CCOC and FETCO fail the test.

What a cursory overview of the literature actually reveals is that there is no clear consensus on the impact of replacement worker bans, for the simple fact that we cannot isolate a specific piece of legislation from their broader socio-historical context and examine their impacts within a controlled experimental setting. As we noted in our paper *Fairness on the Line*:

...it is hard to tell whether the observed effects [...] are due to anti-scab legislation (and other labour relations provisions) or because of historically unique events and circumstances. This includes the specific histories of labour disputes in particular provinces, political parties in power, minority versus majority governments, levels of union density, average size of bargaining units, labour union concentration, shifting labour relations culture and norms, and sectoral differences (including which sectors tend to dominate a specific province's economy) (p. 19).

⁵ Duffy, P. and Johnson, S. (2009). "The Impact of Anti-Temporary Replacement Legislation on Work Stoppages: Empirical Evidence from Canada." *Canadian Public Policy*, 35(1): 99-120. Online: <https://www.jstor.org/stable/40213403>

Another statistics-related challenge that complicates the current debate on the impacts of scab use on the frequency and duration of labour disputes is the lack of comprehensive data regarding the use of scabs in the first place. For example, while in its “What We Heard” document the ESDC Labour Program estimated that FRPS employers used replacement workers in about 42% of strikes and lockouts from 2012 to 2023, they also noted that, “There are no official statistics on how often employers use replacement workers.”⁶

This lack of official statistics makes the findings from Unifor’s *Fairness on the Line* discussion paper all the more relevant, since the data we presented there represents real world experience on the subject.

As Gunderson and his colleagues (2005)⁷ admitted, “the macroeconomic measurement of strikes as lost work time necessitates a view of strikes from an employer perspective”. We argue that the same bias holds true for any attempt to measure the utility of replacement workers through their impact on strike incidence and length alone.

As we noted in *Fairness on the Line*, the literature on replacement worker bans routinely fails to consider and measure the physical and mental impacts of the use of scabs on workers, particularly given their ability to poison workplace environments, impose financial hardship on union members, erode physical and mental well-being, and promote violent confrontations on the picket line.

Ultimately, Unifor maintains that whatever claims are made using conflicting empirical data, workers’ Charter-protected right to strike cannot be abrogated through the use of replacement workers. It is impossible to capture the corrosive impact of the deployment of scabs on workers through oversimplified theoretical models of their effect on lost labour time, or through a cost-benefit analysis of their economic outcomes, as employers argue.

Rejecting the Call for Dubious Exemptions and Exceptions

Employers’ representatives and advocates have routinely invoked the spectre of economic chaos caused by work stoppages to argue against a ban on replacement workers. A common refrain is that strikes in the federally regulated sector constitute a

⁶ ESDC Labour Program. (September 2023) “What we heard: Prohibiting replacement workers in federally regulated industries and improving the maintenance of activities process under the Canada Labour Code.” Cat. No.: Em8-79/2023E-PDF. ISBN/ISSN: 978-0-660-49921-5. Online: <https://www.canada.ca/content/dam/canada/employment-social-development/programs/labour-relations/reports/what-we-heard-replacement-workers-maintenance-activities/SPAWID-RW-WWHR-EN.pdf>

⁷ Gunderson, M., Hebdon, B., Hyatt, D. and Ponak, A. (2005). “Strikes and Dispute Resolution.” In M. Gunderson et al. (eds.): *Union-Management Relations in Canada, 5th Edition*. Toronto: Pearson Addison Wesley: 332-370.

critical threat to delicately balanced supply chains which sustain the Canadian economy and that Bill C-58 would only embolden workers to strike more often and for longer.

As we noted above, there is little empirical evidence to back up the assertion that a ban on replacement workers would increase the number of days lost to work stoppages. Quite the opposite: rather than allow employers to draw out labour disputes indefinitely by using replacement workers to minimize costs to their operations, there would be a balance of economic pressures on both workers and employers to return to the table and bargain a fair deal.

Employers want the government and general public to ignore the fact that labour disputes always entail a greater cost on the individual worker than on the employer. As union and labour representatives have recounted in detail, the decision to strike is a heart wrenching one. Workers sacrifice their income and the economic security of their families to fight for a fair deal, with little guarantee that they will be made whole at the end of the process. Going on strike is always a last option and not something that is done on a whim.

In contrast, the proposed changes to Bill C-58 that employers' representatives have advanced, outlined below, suggest that the underlying issue many employers have with the proposed legislation is the basic notion that a strike should impinge upon their operations or impose any costs at all. Far from maintaining a balance of powers, employers recognize that the use of replacement workers functions as a highly effective circumvention of the economic pressure that the right to strike is meant to leverage. It is this skewed playing field that they are currently attempting to defend.

In what follows we refute some of the most common amendments to Bill C-58 that employers have proposed:

Including “threats to national interest or national economic security”

Employers have demanded a number of modifications to Bill C-58 that would effectively neutralize its effects, as well as changes to the *Canada Labour Code* that would erode the right to strike even further. Most prominent among these proposals is the argument that a “threat to the national interest or national economic security” should be added to the list of exemptions that would permit the use of replacement workers under section 9(7) of Bill C-58 and that similar language should be included in section 87.4 of the *Canada Labour Code* on maintenance of essential services.

Such amendments must be firmly rejected given the alarming potential for abuse and politicization of the terms “national interest” and “economic security”. Not only would the inclusion of this subjective language in the proposed legislation completely nullify any attempt to ban replacement workers – since employers can always argue that their activities qualify for an exemption – their inclusion in the *Code*'s provisions on essential services would effectively overturn the right to strike for large segments of workers in the federally regulated sector.

The current language in the Code under section 87.4 is carefully crafted to impinge as little as possible on the right to strike. The activities must be continued “to the extent necessary” to prevent an “immediate and serious danger” to the “safety or health of the public”. Only to the extent necessary, it must be “immediate” and “serious”, not a future or speculative threat and only in respect to “serious danger to the safety or health of the public”. It is not meant to address mere economic difficulty or inconvenience to the public.

Require binding arbitration for “critical supply chain” sectors

Employers have argued that the proposed legislation should include provisions allowing the Governor in Council to impose binding arbitration for critical supply chain sectors where there has been a failure to reach a negotiated settlement or agreement. As above, there is ample room for abuse and politicization of such a process given the ambiguity of how “critical supply chain” might be defined by successive governments. Such a requirement would also open the door to a flurry of lobbying efforts and a complete loss of faith in the federal labour relations system as some industries and companies are seen to be given preferential treatment.

Change “notice to bargain” to “notice of dispute”

A number of employers’ representatives have argued that all references to “notice to bargain” be changed to “notice of dispute” in section 9 of the proposed legislation. The rationale for such a change is clear: by using the notice of dispute as a deadline for the hiring of permissible replacement workers (e.g. managers and contractors), employers are able to gauge the progress of bargaining and circumvent the ban through proactive hiring of permitted replacement workers prior to a possible notice of dispute. This proposed loophole must be rejected.

Permit the use of contractors in any manner

In line with the proposed change above, a number of employers have argued that there should be no limitations placed on the use of contractors hired prior to the “notice of dispute” under section 9(5), where the proposed legislation currently requires employers to use them “in the same manner, to the same extent and in the same circumstances as they did before the notice was given.” Again, in conjunction with the proposed change above, this change would permit employers free rein to use contractors as replacement workers in any manner they choose and to hire them strategically during the bargaining process itself. This proposed change must also be rejected since it undermines the spirit and intent of Bill C-58.

Conclusion

Peaceful labour relations in Canada and across the world rely upon the principles of fair and free collective bargaining, which have improved the living and working conditions of Canadians for generations. There is no example of a country achieving shared progress and prosperity for its working people without the presence of strong unions and robust collective bargaining laws. History has shown that our ability to bargain within a

framework that respects the voice and power of working people has been the only reliable way to raise standards for all workers, whether unionized or not.

The arguments that a number of employers and industry representatives have made against Bill C-58, including their proposed changes to the legislation outlined above, reveal that they fundamentally do not believe in the basic principles of free and fair collective bargaining or the right to strike, if the expression of these principles and rights by workers imposes economic costs upon them.

A clear case in point was Unifor's recent experience during the Autoport strike in Halifax. Autoport is owned by the highly profitable CN, which operates mostly within the federal jurisdiction, although the recent dispute involved a small group of workers under a provincial certification. On February 27, 2024, the first day of a legal strike, Autoport brought scabs across the picket line, aggressively undermining the right to strike of 239 Unifor members. While at the bargaining table with the local union and a federal conciliator, CN was actively hiring and training scabs and preparing for their deployment.

This is neither free nor fair collective bargaining.

CN is a member of FETCO, who, as we have observed above, vocally and actively lobbies against workers' rights in Canada. The recommendations made by FETCO and other employers would neutralize Bill C-58. Their proposals for broader labour policy changes, including changes to the *Canada Labour Code* would further render collective bargaining rights for workers completely meaningless.

The path proposed by FETCO and other employers will lead precisely to the kind of chaos they have invoked in their efforts to lobby against Bill C-58. It will force working people and unions to resort to more direct methods to enforce collective bargaining rights, causing major challenges for employers, workers, and governments alike. It will not lead to the labour peace that employers claim to want to achieve.

Bill C-58 is needed because the use and the threat of the use of scabs during bargaining undermines workers' right to collectively bargain and to strike, significantly prolongs labour disputes, removes the economic pressure that workers have when negotiating with employers, increases violence and conflict on picket lines, jeopardizes health and safety, destabilizes normal labour relations and leaves in its wake toxic workplaces. Scabs remove the basic incentive for employers to negotiate and settle contracts where they should be settled: at the bargaining table.

Quebec and British Columbia have had similar pieces of legislation in place for decades now, and neither province has experienced the kind of economic mayhem that employers suggest will take place. Manitoba recently announced that it will be implementing a ban on replacement workers as well.

In Unifor's view, passing Bill C-58 and implementing it, without delay, is the least that elected officials can do to balance the playing field. The proposed legislation would modernize labour relations in the federally regulated jurisdiction to reflect the current

social and economic context – one where drastically increased corporate power and wealth requires an effective counterbalance.

Unifor therefore recommends a swift passage of Bill C-58 and its implementation as soon as possible.

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