

Fairness on the line:

The case for anti-scab legislation in Canada

Unifor Research Department | May 2021

Introduction

“In the group struggle over the division of the joint-product, labor utilizes the union with its two great weapons,—the strike and boycott; while capital utilizes the trust and the association, the weapons of which are the blacklist, the lockout, and the scab. The scab is by far the most formidable weapon of the three. He is the man who breaks strikes and causes all the trouble.”

From *“The Scab”* by Jack London

The scab might be the single most polarizing figure in the world of labour relations. For employers, the scab represents an effective means of applying economic pressure when contract talks with the union break down, either taking some of the financial sting out of a lockout, or undermining the effectiveness of a strike. For picketing union workers, the scab represents a breach in the strength of the line, and a loss of solidarity and collective power. At the same time, the use of scabs completely destroys the essence of a labour dispute, that is, a withdrawal of labour creating a cost to both the union and the employer.

Whether at the provincial or federal level, labour relations legislation in Canada is based on a set of fundamental principles arising from our freedom of association and the shared goal of harmonious employer-labour relations. The Preamble to the *Canada Labour Code* begins with

WHEREAS there is a long tradition in Canada of labour legislation and policy designed for the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes...

The *Code* goes on to note that Parliament supports a system where employers and workers, “develop good relations and constructive collective bargaining practices,” and claims that, “the development of good industrial relations to be in the best interests of Canada in ensuring a just share of the fruits of progress to all.” Provincial labour legislation contains similar language. And yet, the use of scabs would seem to contradict these very clear and fundamental statements of principle. As this paper will show, the use of scabs during labour disputes undermines the “common well-being” and decreases the likelihood of “good relations and constructive collective bargaining practices.”

In this paper, we will argue that strong and fair anti-scab legislation – at both the federal and provincial level – will help lead to shorter labour disputes, safer workplaces, and less acrimonious and conflict-ridden picket lines.



Scott Doherty speaks to locked out Local 594 members during one of many daily rallies streamed live on Facebook from the Co-op Refinery in January of 2020.

This paper begins with an analysis of Unifor’s experience with the use of scabs during strikes and lockouts since the union’s founding in 2013. Surprisingly there is a lack of solid data in Canada regarding the effects of scabs on the frequency and duration of labour disputes. In the section titled **Scabs and Unifor Strikes and Lockouts**, we will explore our own experience with scabs, by the numbers, showing a strong correlation between the use of scabs and drawn out labour disputes.

We also know that beyond the numbers themselves, there are real working people out on the picket line, taking huge risks and fighting for themselves and their families. In **Voices from the Picket Line**, we are going to look at two real life case studies that document the experiences of Unifor members and how the use of scabs during labour disputes undermined workplace safety, increased the likelihood of conflict, dragged out disputes, and created lasting animosity that destabilizes labour relations.



Presentation of a donation to the striking members of Local 1209 at Delastek at a solidarity demonstration in the streets of Grand-Mère, Quebec, on December 15, 2015.

Acknowledging these and other negative effects, governments have often limited and or restricted the ability of employers to use scabs during labour disputes. In the section titled **Anti-scab Legislation in Canada**, we will explore the relevant legislative regimes established by federal and provincial governments in this country. Then, we will take a bigger picture look, and explore the global situation in **Anti-scab Legislation Around the World**. We believe we can build on the experiences of other jurisdictions to guide the development of a made-in-Canada solution to the problem of scabs.

The last two sections of this paper take the form of a literature review, providing an overview of some of the most important research undertaken by academics and labour experts regarding the subject. In the section titled **Effects of Anti-Scab Legislation on the Frequency and Duration of Labour Disputes**, we will share some



During the 2018 lockout by D-J Composites, Unifor launched a “name and shame” campaign to raise awareness about the employer’s use of scabs, drawing attention to the fact that scabs unnecessarily prolong labour disputes and undermine fair settlements.

other studies that connect the use of scabs with more entrenched and protracted labour disputes. In this section, we will also briefly explore some of the challenges in assessing and comparing anti-scab legislation across jurisdictions.

Finally, in **Effects of Anti-scab Legislation on Health and Safety**, we will explore some of the most serious implications of the presence – or lack – of effective and fair anti-scab legislation.

Scabs & Unifor Strikes and Lockouts

Unifor is Canada’s largest private sector union, with more than 315,000 members across the country, working in every major sector of the Canadian economy, in approximately 2,800 individual bargaining units.

Since the founding of Unifor in 2013, our members either have taken strike action or have had employers lock them out 119 times. Of those 119 labour disputes, 88 were strikes, 30 were lockouts, and one was a workplace occupation.

The three longest labour disputes in Unifor’s history involved the use of scabs.

Since 2013, 9 out of 88 strikes (or 10.2%) involved the use of scabs, as did 2 out of 30 lockouts (or 6.7%).

Those strikes and lockouts involved the participation of approximately 24,000 members, meaning about 7.6% of our members experienced a strike or lockout in that seven year period. To put these numbers into perspective, in that same time, our bargaining committees and leaders across the country bargained more than 5,600 collective agreements without a strike or lockout.

According to our records, out of those 119 labour disputes, our employers made use of scab labour in 11 separate instances, or 9.2% of the time. Of these 11 disputes when scab workers were deployed, nine were strikes and two were lockouts. For a full list of Unifor disputes that involved the use of scabs, see *Table 2: List of Unifor labour disputes since 2013 where employers used scabs.*

Strike: when a group of employees sharing a common understanding choose to stop working entirely or take steps to reduce or limit their work output

Lockout: when an employer closes a workplace or suspends work, in order to compel their employees to agree to terms or conditions of employment

Table 1: Top 10 longest Unifor labour disputes in terms of total days lost.

Unit	Strike/ Lockout	Location	# of Mbrs	Strike/Start Date	Strike/LO End Date	Total Days Lost	Scabs?
Delastek Inc	Strike	Grand-Mère, PQ	36	Wednesday, April 1, 2015	Friday, March 9, 2018	1074	SCABS
D.J. Composites	Lockout	Gander, NL	30	Monday, December 19, 2016	Friday, November 30, 2018	740	SCABS
Intek Communication & DHT	Strike	ON	20	Friday, June 15, 2012	Sunday, September 15, 2013	457	SCABS
Coventry Connections (Airport taxi)	Lockout	Ottawa, ON	231	Tuesday, August 11, 2015	Tuesday, August 2, 2016	383	
Bathium Canada	Strike	Boucherville, PQ	52	Tuesday, April 29, 2014	Friday, February 13, 2015	293	
Silicium Becancour inc	Lockout	Trois-Rivières, QC	124	Friday, May 3, 2013	Friday, December 27, 2013	239	
Gardaworld	Lockout	Ottawa, ON	68	Thursday, May 14, 2015	Friday, December 11, 2015	221	
AMT Moulage sous pression	Strike	St-Cyprien	64	Wednesday, May 10, 2017	Monday, November 27, 2017	218	
Coop Refinery	Lockout	Regina, SK	689	Thursday, December 5, 2019	Tuesday, June 23, 2020	201	SCABS
Kia Longueuil	Lockout	Longueuil, QC	8	Monday, September 18, 2017	Thursday, March 1, 2018	165	

In terms of the relationship between the employer’s use of scabs and the duration of the dispute (measured as total number of lost days), our records show a strong correlation. Our three longest labour disputes in terms of overall days lost involved the use of scabs. In addition, four of our top ten longest disputes involved the use of scabs.

Looking at the average length of disputes involving scabs versus those not involving scabs, the correlation is even more apparent.

How rare it is for a labour dispute to occur?

If we assume 2,800 Unifor contracts, with an average 3.5 years duration, that means in the seven years between 2013 and 2020 there were approximately 5,600 rounds of Unifor negotiations.

In that same period, there were 119 labour disputes, which means that labour disputes occurred in approximately 2.1% of contract negotiations.

265.1 days:
the average length of a dispute when the employer uses scabs

42.8 days:
the average length of a dispute where scab workers were not used

Table 2: List of Unifor labour disputes since 2013 where employers used scabs.

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Coop Refinery	Lockout	Regina, SK	689	Thursday, December 5, 2019	Tuesday, June 23, 2020	201
Port Arthur Health Centre	Strike	Thunder Bay, ON	42	Monday, April 9, 2018	Tuesday, August 14, 2018	137
Carmeuse Lime	Strike	Ingersoll, ON	77	Saturday, January 17, 2015	Saturday, April 18, 2015	98
Compass Minerals	Strike	Goderich, ON	295	Saturday, April 28, 2018	Monday, July 16, 2018	86
Cascade Aerospace	Strike	Abbotsford, BC	280	Wednesday, June 4, 2014	Thursday, August 21, 2014	82
Sheraton Guildford	Strike	Surrey, BC	128	Tuesday, May 1, 2018	Monday, May 28, 2018	29
Holiday Inn - London	Strike	London, ON	25	Wednesday, September 11, 2019	Tuesday, September 17, 2019	7
Saputo	Strike	Georgetown, ON	203	Thursday, June 25, 2020	Monday, June 29, 2020	5

Voices from the Picket Line

Case Study 1: Co-op Refinery & Unifor Local 594

In December 2019, Unifor Local 594 members working at the Co-op Refinery in Regina, SK were locked out by their employer, in a dispute that would ultimately last for 201 days. The members' defined benefits pension plan was the main area of disagreement at the bargaining table, with the employer demanding deep concessions but unwilling to put an offer to the membership until the months into the lockout.

Co-op Refinery & Unifor Local 594

Type of dispute: Lockout

Location: Regina, Saskatchewan

Number of members: 689

Duration: December 5, 2019 to June 23, 2020

Total days lost: 201



NATHAN KRAEMER

Nathan Kraemer is the President of Local 594 and was on the bargaining committee during the 2019-2020 lockout at the Co-op Refinery in Regina where the employer flew in scabs by helicopter.

Can you give us the history of the extraordinary dispute between the Co-op Refinery and Local 594?

It was kind of a long time coming, for at least the contract term before, when we had ratified a deal in 2017 that I don't think the employer ever anticipated we would actually ratify. They came in again in 2019 with every intention of getting us out on a picket line one way or another.

Starting almost immediately, the company started driving in, and flying in on helicopters, all kinds of scabs and replacement workers. It really takes away any incentive or reason for the employer to bargain fairly, or to even bargain at all, which is what we saw. They didn't provide us with an offer that we could even take to the membership until well into the lockout.

The use of scabs tips the balance of power, and it really left us without many options. Local 594 is supposed to be their sole provider of labour. But with us locked out and their ability to replace us with replacement workers, it really took away the only leverage that we had. So we were kind of trapped out on the line. The company was not willing to bargain because they didn't feel any need to do that, as they were able to run the plant with their scabs and without us.



Members of Unifor Local 594 were forced to endure a longer lock-out in frigid conditions thanks to replacement workers.

Can you talk about the level of stress this had on our members and their families?

So many families were impacted by this, freezing out on the picket line and looking up and seeing that helicopter. It was awful from the first day we saw those helicopters fly in. Watching them continue to fly in all day, every day. They would make low passes, I'm sure intentionally just for the psychological impact it would have on all of us. And the flight paths took them around the city, making sure that a massive percentage of the membership and everyone else in Regina was very aware of the helicopters and what was going on.



Unifor members from across Canada helped to bolster the picket lines at the Co-op Refinery lock-out.

Can you talk about what difference anti-scab legislation might have made for you at the Co-op lockout?

It's fair. It's the right thing to do. It would sure be great to not have to worry about scabs the next time we go into bargaining. That would be amazing. It would have changed things a lot for us, and for other workplaces, unions and labour disputes. We want to do everything we can right now to get anti-scab laws in place in Saskatchewan and in other provinces. When employers can use scabs to continue production and sales, it takes away the power that a strike or lock out is supposed to give workers to end a dispute.

How did you feel in terms of the safety of going back to work knowing that there had been scabs working there for the seven months that you were out on the picket line?

For one thing, those workers were not necessarily familiar with the facility and some of the specific equipment there. But also they don't have a vested interest in that place - they're there for the duration of the labour dispute and then, and then they're gone, sometimes to scab somewhere else.

So yeah, there was absolutely concerns. And the plant wasn't in great shape when we got back. Very shortly after we got back in, actually, there was a fairly significant fire on a piece of equipment. I guess you couldn't necessarily blame it directly on the scabs, but it was a piece of equipment that should have been worked on in that turnaround, but ended up being postponed because of the labour dispute. It was things like that - they were very avoidable, but they happened and will probably continue to happen over the next while until the entire place gets sorted out again.

What about the impact of scabs on the picket line? How did their presence affect the nature of the dispute?

There's a whole level of community risk and safety. Not just thinking that this was a refinery in the city of Regina next to people in residential neighbourhoods, but other health and safety concerns caused by generating this much conflict.

The use of scabs has an effect way beyond just within the plant or in the workplace, but also out in the community. But even just on the lines, watching them cross all day, you know, happily going in to do our work - and even taunting us about that fact. It did a lot of damage. It actually ends up pushing people to much higher levels of stress and things happen that might not normally happen. And we actually ended up having



Unifor National President Jerry Dias was one of 19 activists arrested by the Regina Police Service on the Co-op Refinery Picket line during one of the nastiest labour disputes in Unifor's history.

future bargaining goes, it's a huge concern. I think the company has seen that when they have the ability to use those replacement workers, the scabs, they don't have any incentive to actually bargain a deal with the Local. If they choose to go that way in future bargaining, it will really be difficult at the bargaining table to get anywhere and not just end up locked out on a picket line again.

The whole labor dispute, at the heart of it, was primarily about our pension – for us anyways. But I have no doubt that the end goal from the employer's perspective was to break this union. They didn't want to deal. That's why they didn't give us even any proposals until well into the lockout. This was union busting, pure and simple, and we were told that everyday on the lines by the scabs going through, and by their security. They were taunting us, saying, "You're never coming back in here. You guys are done. They don't need you." It was psychological, for sure, and they knew what they were doing. It was about union busting, but they didn't succeed.

If you could talk to one of the scabs that crossed the picket line, what would you say to them?

I would just ask what their justification is, what their motivation is. I understand people need to be employed, but of all the types of employment you could pursue, why be a scab while 750 people are out suffering on a picket line? Everybody knows it's not long-term employment. I just can't wrap my head around why somebody would want to willingly do that and how they can feel okay about that.

some issues on the picket line that we're still dealing with through grievances and stuff. It was very much because of the stress that was introduced by the scab workers.

You've said that your employer deployed scabs to both continue their business operations, but also as a tool of intimidation. Given that, how does the use of scabs makes you feel about bargaining in the future?

In terms of having a reasonable relationship with the employer, that kind of thing? After the labour dispute, with the company using scabs for the duration, it is definitely difficult to try and rebuild the relationship with them.

We've been working a lot on that and as far as



Unifor National Secretary Treasurer Lana Payne speaks to reinforced picket lines at the Co-op Refinery lock-out.

Case Study 2: Compass Minerals & Unifor Local 16-O

In 2018, almost 300 members of Unifor Local 16-O working at for Compass Minerals in Goderich, ON went on strike after rejecting a company proposal that included mandatory overtime, 16-hour shifts and 72-hour work weeks. The US-based employer brought in scabs in an attempt to keep the mine operating, leading to heightened tensions on the picket line and safety concerns in the workplace.

Compass Minerals & Unifor Local 16-O

Type of dispute: Strike

Location: Goderich, Ontario

Number of members: 295

Duration: April 28, 2018 to July 16, 2018

Total days lost: 86



GARY LYNCH

Gary Lynch is the former President of Local 16-O and was President during the 2019 strike at the Compass Minerals Salt Mine in Goderich Ontario, where the employer bussed in scabs to prolong the dispute.

How did the dispute at Compass Minerals in Goderich begin?

We were at the table for probably 10 to 12 bargaining sessions, and the company gave no indication of even entertaining any of our proposals. They constantly kept bringing concessions to the table and, and it seemed like they had a hidden agenda that we weren't aware of, which was ultimately for replacement workers – scabs – to come in and take over the mine. They obviously needed some time to put it all in place, get them into housing, and their plan ready. We were unaware of this at the time, but there were some certain indications because they never did entertain our proposals or sit down and talk. But at a certain point, we just knew something was up.

What was it like when the scabs arrived?

One day, we started to see brand new coach busses roll in. And the members, with their spouses and families that were down on the picket line stand there watching these buses roll in, filled with scab workers. Obviously, everybody's hearts sank. We knew that we were in for a long haul. This is a great tactic by the company – nothing but concessions ever hit the table after that, there was no fair bargaining, and unfortunately no going back. This leads to anxiety for the families, and our members were hit hard, with no paycheques.

By bringing in replacement workers, how did the employer affect the dispute?

It seems like they don't want to bargain fairly, and it just prolongs the dispute. In our work culture, being in an underground mine, the integrity of the mine – our workplace – it's all impacted. And when we got to go back down there, we didn't know what we'd find heading in – there's ground control that we know was probably



Jerry Dias addresses members of Local 16-O in Goderich on July 5, 2018 after escorting scabs off the property.

never done properly. It wasn't like what we would do. You know, where was the skilled labour? Where are the guys with 20, 30, 40, 50 years of training and skills that we've learned over the years? And these guys just come flying in from out of province, you know, settled down in Kitchener, two hours away. Like I said, they were coached in. The scabs put videos all over the internet and Facebook, laughing at us, down there having a great time, carrying on. But you know, we've seen it. The impact is horrible. The mine was a disaster when we went back.

The company's telling you that, "Oh yeah, we're business as usual, pumping out the salt," but you know, when the buses were heading home and it was over, it was just horrifying.

What was the impact of the dispute on the local community?

Well, first off, I think community was a huge part of this – obviously our fellow Unifor members from the area showed and supported us, and showed up on the line every day. Every waking hour, and I'm not kidding. We had thousands of people here for a small town of 5,000.

I bet you two thirds of the town at one point in time showed up here on the line. They'd bring dinners down here. The nurses from the hospital, the school teachers sent support. This mine has been here 60 years, and almost every household has someone who worked here in some capacity.

When employers do this, they take most of the money from the small merchants in town. Business just comes to a crashing halt – they depend on the miners. I mean, all the other good jobs in town have left, due to free trade and other things. We're the last employer, the biggest employer in town.

You know, it's not rocket science. Anybody that has a job will fight for their job. That's what we come to work for – to support our families. And when you take that away, everybody bands together because they know what's right and wrong.



Jerry Dias leads scabs out of the Compass Minerals Salt Mine in July 2018.



Members from across Ontario mobilized to support members of Local 16-0 in Goderich, Ontario in the summer of 2018.

How do you think the use of scabs in the last round of bargaining will affect how you and your members feel about going into the next round?

Like any local union, at times we all don't agree on everything that is brought forward, whether it's from the union executive or from management. But when they do something like this, it brought our local so close together, especially when the gloom cut so deep.



This is one of several concerts held on the picket line in Goderich to bring community member to the picket line in 2018.

But that's all I get now - three years later, I walked to the square to go to Tim Horton's and people know that we're up for negotiations. To me, that's shocking. It's like, wow, you guys remembered. People in town know it's been three years and they're waiting to see what's going to happen.

I think the strike brought us all closer together, you know? And at the end of the day, we did walk those scabs off the property - probably the proudest moment of my life. It just created a huge solidarity through our local. I know we sent a strong message

and took a stand. And I'll never forget that morning, waking up to that footage and it cutting to a video of Jerry walking the scabs out.



LANCE GREER

Lance Greer is the Vice-President of Local 16-0 and was a member of the Local Executive during the 2019 strike at the Compass Minerals Salt Mine in Goderich, Ontario.

What was your experience like during the 2018 labour dispute at the mine?

I remember in July 2018, having to watch those white buses rolling in. My kids were teenagers at the time, and they knew what it meant. It was a kick in the face for the most part. There's young kids that shouldn't have understood what those white buses were, and what they represented and what they were doing to the community. We even had people that needed to leave the community for a little while to work at different places, in different mines. And that impacted the community as a whole, because we didn't have money being spent here. There wasn't the same disposable income going around, so the whole town, the whole community, felt what was going on with the fact that we had scabs.

How does the use of scabs change the balance of power in bargaining?

It means your boss can just say to you the workers, "I don't have to negotiate with you. I'll just bring in some buddies from New Brunswick on a bus." Collective bargaining is supposed to be fair, but it gives them a complete upper hand. You can't go to the table and expect to have a fair deal, or even have the chance to express your position in the bargaining process. If the employers have the option of not even talking to



Hundreds of Unifor members traveled to a rally in support of workers at the salt mine in Goderich in 2018.

people, and still getting their product out, it's absolutely tipping the balance and the scales in the company's favour.

What do you think was the impact of the use of scabs on the length of the dispute in Goderich?

I aged quite a bit that summer! I will tell you, the fact is that we went days, weeks, and eventually months without them actually coming to the table to legitimately negotiate. And that really affected how we were going to actually reach a deal. In the end, the only

reason that they came back to the table was because we took away their ability to have the scabs at the mine. Once it was clear they weren't getting in or out – once they got it – that was it. That was the only reason they came back to settle.

If you could talk to one of the scabs that crossed the picket line, what would you say to them?

For us, it's our right to belong to a union. It's our constitutional right to belong to a union. And we believe in that – we believe in the fact that we have collective bargaining power in that fashion. When you have somebody else come and take your job, the fact is we are no longer able to go to the bargaining table and bargain a fair and equal agreement for the workers.

For somebody to come from out of province, it's a kick in the face. It's one of the worst things that I could think of doing to somebody – they don't know who we are and they don't know our families. They don't know the community.

If your employer had been able to continue to use scabs, what do you think would have been the outcome there?

For us, we were really sure there would have been some sort of serious accident at the mine. And the dispute would have been prolonged. But in terms of an accident, the fact is we were worried about the mine as a whole, and would we even have a place to go back to work? That was a serious concern that we still talk about today. These people the company had hired to come and do our jobs had no skills whatsoever and were working 12 to 16 hour days.



One of many family friendly events on the Goderich picket line in 2018.

Anti-scab Legislation in Canada

In Canada, three provinces currently have or have had anti-scab legislation: Quebec, British Columbia and Ontario.



Unifor members in Grand Mere, Quebec spent 1074 days on the picket line.

Quebec

Section 109.1 (1977) of Quebec's *Labour Code* prohibits an employer from using scabs to perform the work of a member of the bargaining unit, whether those are externally contracted, recent hires (i.e. after negotiations begin), members of the bargaining unit, or any other employees at any of the employer's establishments with the exception of managers at the struck or locked out facility.¹ Despite serving as the strongest example of anti-scab legislation at the

provincial level, the loophole regarding management is a significant one. Combined with issues around enforcement, this has meant that some of the longest labour disputes in Quebec's history have taken place in recent years due to the deployment scabs (see below).

British Columbia

Section 68 (1993) of British Columbia's *Labour Relations Code* prohibits employers from using scabs who are new hires (i.e. after notice to commence collective bargaining has been given), employees who ordinarily work at another place of operations or who have been recently transferred, or externally contracted workers. Unlike in Quebec, B.C. anti-scab rules permit an employer to use scabs when they are existing members of the bargaining unit or they are employees, working in the establishment and hired prior to the commencement of collective bargaining (e.g. managers). The only restriction is that employers cannot compel or coerce an employee into performing any or all of the work of a bargaining member unit while on strike or lockout.²



Unifor members walk off the job on day 1 of the strike at Cascade Aerospace in Abbotsford, B.C.

Ontario

Ontario had anti-scab legislation in place, briefly, from January 1993 until October 1995, but it was ultimately repealed by the Mike Harris Progressive Conservative government. While in place under Section 73 of the *Labour Relations Act*, the law prohibited the use of scabs at any workplace involved in a labour dispute, except for employees outside the bargaining unit and those performing managerial functions at the workplace in question. As in B.C., employers could not compel employees outside the bargaining unit to perform the duties of an employee locked out or on strike.³

¹ http://legisquebec.gouv.qc.ca/en/showversion/cs/C-27?code=se:109_1&pointInTime=20210202#20210202

² https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96244_01#section68

³ <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-92>

Quebec’s anti-scabs laws effectively ban the use of any employee or contracted workers to perform the duties of a bargaining unit member, except for managers at the workplace, rendering it the most favourable to workers in the country. However, the loophole which allows managers to be deployed as scabs has been exploited by some employers to drag out disputes. This undoubtedly contributed to one of the longest labour disputes in Quebec’s history, when Delastek deployed managerial scabs to hold out against Unifor Local 1209, leading to a 35-month strike from 2015 to 2018. Likewise, workers at the ABI aluminum smelter in Bécancour, QC were locked out for 18 months from 2018 to 2019 by their employer with the help of scabs and the authorities’ failure to properly enforce anti-scab provisions. Ontario’s anti-scab legislation, now repealed, permitted the use of managers and non-bargaining unit employees as scabs, that (while limited) created an even more expansive pathway to potential disruptive labour relations during a dispute. Finally, B.C. laws – which allow all employees at the workplace to cross picket lines during a dispute – are the weakest of the three.



Unifor members on the picket line during the Cascade Aerospace strike in 2014.



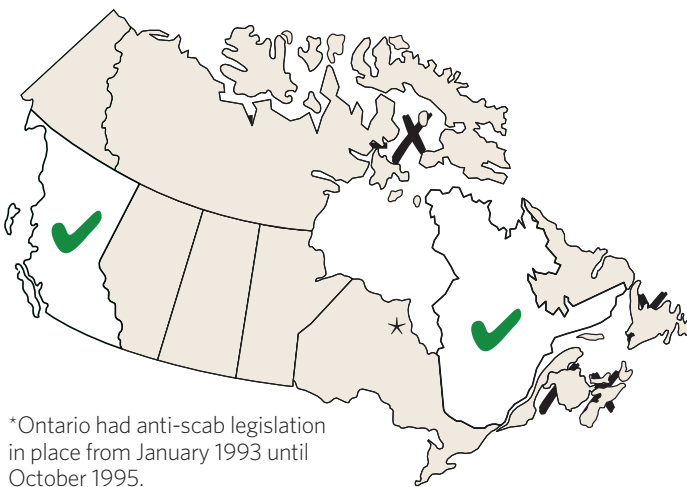
Speech by Jerry Dias at a solidarity event for Local 1209 members at Delastek on December 15, 2015.

All three provincial anti-scab laws made exceptions in the case of emergencies where health and safety are at risk or there is the risk of damage to property, machinery or the environment.

As we shall see in the following section, certain international studies on scabs distinguishes between so-called ‘internal’ scabs – i.e. those who are existing employees of the employer at the time negotiations commence – and ‘external’ scabs – those hired specifically to replace striking or locked out bargaining unit members.⁴

Applying this distinction to the three Canadian examples of anti-scab legislation (above), all three ban the use of external scabs while allowing internal scabs to a limited extent (i.e. managers and/or some employees who choose to cross the picket line).

Which Canadian jurisdictions have anti-scab legislation?



The private member’s bill (C-258), introduced in December 2020 by the NDP at the federal level, would effectively follow the Quebec approach by banning the use of scabs while a strike or lockout is underway, except for managers at the workplace and in the case of emergencies.⁵ Since it maintains the loophole that would exempt managers from anti-scab provisions, it falls short of the strongest kind of anti-scab legislation that would completely ban the use of both internal and external scabs.

⁴ See for example López, Sergio L. (2015). *La Problemática de la Sustitución de Trabajadores Huelguistas*. Retrieved from https://ddd.uab.cat/pub/tfg/2015/133241/TFG_sleallopez.pdf

⁵ <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=10866336&Language=E&View=10>

Anti-scab Legislation Around the World

There is significant legal precedent for implementing anti-scab legislation at the federal level, not just among Canada's provinces (i.e. B.C. and Quebec), but in a number of jurisdictions around the world. In Asia, Article 43 of the South Korean *Trade Union and Labour Relations Adjustment Act* prohibits employers from hiring replacement workers during labour disputes. An amendment was made in 2006, exempting employers of essential public services (Article 43(3)) but limiting their use of replacements to just 50% of strike participants (Article 43(4)).⁶

Closer to home, Articles 4 and 447 of Mexico's Federal Labour Law (*Ley Federal del Trabajo*) explicitly prevent employers from hiring permanent or temporary replacement workers, except in the case of essential services (Article 468).⁷ These provisions also effectively ban members within the bargaining unit from continuing to work. However, as some commentators have pointed out, there are strict conditions that must be met for a strike to be deemed legal, which has historically had the effect of discouraging strike action in Mexico (cf. Singh and Jain, 2001).

In South America, Article 449 of Colombia's Labour Code suspends employment contracts for the duration of legal strikes and prohibits the employer from entering into new employment contracts, except in cases where tasks are critical to maintenance and the strike committee has refused to authorize the necessary work.⁸ Likewise, Article 7

"In line with previous studies on the Canadian experience, they found that the incidence of work stoppages increased in the first two years after anti-scab legislation was introduced, but in contrast to these earlier studies, there was a significant and substantial reduction in the length of the work stoppages."

of Law 7.783/89 in Brazil suspends the employment contract and bans the use of replacement workers except where critical maintenance work is needed.⁹ Article 501 of Ecuador's Labour Code states simply, "during a strike, work may not be performed by substitute workers."¹⁰

In Spain, labour statutes do not regulate the use of replacement workers. Rather, the prohibition of scabs is by royal decree. This dates back to 1977 (RDL 17-1977, Article 6), wherein the decree specifies that, "As long as the strike lasts, the employer may not replace the strikers with workers



Walk in solidarity with the members of Local 1209 at Delastek in the streets of Trois-Rivières during Quebec Council on May 5, 2016.

⁶ Although Japan is often included in the same category as South Korea when it comes to East-Asian countries with anti-scab legislation, the English language sources claiming this (mostly online) are inaccurate. The Japanese Supreme Court has issued rulings that guarantee workers the right to reinstatement once a labour dispute has ended, but there exist no legal statutes in Japan that explicitly ban the hiring of temporary replacement workers (Dau-Schmidt and Ellis, 2010). The ability for Japanese employers to continue conducting operations during a strike is protected by Japanese labour law, which encompasses the freedom to employ replacement workers (Sugeno 2002).

⁷ http://www.diputados.gob.mx/LeyesBiblio/pdf/125_020719.pdf

⁸ <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Codigo/30019323>

⁹ <https://www.jusbrasil.com.br/topicos/11655485/artigo-7-da-lei-n-7783-de-28-de-junho-de-1989>

¹⁰ <http://www.trabajo.gob.ec/wp-content/uploads/downloads/2012/11/C%C3%B3digo-de-Tabajo-PDF.pdf>

who were not linked to the company at the time it was communicated, except in the case of non-compliance with the obligations contained in section number seven of this article.”¹¹ Section 7, which at one time required the strike committee to guarantee the performance of basic maintenance work and upkeep, was eventually declared unconstitutional. Note, however, that this decree does not prevent members of the bargaining unit from crossing the picket line nor does it cover strikes deemed illegal.

In France, Article L124-2-3 of the Labour Code prevents employers from entering into temporary employment contracts as a means of replacing workers whose contracts are suspended due to a labour dispute.¹²

Article 535 of Portugal’s Labour Code states the following: 1) the employer cannot substitute striking workers with new employees; 2) tasks that are the responsibility of a striking worker cannot be contracted out except in instances of non-compliance with the minimum maintenance of essential services; and 3) that the violation of these provisions constitutes a serious infraction.¹³

In Scandinavia (i.e. Denmark, Sweden and Norway), the state tends to take a hands-off approach to labour relations and allows peak labour and employers’ federations to determine the nature of their relationship themselves, including pay and working conditions (there is, for example, no statutory minimum wage in any of the three Scandinavian countries).

This model of ‘social partnership’ relies on a high level of union density and collective bargaining coverage (usually in the neighbourhood of 80-90%) as well as general agreements that are negotiated between the major labour and employer federations which set baseline regulations for most employers and workers. These general agreements include provisions that set penalties for strike action undertaken while an agreement is in force. This arrangement implies that employers are free to replace striking workers during a labour dispute. In practice, however, the use of scabs in these countries is rare in the modern era, particularly since the threat of co-ordinated solidarity strikes by other unions, which strategically target an employer’s supply chains, tends to put a damper on employers’ willingness to deploy replacement workers.



Members across Ontario at Intek Communications and DHT were locked out for 457 days in 2012.

¹¹ <https://www.boe.es/buscar/act.php?id=BOE-A-1977-6061>

¹² https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006646925/2004-06-26

¹³ <https://dre.pt/legislacao-consolidada/-/lc/75194475/201707240900/73440403/diploma/indice>

Table 3: Examples of anti-scab laws and policies from around the world

Country	Anti-scab law/policy?	Details
South Korea	✓	Employers prohibited from hiring replacement workers during labour disputes, employers in essential public services can hire replacement workers up to 50% of number of strike participants
Mexico	✓	Employers prohibited from hiring permanent or temporary replacement workers, except in the case of essential services; however, conditions required for legal strike action are difficult to meet
Colombia	✓	Employment contracts suspended during legal strikes, employers prohibited from entering into new employment contracts, with limited exception regarding maintenance work
Brazil	✓	Employment contracts suspended during strike, use of replacement workers prohibited except where critical maintenance work is needed
Ecuador	✓	"During a strike, work may not be performed by substitute workers."
Spain	✓	Prohibition of scabs is by royal decree, not labour law; however, this decree does not prevent a striking member from crossing the picket line, does not cover strikes deemed illegal
France	✓	Employers prohibited from entering into temporary employment contracts to replace workers engaged in labour dispute
Portugal	✓	Employers cannot substitute striking workers with new employees; during a dispute only certain maintenance activities may be contracted out
Denmark		No formal anti-scab legislation, however 'social partnership' model discourages use of scabs, general agreements negotiated between major labour and employer federations set baseline regulations for most employers and workers
Sweden		
Norway		

Effects of Anti-Scab Legislation on the Frequency and Duration of Labour Disputes

Within the field of labour studies, few studies examine the impact of replacement workers - or anti-scab legislation - on the frequency and duration of strikes and lockouts, with most of the examples drawing on experiences in the United States and Canada. In these latter cases, many of these studies are further limited by their use of strike and lockout data from the 1980s and 1990s.

In the United States, Cramton and Tracy (1998) set out to examine whether or not there was an increasing tendency to use replacement workers - particularly after Ronald Reagan hired permanent scabs to replace the striking members of the Professional Air Traffic Controller's Organisation (PATCO) in 1981 - and what the effect of replacement workers was on strike duration. While the number of strikes decreased during the decade, the use of replacement workers went up - dramatically - after 1981. The authors conclude that the threat of replacement workers caused many unions to resort to 'holdout' strategies through slowdowns, work-to-rule campaigns, and others, instead of striking. However, their data clearly showed that the use of replacement workers increased the length of strikes, from an average of 32 days without replacements, to 70 days if temporary scabs were deployed and 217 days if permanent replacements were hired. The use of scabs was also associated with a higher incidence of violence. Scabs were present in 46% of strikes that involved major violence, far above their deployment as a percentage of overall strikes during the period (14%).

The relatively limited experience with anti-scab legislation in Canada results in a lack of reliable data on the use of scabs, and their effect. Canadian studies, therefore, have tried to extrapolate the effect of anti-scab legislation on the incidence of strikes and their length. Counterintuitively, a number of studies from the 1990s



"D-J Composites meet Unifor," said Lana Payne, then Atlantic Regional Director as hundreds of union members shut down the aerospace plant in September of 2018.

- including Gunderson and Melino (1990), Budd (1996) and Crampton, Gunderson, and Tracy (1999) - found that the presence of anti-scab legislation both increased the frequency and the duration of strikes. However, as Bartkiw (2015) points out, many of these studies used models that were simplistic and which failed to control for province-specific effects that were likely skewing the data (Gunderson and Melino, for example, relied entirely on data from Quebec since it was the only province with anti-scab legislation at the time). When Budd (1996)

controlled for province-specific effects, he found no statistically significant impact of anti-scab legislation on strike incidence and duration.

However, more recent study by Duffy and Johnson (2009) used a larger data set from 1978 to 2003 to examine the impact of anti-scab legislation in Quebec, B.C. and Ontario on the frequency of work stoppages as well as their duration. In line with previous studies on the Canadian experience, they found that the incidence of work stoppages increased in the first two years after anti-scab legislation was introduced, but in contrast to these earlier studies, there was a *significant and substantial reduction in the length of the work stoppages*. Of all the variables they examined, including dues check-off, compulsory conciliation and mandatory strike votes, among others anti-scab legislation, along with bans on professional strike-breakers and reinstatement rights, had the most significant impact on the length of work stoppages, considerably reducing them. Notably, the authors also found that there was little to no evidence that there was any effect on days lost to work stoppages once anti-scab legislation was introduced, both in the first two years following its implementation and after it had been in effect for more than two years.



The crowd kept building as Unifor stood up to D-J Composites during a two year lockout.



This Billboard was part of the campaign to end the D-J Composites Lockout.

This is a key finding. It suggests that once workers' bargaining power is restored through anti-scab legislation, there may be a slight uptick in the incidence of work stoppages (particularly in the first two years after legislation is introduced) but the length of the average labour dispute shortens significantly so that there is no overall increase in the number of days lost.

Effects of Anti-scab Legislation on Health and Safety

Although empirical studies are important to get a sense of whether there are any discernable effects of anti-scab legislation on aggregate statistics such as the number and duration of labour disputes, the studies cited above suffer from a number of issues that limit our ability to draw meaningful conclusions about the importance of anti-scab legislation. For one, their sample size is often limited to a small number of jurisdictions and disputes involving large bargaining units (typically more than 500 members), which means that they are drawing on a relatively small pool of data that is subject to a large number of external variables which might be causing the observed effects.



Members across Ontario at Intek Communications and DHT were locked out for 457 days in 2012.

In the case of Canada, for example, it is hard to tell whether the observed effects discussed above 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).

There are two other key flaws in the empirical studies mentioned above.

For one, there is little distinction between the different types of anti-scab legislation, for example, the extent to which the legislation bans or limits the deployment of 'internal' scabs (i.e. managers and bargaining unit members), as well as a how it groups strikes and lockouts together under the category of work stoppages.

Second, and perhaps the greatest drawback of the studies, is their inability to measure the long-term physical and mental effects scab use has on workers. This can include a decline in morale, fractured workplace relationships, mental and physical exhaustion and breakdown (particularly when scabs enable drawn-out lockouts or strikes), or outright violence that injures and even kills workers.

The experiences of our members clearly illustrate the potential for harmful outcomes in labour disputes where employers use scabs. Members of one of Unifor's predecessors, the Canadian Autoworkers Union (CAW), were subjected to outright violence during a 2002 strike at Navistar International's truck plant in Chatham, ON, a dispute where the presence of scabs became a source of conflict. In that highly publicized incident, a security guard working for a third-party firm hired by the company drove a van through a group of strikers and their supporters on the picket line, injuring three, one of them critically.

Unfortunately, such stories of hostility and violence associated with scabs are not unique to our union. For example, Singh, Zinni and Jain (2005) set out to examine four case studies of notable labour disputes in Canada and found that the use of replacement workers was associated with a far higher risk of workplace

acrimony and potential for violence. In the Air Ontario strike of 1997, 146 flight attendants and members of CUPE's Airline Division were replaced by 85 scabs, which led to a hostile and potentially unsafe work environment since many of the pilots (members of CALPA who would soon go on strike themselves) were reluctant to work with scabbing flight attendants who had limited training and experience.

The Air Ontario example, however, pales in comparison to the 1992 Giant Mine tragedy in Yellowknife. Members of the Canadian Association of Smelter and Allied Workers (CASAW), Local 4, were locked out by the owner of Giant Mine, Peggy Witte, over the union's refusal to accept wages and benefits concessions. Witte immediately brought in scabs, some sourced from Pinkerton in the U.S. A team of 50-RCMP officers were deployed. The close-knit community in Yellowknife was torn apart by the lockout, with neighbours pitted against one another and fights breaking out both on the picket line and in the streets of the town itself. Forty-five workers were laid off for alleged acts of violence and property damage, which only further inflamed tensions.

The escalating hostility between the union and the scabs culminated in tragedy on September 18, 1992 when three replacement workers and six bargaining unit members who had crossed the picket line were killed by a bomb that had been placed inside the mine by a striking worker. Despite the deaths of nine people, the lockout dragged on for another 15 months, and the employer refused to accept the recommendations of two mediators appointed by the federal government. The dispute finally ended in December 1993, after the CLRB ruled that the employers had failed to bargain in good faith and directed them to table an earlier offer. A back-to-work protocol was also implemented, which included arbitration for the dismissed workers. In the end, just three of the dismissals were upheld.

Examples such as the Giant Mine tragedy reveal the incalculable costs of failing to have anti-scab legislation in place, which cannot be captured by studies that simply look at the incidence or duration of labour disputes. Both Unifor's experiences and those of the broader Canadian labour movement show a clear trend towards escalating tensions and potential violence when scabs are brought in by employers, as well as enduring adverse impacts on the broader community, particularly in smaller cities and towns. Based on these negative outcomes alone, anti-scab legislation should be present in every jurisdiction in Canada. One lost life is one too many, and no worker should be afraid of injury or death because an employer has decided to deploy scabs in an effort to undermine workers' rights to collectively bargain and strike.



Unifor members block the entrance to D-J Composites and wave Unifor flags during a rally streamed live on Facebook.

Conclusion



Jerry Dias tells locked out D-J Composite workers scabs are not crossing a Unifor picket line again.

At our National Convention in August 2019, more than a thousand Unifor delegates endorsed a resolution to undertake a national campaign to fight for anti-scab legislation in Canada. This resolution was proposed by Unifor Local 597, whose members working at DJ Composites in Gander, NL were locked out for 740 days – the second longest labour dispute in Unifor’s history. As noted above, the three longest disputes in Unifor’s history involved the use of scabs, a fact that speaks for itself when considering what effect scabs can have on the duration of labour disputes, and on the overall state of labour relations between workers and their employers.

Unifor members, and union members across Canada, know all too well how the use of scabs:

- Undermines their collective power;
- 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.

Only about 2.1% of Unifor’s contract negotiations since 2013 have involved a strike or lockout, and employers used scabs in less than 10% of those disputes. However, it is clear that when they *are* involved, scabs make strikes and lockouts longer, more acrimonious, and more risky in terms of workplace health and safety. The employers’ ability to use scabs tips the balance of power too far in their favour and undermines normalized labour relations. It is time to level the playing field and pass anti-scab legislation, allowing working Canadians to bargain fair contracts that support themselves, their families and their communities.



One of many families featured in a series of videos about how scabs hurt families posted during the Compass Minerals dispute.

Unifor's Recommendations

Unifor calls on all elected officials at the provincial, territorial and federal level to enact anti-scab legislation, in accordance with a set of basic principles based, in part, in existing legislation in Quebec, BC, and international jurisdictions. This anti-scab legislation should:

- **Prohibit employers from using replacement workers for the duration of any legal strike or lockout**, specifically banning the use of any employee or contracted workers to perform the duties of a bargaining unit employee;
- Prohibit employers from using both **external scabs** (those hired specifically to replace striking or locked out bargaining unit members), as well as **internal scabs** (new hires, members of the bargaining unit who might otherwise cross the picket line, or any other employees at any of the employer's establishments, including managers);
- Include **significant financial penalties for employers who defy the anti-scab legislation**; and
- **Allow for the very limited use of temporary workers**, only to undertake essential maintenance work to **protect the integrity and safety of the workplace**, but not to contribute to the ongoing, normal operation of the workplace.



Unifor is Canada's largest private sector union, with more than 315,000 members across the country, working in every major sector of the Canadian economy.

Unifor brings a modern approach to unionism: adopting new tools, involving and engaging our members, and always looking for new ways to develop the role and approach of our union to meet the demands of the 21st century.

Every person of working age in Canada has a right to a good job and the benefits of economic progress.

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