

A race against time

Achieving a new Federal Anti-Scab Law

By Bryan Savage, Director of Legal Services

image by Frederick D. Perry, Flickr

On November 9, 2023, fulfilling a commitment made to the New Democratic Party, the federal government introduced Bill C-58 into Parliament. The bill, if passed, would prohibit the use of replacement workers by an employer during a legal strike or lockout.

The bill would prevent an employer from using the services of any of the following persons to perform all or part of the duties of an employee in the bargaining unit that is on strike or locked out:

- Any management, or confidential staff hired after notice to bargain has been given
- Any contractor or an employee of a contractor

In addition, except in cases of essential services, or when the strike or lockout does not affect all employees, an employer cannot use the services of any employee within the bargaining unit.

As those of you who work under the BC Labour Code are aware, replacement workers have been banned in BC for 30 years. This law, if it takes effect, goes further than the BC law, as it will also prevent the use of bargaining unit employees to perform their own work during a strike or lockout. If the strike is a limited one (e.g.: an overtime ban) this restriction would not apply.

While the BC law does not prevent bargaining unit members from crossing picket lines, it must be remembered that in doing so, a bargaining unit member can be brought up on charges under the union's constitution. Such charges could lead, among other consequences, to expulsion from the union. This would prevent an employee from returning to work for the employer after the strike if the collective agreement provides that employees in the bargaining unit must be union members.

The proposed bill would allow the employer to utilize management staff hired before the notice to bargain was given to perform bargaining unit work.

While this bill has rightly been welcomed by unions throughout Canada, there are a number of concerns.

Firstly, the bill is only in second reading before the House of Commons. It will still have to go to Committee and then come back to the house for a third reading. After that, the bill will be sent to the senate, where the same procedure will take place. It is simply not clear how long this process will take.

Second, and much more worrisome, the bill will not take effect until 18 months after it is passed. Currently, the next federal election is scheduled to take place in October of 2025, although a sooner election is possible.

If the election is held on the October 2025 date and the bill has not passed before April of 2024, this would mean a new government would be in place prior to the effective date of the legislation. If this is the case, it is not clear if the replacement worker ban would survive. 🌐



Union members today face similar issues as the workers pictured here did in 1936.