Historic anti-strike-breaker legislation in the works for federally regulated workplaces

October 28, 2022

Prohibited use of replacement workers

On Oct. 19, 2022, Employment and Social Development Canada (ESDC) made an important announcement for federally regulated workplaces:[1]

> A commitment to introduce legislation to prohibit the use of replacement workers during a strike or lockout by the end of 2023.

ESDC stated that this change was "to ensure that all workers in federally regulated sectors continue to benefit from a meaningful right to strike."[2]

Who is a replacement worker

A replacement worker is a person who is not part of the bargaining unit (or who is, but who has been hired after the beginning of the strike/lock-out) and who performs the duties of a unionized worker who is on legal strike/locked out.

The current rule

Currently, the *Canada Labour Code* (the Code) only prohibits employers from using replacement workers "for the demonstrated purpose of undermining the trade union's representational capacity rather than the pursuit of bargaining objectives."[3] As a result, it is not unlawful to have contractors or other individuals perform the work of the striking employees.

Practical impacts

As of today, Québec and British Columbia remain the only two provinces where the applicable provincial labour relations regimes prohibit the use of replacement workers during a legal work stoppage.

Under the proposed changes, all federally regulated employers would be banned from using replacement workers during legal work stoppages (and this, regardless of the province of operations).

This is significant as, over the last 10 years or so, federal employers have used other workers and managers to perform some or all of the work of legally striking or locked out employees, in over 40 per cent of all strikes and lockouts.[4]

Collective bargaining dynamics may thus change, should employers lose the ability to continue their regular operations through the use of replacement workers during a strike or lockout.

However, if similar legislation under provincial jurisdictions are any indication, employers would likely be able to continue to, for instance:

- Enlist management employees to perform certain tasks;
- Relocate the work to other jurisdictions or establishments not covered by the work stoppage and the certification;
- Take the necessary measures to avoid destruction or serious deterioration to their property.

This all remains to be seen in 2023.

Whether the upcoming legislation will be uncompromising or allow for exceptions will prove significant in assessing how, and to what extent, the labour relations dynamics will be affected.

BLG's Labour and Employment Group comprises skilled, experienced and business-minded labour relations lawyers, who will continue monitoring the changes discussed above. Contact us for support with collective bargaining matters, including regarding the upcoming challenges covered in this article.

[1] Workplaces covered by Part I (Industrial Relations) of the *Canada Labour Code*, such as, for example, those in the banking, telecommunications and broadcasting, air, rail, and maritime transportation, sectors.

[2] Prohibiting replacement workers in federally regulated industries - Discussion paper, Employment and Social Development Canada.

[3] Section 94 (2.1), *Canada Labour Code*.

[4] 42 per cent between January 1, 2012, to August 1, 2022, as estimated by the Labour Program. Prohibiting replacement workers in federally regulated industries - Discussion Paper, ESDC, *op. cite.*

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