

# Balancing Act: Card-Check, Anti-Scab, and the Case for Rebalancing Manitoba's Labour Relations

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# Executive Summary

CARD-CHECK (OR SINGLE-STEP) union certification and a ban on replacement workers have long been regarded as important labour relations reforms in Manitoba and elsewhere in Canada. Prior research on the effects of card-check union certification and a ban on scab workers within Canadian provincial political-economies have focused primarily on labour statistics such as union certification success rates, the incidence and length of strikes, wage settlements, and other macroeconomic measures (Budd and Wang 2004; Singh, Zinni, and Jain 2005; Campolieti, Riddell, and Slinn 2007; Duffy and Johnson 2009; Campolieti, Hebdon, and Dachis 2014). This literature has consistently documented a positive connection between card-check union certification and union certification success rates, as well as a drop off in union certification whenever card-check certification is abandoned (Riddell 2004; 2010; King 2023a). Previous research on anti-scab legislation suggests that while anti-scab may increase strike incidence over the short-term, it tends to reduce the length of strikes netting out to no change in overall days lost due to strike activity (Singh, Zinni, and Jain 2005; Duffy and Johnson 2009). In terms of wage settlements, and other macroeconomic indicators the research is not clear. This report builds upon prior research on the effect of card-check and anti-scab legislation by reviewing not only labour statistics surrounding these two pieces of legislation but by investigating how the balance of power within Manitoba labour relations is affected by the presence or absence of this legislation.

The report draws upon provincial labour statistics as well as 12 interviews with rank-and-file union members, union organizers, and union negotiators to understand the effects of card-check and anti-scab legislation on Manitoba workplaces. In line with previous research, there has been a marked decline in union certification rates since the 2016 elimination of card-check certification in Manitoba. Union certification applications declined from a five-year average of 38 applications per year (2010–11 to 2015–16) to 28 applications per year (2016–17 to 2021–22). A review of Manitoba strikes and lockouts between 2016 and 2023 finds that replacement workers are regularly hired in Manitoba with 34.7 per cent of strikes during this period involving scab workers. Strikes involving scab workers on average lasted twice as long (45 days) as strikes where scabs were not used (23.2 days). Over this period scabs were used during strikes in the retail sector, childcare, education support, garment manufacturing, restaurants, and crown insurance and liquor retailers, indicating there may be gendered and racialized inequalities in where scabs are hired.

Interviews with union workers and organizers revealed that Manitoba workers engaged in union organizing consistently experience intimidation and a climate of fear at work during union certification drives. Instances of intimidation, anti-union messaging from employers, and reprimand for union organizing activity were increased by the implementation of additional mandatory union certification votes. Between 2000 and 2024 the Manitoba Labour Board ruled against employers ten times for unfair labour practices (ULPs) during certification drives. The absence of similar rulings against unions indicates that balanced labour relations requires stronger protections against employer intimidation. Although Manitoba's Labour Relations Act (LRA) includes protections against undue influence by employers, workers reported procedural delays to certification votes as well as limitations of the LRA to protect workers from influence. As previous research shows, procedural delays benefit employers opposed to union certification by increasing time to influence workers. Broadly, workers identified a balance of power within workplaces in which employers hold significant capacity to influence workers, which has been increased to the benefit of the employer by the introduction of mandatory vote union certification.

Workers involved in strikes and lockouts in Manitoba reported issues with workplace safety and long-term damage to labour-management relations resulting from the use of scab workers. Issues with workplace safety included experiences with violence and harassment on picket lines during a strike involving scab workers as well as safety issues within the workplace

due to scab workers performing unsafe work without training. In terms of damage to labour relations, workers repeatedly noted a sense of injustice in being replaced by scab workers which had a negative effect on bargaining. Workers noted the persistence of a negative impact following the resolution of bargaining, indicating that the use of scabs can have long-term effects on labour-management relations. The report notes that many of the negative impacts described by workers would be greatly reduced or eliminated by the introduction of card-check certification and anti-scab legislation.

The evidence presented in this report runs counter to arguments that card-check and anti-scab legislation give excessive power to workers over employers. Rather, card-check certification and a replacement worker ban are fundamental to upholding workers rights within Canada's labour relations system. The right to join a union and the right to strike are two foundational aspects of Canadian labour relations. Testimonials from workers in this report make clear that mandatory votes suppress workers' freedom to join a union without coercion from anti-union employers. The use of replacement workers undermines the power of a strike, the primary tool Canadian workers have to further negotiations with their employers. Under Manitoba's existing labour relations system, unions have no legal avenues to push back against the use of replacement workers. The introduction of card-check certification and anti-scab legislation would promote access to unionization and fair collective bargaining in Manitoba, both of which carry broad public policy benefits, including increasing economic equality, promoting workplace democracy, and improving working conditions.

# Introduction

CARD-CHECK UNION CERTIFICATION and anti-scab legislation have become polarized topics within Canadian provincial labour relations to the detriment of working people. Prior to the 1970s card-check union certification, which allows a union to be legally formed when a certain percentage of the workforce signs a union card, was accepted in every Canadian province as the standard for union certification that optimally balanced the competing interests of workers and employers (Johnson 2002). A pattern of reform, however, emerged in the 1980s in which anti-union provincial governments driven by an ideological conviction to limit the power of unionized workers began to legislate mandatory votes as an additional step within all union certification drives. In many instances when these governments have been defeated by parties who draw support from organized labour, card-check or single-step certification has been reinstated with modifications that reduce its effectiveness. This pattern of reform has created a yo-yo effect with observable impacts on union certification and, by consequence, worker access to union representation (Riddell 2004; 2010; King 2023a). Prior to 1990, and from 2000–2016, Manitoba’s Labour Relations Act did allow for card-check certification, however card-check was replaced with mandatory vote union certification as one of the first acts by the Pallister government in 2016. Under mandatory vote laws workers who wish to join a union still must sign union cards to initiate a vote and must indicate their preference for a union a second time in a secret ballot vote.

Anti-scab legislation, which bans the use of replacement workers during a strike or lockout, became a central legislative demand for Manitoba's labour movement in the 1970s. Calls for anti-scab legislation emerged following extended, violent strikes, particularly the Robin Hood strike in Montréal in which security opened fire on workers and the bitter Griffin Steel strike near Winnipeg, which lasted multiple months (Black 1985; Devitt 2022). At the same time, neoliberal reforms brought higher unemployment rates into provincial economies, creating conditions favourable to the use of scabs by employers. Anti-scab legislation provides a tool to protect the efficacy of strikes, particularly for workers in lower-skill sectors (Black 1985). On the opposite side of the debate, employers associations argue that anti-scab legislation gives unionized workers too much bargaining power, encouraging them to strike more frequently for larger gains which in turn reduces business investment and overall employment (Lemay 2005; Canadian Federation of Independent Business 2023). Empirical studies on anti-scab legislation find the effect on provincial economic conditions and strike activity is negligible and that in fact anti-scab legislation tends to reduce the length of strikes significantly (Singh, Zinni, and Jain 2005; Unifor Research Department 2021). Manitoba has never adopted anti-scab legislation, although it has been adopted as Manitoba NDP party policy repeatedly since 1978.

Card-check union certification and anti-scab legislation are significant within Canada's broader industrial relations system from the perspective of upholding the right to union membership and collective bargaining. Early legislation enshrining Canada's model for industrial relations emerged after World War II (Ross et al. 2015). In this period, workers engaged in a record number of strikes as they fought for the right to collectively bargain and secure better wages and working conditions. In response, the federal government created a new labour relations system; the goal was to channel conflict between workers and employers into a clear and orderly process so as to minimize economic disruption. Making it more difficult for workers to unionize (by having mandatory votes) and making it easier for employers to avoid bargaining (by bringing in replacement workers), substantively undermines this system and the rights to unionize and bargain or strike that are central to it.

Within Canada's model of industrial relations, the significance of anti-scab legislation is further increased by heavy legal restrictions on the right to strike and by a lack of any other lawful avenues for unions to push back against employers who use replacement workers. Historically, ensuring "union security" (dues check-off, mandatory recognition and bargaining)

within Canada's industrial relations required labour to make commensurate concessions. Canadian unions were forced to give up the right to strike between agreements, among other restrictions on striking, in exchange for union security and a certification process (Fudge and Tucker 2010). We now have a labour relations regime that strictly limits the times when unions can lawfully strike, which in turn makes it very difficult for unions to respond when employers utilize replacement workers. Most notably, unions cannot engage in secondary "solidarity" strikes. In other jurisdictions, for example in the Nordic countries, employers can use scabs but they almost never do because unions essentially check this power with their ability to launch wide-ranging secondary strikes targeting employers' operations across the economy. In short, a ban on scabs is the 'fair' trade-off for a system where unions are limited in their capacity to strike only direct employers at specified worksites.

In light of these debates over the effects of card-check certification and anti-scab legislation, this paper assesses how the absence of a simpler union certification process and anti-scab protections pose challenges for workers and unions. This report draws upon interviews with rank-and-file union members, organizers, and officials to assess how the documented effects of card-check and anti-scab legislation might influence the lives of unionized workers. Prior research on these two pieces of labour law has focused on the effects of the presence or absence of legislation through quantitative measures, but less attention has been focused upon the lived experience of workers engaged in union organizing or job action. The results presented below draw attention to the balance of power between employers and workers in Manitoba workplaces, and how these dynamics would be altered by card-check and/or anti-scab legislation.

The report makes these key findings:

- Manitoba workers engaged in union organizing consistently experienced intimidation and a climate of fear at work due to their union activity.
- Instances of intimidation, one-sided communication from employers, and reprimand for union organizing activity were increased by the implementation of mandatory union certification votes following the delivery of signed union cards to the labour board.
- Although Manitoba's Labour Relations Act (LRA) includes provisions to complete a certification vote within seven days as well as protections against undue influence by employers, workers reported

procedural delays to certification votes as well as limitations of the LRA to protect workers from influence that benefit employers opposed to union certification.

- Broadly, workers identified a balance of power within workplaces in which employers hold significant capacity to influence workers, which has been increased by the introduction of mandatory vote union certification.
- Workers involved in strikes and lockouts in Manitoba reported issues with workplace safety and long-term damage to labour relations resulting from the use of scab workers.
- Issues with workplace safety included experiences with violence and harassment on picket lines during a strike involving scab workers as well as safety issues within the workplace due to scab workers performing unsafe work without training.
- In terms of damage to labour relations, workers repeatedly noted a sense of injustice in being replaced by scab workers, which had a negative effect on bargaining. Workers noted the persistence of a negative impact following the resolution of bargaining, indicating that the use of scabs can have long-term negative impacts on the bargaining relationship.
- The report notes that many of the negative impacts noted by workers would be greatly reduced or eliminated by the introduction of card-check certification and anti-scab legislation.

Results of this report are situated within a broader discussion over the appropriate balance of power between workers and employers in Canada and the United States. Reforms to labour legislation which impede union organizing and fair collective bargaining have contributed to declining union density and in turn wage stagnation for workers across the economy. At the same time, the share of income captured by high-income households has skyrocketed contributing to high levels of social inequality both in Manitoba and across North America (Hudson 2023). A growing chorus of voices now recognize that boosting wages, reducing poverty and inequality, and revitalizing Canada's social safety net requires a rebalancing of the institutional terrain workers and employers operate upon.

# Why is Promoting Access to Unions and Fair Collective Bargaining Good Public Policy?

HIGHER LEVELS OF union density and collective agreement coverage have long been empirically linked with lower levels of income inequality and poverty, both in Canada and internationally (Freeman and Medoff 1984; DiNardo, Fortin, and Lemieux 1996; Farber et al. 2021; Nunn and Hunt 2021; ILOSTAT 2023). The connection between unionization, collective bargaining, and reduced income inequality and working poverty is due to two key effects unions have on the economy. First, unions through collective bargaining secure a ‘union advantage’ in the form of higher wages, and improved benefits and pension plans for their members relative to workers with comparable workplace and employee characteristics (Fang and Verma 2002; Jackson 2003; Stevens and Poirier 2023). The advantages secured through union membership tend to promote a healthier work-life balance and greater participation by workers in the governance of their workplaces (Stanford 2015; Ross et al. 2015). Second, increasing the proportion of workers who can join unions and bargain collective agreements tends to promote society-wide economic equality through economic and political processes that transcend a single workplace (Western and Rosenfeld 2011; Haddow 2014; Fortin,

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Lemieux, and Lloyd 2021; Mishel 2021). Promoting society-wide economic equality has been linked to other positive social outcomes such as improved health outcomes, higher levels of education, and lower incidence of crime (Marmot 2004; Wilkinson and Pickett 2010). Unionization is by no means a silver bullet for progressive social outcomes, but alongside access to truly affordable housing, healthcare, affordable public childcare, and educational opportunities, access to unions is an important avenue to promote social and economic equality.

The proportion of Manitoba workers who are members of a union (otherwise referred to as union density) and/or covered under a collective agreement has declined more slowly than in other Canadian provinces due to a unique labour policy environment, but has nonetheless been on a multi-decade decline since the early 1980s (see *Table 1*). The overall unionization rate in Manitoba has fallen from 37.8 per cent in 1997 to 34.7 per cent in 2022. This has been driven by a decline in private sector union membership from 21.2 per cent in 1997 to 15.2 per cent in 2022 (Statistics Canada 2022). There was a small increase in unionization in the public sector from 77 per cent in 1997 to 80.6 per cent in 2022.

As evidence below shows, union organizing and collective bargaining are influenced by provincial labour relations legislation. Similar to other provinces in Canada, hostile reorganizations of the legal and political terrain the labour movement operates upon in Manitoba have occurred since the 1980s (Peters and Wells 2022). These hostile reorganizations include reforms to legislation governing union organizing drives and impediments to free collective bargaining. These reforms have eroded the structural power of labour within Canada's political economy, leading to fewer strikes and lower wage settlements. The period 2016–2022 has marked a moment of hostile reform to labour relations legislation, including the implementation of mandatory votes for union organizing drives and the suspension of free collective bargaining under wage mandate legislation, among other attempted reforms.

The remainder of this paper focuses on two aspects of labour relations reform which are key to promoting access to unionization and fair collective bargaining in Manitoba: card-check and anti-scab legislation. In the remaining sections, the recent history of card-check and anti-scab legislation in Manitoba will be reviewed, as well as prior research on each piece of legislation, respectively.

**TABLE 1** Manitoba Union Coverage, 1997–2022\*

Year	Union Coverage Rate, All Industries	Union Coverage, Public Sector	Union Coverage, Private Sector
1997	37.8%	77.0%	21.2%
1998	35.9%	77.0%	19.7%
1999	37.2%	78.6%	20.8%
2000	36.6%	77.4%	19.9%
2001	37.1%	79.5%	19.8%
2002	36.4%	77.5%	19.8%
2003	37.3%	79.4%	20.2%
2004	37.7%	77.4%	20.6%
2005	37.1%	77.8%	20.0%
2006	36.6%	79.9%	18.9%
2007	36.6%	80.2%	18.7%
2008	36.3%	80.0%	17.9%
2009	36.5%	79.5%	17.9%
2010	37.2%	80.1%	18.3%
2011	36.2%	79.0%	18.0%
2012	35.6%	79.7%	17.5%
2013	35.8%	80.4%	17.7%
2014	35.7%	78.8%	17.7%
2015	35.6%	79.5%	17.3%
2016	35.1%	79.8%	16.2%
2017	34.7%	78.8%	16.4%
2018	34.4%	79.8%	15.7%
2019	34.7%	80.4%	16.5%
2020	35.6%	80.3%	16.7%
2021	33.7%	77.6%	15.6%
2022	34.7%	80.6%	15.2%

Source Statistics Canada

\* Available Statistics Canada data on provincial private and public sector unionization reported coverage rates rather than union membership (density). Although coverage is definitionally different from density, in Canada these two figures are closely aligned. Non-union members who are covered by a union collective agreement has typically hovered around 2% since 2000 - for more info see: <https://www150.statcan.gc.ca/n1/pub/14-28-0001/2020001/article/00016-eng.htm>

# Card-Check Certification in Manitoba

EARLY IN ITS first term in 2016, the then-Pallister led Manitoba government introduced Bill 7, *The Labour Relations Amendment Act*, eliminating card-check, which had been used in Manitoba since the turn of the millennium. Bill 7 mandated secret-ballot votes as an additional step to union certification. In line with arguments for eliminating single-step, card-check certification in other provinces, the government argued Bill 7 was a means to make union certification more democratic. However, arguments that mandatory union certification votes are ‘democratic’ are deeply misleading, given the balance of power present in most workplaces.

Under the former Labour Relations Act, from 2000–2016, if 65 per cent of workers signed a union membership card, the Labour Board, after ensuring that all other aspects of the law had been upheld, certified the union as the official bargaining agent. If 40 per cent to 65 per cent signed, then a secret-ballot was needed to certify. The 65 per cent threshold in Manitoba was the most demanding in the country among provinces that had card-check certification, and in fact was a compromise position agreed to when card-check was brought back by the Manitoba Doer government, having been eliminated by its predecessor, the Filmon government. Prior to the Filmon government, the threshold in Manitoba was 55 per cent. The new 65 per cent threshold was higher than in Quebec, PEI and Saskatchewan,

which all had a 50 per cent +1 threshold at the time, and in New Brunswick where the threshold was 60 per cent.

Prior to the late 1970s, every jurisdiction in Canada used the card-check system, and it was recognized across the country as a way of mitigating the power imbalance between workers and employers. However, by the late 1990s almost 60 per cent of the nation's labour force was under a mandatory election rule (Johnson 2002).

In democratic contexts where people can expect to cast their votes free from fraud, intimidation, and coercion, secret ballots work well. When most Canadians walk down the street to their polling station, they don't expect to be harassed or threatened into voting a particular way by anybody in a position of authority over them. Nobody suggests they will lose their job if they vote for one candidate over another. Voters don't have to attend mandatory, one-sided presentations on the evils of one candidate in an election, or one side of the issue in a referendum. When these kinds of things do happen in elections—even those with a secret-ballot—we are quick to call the legitimacy of the process into question.

Workplaces, however, aren't democratic. There is a balance of power heavily weighted toward the employer. Employers have discretion over the position, hours, and termination of employees, giving them control over the schedule and livelihood of workers. While some workplaces are collaborative environments, there is a hierarchical system of command from the boss down to the employees. Employees can, in fact, expect to be intimidated and coerced by the only relevant authority present. We need not speculate on this. In 2015, when workers at a Winnipeg Tim Horton's outlet started talking about unionization, their boss threatened to close the store or take away employee benefits (Kirbyson 2015). Workers involved in the union drive at Winnipeg's Canada Goose factories reported intimidation, increased surveillance, and unfair treatment by the employer of workers involved in the union drive (Boguslaw 2021). Between 2000 and 2024, the Manitoba Labour Board has found employers guilty of unfair labour practices during union drives in ten cases (See Appendix B). This includes six cases in which the labour board issued discretionary certification rulings, the highest penalty for intimidation during a union drive. Although employers filed unfair labour practice claims against unions for intimidation, no unions were found guilty. These findings underline that with the balance of power at work firmly tilted in favour of employers, the thing to protect against is employer intimidation.

In many cases mandatory votes create opportunities for employers to use their outsized power to sidestep aspects of the Labour Relations Act,

Workplaces, however, aren't democratic. There is a balance of power heavily weighted toward the employer.

A well-funded industry of lawyers, consultants, and security firms are routinely hired by employers to influence union drives without getting caught (Thompson 2020). Bringing back single-step, card-check certification reduces the potential for these sorts of injustices against workers trying to join a union.

intended to protect the right to join a union. The Manitoba's Labour Relations Act already stipulates that employers cannot interfere with their employees' right to join a union. The successful filing of unfair labour practices claims at Canada Goose and Tim Hortons provides examples of unions upholding the Labour Relations Act, but not all workers who face interference receive access to justice. Filing an unfair labour practice claim relies upon physical evidence and employees willing to step forward and speak against their employers. For many workers, particularly in low-wage parts of the private sector, speaking out against their boss is not an option due to experiences of employer reprisal. A well-funded industry of lawyers, consultants, and security firms are routinely hired by employers to influence union drives without getting caught (Thompson 2020). Bringing back single-step, card-check certification reduces the potential for these sorts of injustices against workers trying to join a union.

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## Lessons from Research Literature on Card-Check Certification

Research on the removal of card-check in other Canadian provinces and elsewhere provides clear lessons about the effect eliminating single step, card-check certification has on union organizing. A review of the research on this, undertaken in 2014, concludes that “the impact of (mandatory elections) has been the subject of a number of studies and while their findings differ on the extent of the impact, they are unanimous in its direction. The shift to mandatory elections has reduced the likelihood of certification success and negatively affected the unionization rate. The effect of the change is buffered to an extent by the tight timelines the legislation typically imposes between the filing of a certification application and the holding of an election, but a negative effect still remains.” (Tucker 2014:3) Given this conclusion, Manitoba's seven-day certification vote timeline is not a reasonable substitute for card-check union certification.

Using a dataset of 6,500 private-sector unionization drives, Chris Riddell concludes that when mandatory voting replaced card-check across British Columbia in 1984, success rates fell by 19 per cent. When card-check was reinstated in 1993, they bounced back by the same per centage. According to Riddell, “the results indicate that the mandatory election law can account for virtually the entire decline. In addition, the findings suggest that management opposition was twice as effective under elections as under

**TABLE 2** Union Certification Applications Filed and Granted with MB Labour Board, 2010–2022

Year	Filed	Granted	Percentage Granted
2010–2011	42	22	48%
2011–2012	33	26	53%
2012–2013	36	24	52%
2013–2014	48	35	63%
2014–2015	43	41	82%
2015–2016	27	25	83%
2016–2017	24	15	60%
2017–2018	40	32	70%
2018–2019	29	17	55%
2019–2020	35	20	54%
2020–2021	19	10	42%
2021–2022	21	15	63%
Average 2010–11 to 2015–16	38.17	28.83	63%
Average 2016–17 to 2021–22	28.00	18.87	58%

Source: Manitoba Labour Board, Annual Reports

card-checks” (Riddell 2004). Card-check was reintroduced in BC in 2022 and annual labour board statistics released in June 2023 showed similar results (King 2023a). BC Labour Relations Board statistics show a 59.3 per cent increase in union certification applications following the reintroduction of card-check, from 108 filed in 2021 to 172 filed in 2022. The rate of successful applications also increased from 79 per cent to 87 per cent. These results show that the presence or absence of card-check certification has a clear impact on union certification.

A larger scale study looking at the success of union certification over nineteen years across nine Canadian jurisdictions concludes that relative to card check, mandatory elections reduce success rates by about 9 percentage points (Johnson 2002). The same author, through a simulation analysis of US and Canadian union densities, concludes that somewhere between three and five percentage points of the density gap between the US and Canada was attributable to differences in the certification process, with Canada favouring card-check. Canadian jurisdictions’ move away from card-check narrowed the gap by one percentage point (Johnson 2004).

Research from BC and Ontario also shows that the more time that elapses prior to a vote, during which employers engage in a number of intimidation strategies, the less likely eventual certification becomes (Campolieti, Riddell,

and Slinn 2007). As Tucker suggests, there are timelines in the law, including in Manitoba, but they allow significant time for intimidation, and can be extended by the Labour Board. Minimizing the room employers have to engage in the anti-union intimidation and coercion that mandatory voting laws encourage (Slinn 2005) is a crucial aspect of allowing union drives a fair shot at success. However, Riddell's research finds that "even in a quick-vote system, election delay does appear to reduce causally the likelihood of a union win, casting doubt on whether the current Canadian system is sufficient to ensure a fair playing field for unions and employees interested in forming a union" (Riddell 2010:385).

Manitoba's switch to mandatory vote certification in 2016 has lowered union certification applications and successes at the Manitoba Labour Board. Looking at the six years prior to the elimination of card-check in Manitoba, versus the six years after, the annual average number of applications filed for certification dropped from 38 to 28. The number of successful certifications dropped from 28 to 18, and the ratio between certifications granted and total files (including those carried over from the previous year) dropped from 63 per cent to 58 per cent (see *Table 2*).<sup>1</sup> The evidence is clear that the elimination of card-check has made unionizing harder.

Statistics presented above state the powerful effect eliminating card-check certification in favour of a mandatory vote has on suppressing union certification and overall union density. This is of concern when taking the societal implications of long-term decline in private sector union density into account. While it is clear that certification delays made possible by mandatory votes decrease union certification success, we have to look past certification statistics and into dynamics of power at the workplace to understand why this is the case.

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<sup>1</sup> See <https://www.gov.mb.ca/labour/labbrd/publicat.html>

# Anti-Scab Legislation in Manitoba

ANTI-SCAB LEGISLATION, SOMETIMES called anti-temporary replacement legislation (ATR), prohibits employers from hiring contract staff to do the work of a union bargaining unit while the unit is either on strike or has been locked out. The practice of ‘scabbing’ (employers replacing union workers with new staff during a strike or lock-out) has been a source of tension for unionized workers on picket lines for decades. At issue for labour is the fact that scabs give employers the power to continue business as usual during a job action – undermining the power of a strike to push forward negotiations at the bargaining table. Numerous instances of violence have resulted from the use of scabs, as we have seen during the United Auto Workers (UAW) strike in October 2023 (Cole 2023). Employers, on the other hand, argue that anti-scab laws give workers too much power in negotiations, emboldening them to go on strike more often for larger gains. Opponents of anti-scab legislation promote studies finding that banning scabs reduces business investment and economic growth. The arguments for and against anti-scab laws are reviewed below, paying particular attention to the economic arguments surrounding anti-scab laws. Adopting anti-scab legislation is important in ensuring balance and fairness at bargaining tables in Manitoba, particularly for workers in low-wage, precarious sectors of the economy.

The adoption of anti-scab legislation has been a priority for the Canadian labour movement at the federal and provincial levels for at least five decades.

Scabs give employers the power to continue business as usual during a job action – undermining the power of a strike to push forward negotiations at the bargaining table.

**TABLE 3** Share of Strikes Involving Scab Workers in Manitoba, 2016 to 2023

Strikes/Lockouts Involving Scab Workers	Strikes Without Scab Workers	Total Number of Strikes	Total Number of Lockouts	Percentage of Strikes/Lockouts Involving Scab Workers
7	12	19	4	34.7%

**Source** Employment and Social Development Canada, Labour Program, Authors Calculations

**Note** A complete lists of strikes in Manitoba between 2016 and 2023 was provided by Employment and Social Development Canada, Labour Program. The use of scabs was tracked through media reports.

Anti-scab legislation was first adopted as party policy by the Manitoba New Democratic Party in 1978, following the bitter 1976/77 strike at Griffin Steel and the 1978 strike between Canada Safeway and Manitoba Food and Commercial Workers (MFCW) local 832 members (Black 1985). Campaigns spearheaded by the Manitoba Federation of Labour have seen anti-scab receive broad support at NDP conventions over the last four decades, but legislation has yet to materialize. Meanwhile, anti-scab legislation was adopted in Quebec in 1977, and in British Columbia and Ontario in 1993. While Ontario’s anti-scab laws were repealed by Mike Harris’s government in 1995, BC’s legislation has remained in place for the last thirty years and Quebec’s for nearly fifty years. As part of consultations for federal anti-scab legislation, researchers at Employment and Social Development Canada’s Labour Program found that federally regulated employers used scab workers during 42 percent of strikes and lockouts between 2012 and 2023, indicating the issue is widespread. In Manitoba, scabs were used in 34.7 percent of strikes and lockouts between 2016 and the end of 2023, underlining that this is a central labour issue in Manitoba’s provincially regulated workplaces as well.

Policy debate over anti-scab legislation has reemerged following the Trudeau government’s introduction of federal anti-scab legislation in November 2023, a condition of the confidence-and-supply agreement with the federal NDP. In addition to a ban on hiring scabs during a strike or lockout, the new federal anti-scab legislation includes strict limits on the use of non-union contractors hired prior to a strike and imposes a fine up to \$100,000 per day on employers who violate the law (King 2023c).

### Recent Experiences with Scab Workers in Manitoba

Under Manitoba’s current labour relations legislation, employers have the right to hire non-union staff once unionized employees have been locked-out or have taken the decision to strike. This allows employers to continue their

operations during a strike or lock-out, reducing their incentive to return to the bargaining table. In some cases, this can extend the length of strikes or lockouts, inflame tensions on the picket line, or allow employers to delay in hopes of favourable arbitration. The recent use of scab workers by Manitoba Liquor and Lotteries (MBLL) and Manitoba Public Insurance (MPI) during strikes by Manitoba Government and General Employees Union (MGEU) staff at both crown corporations during the summer of 2023 underline these points. During the opening weeks of the MBLL strike, scabs were used to continue making deliveries from MBLL's distribution centre (Abas 2023a). During the strike it was revealed MBLL drew in record profits, however management repeatedly pushed arbitration while bargaining remained at a standstill (Rollason 2023; Mlinarevic 2023). In MBLL's case, the result was a five-week strike as workers walked picket lines to push back against an eight per cent wage offer over four years (below the annual inflation rate in 2022 alone), which had been preceded by a four-year wage freeze. During the strike at MPI, management repeatedly made appeals to staff to cross the picket line while the Board Chair at the time defended his decision to spend weeks out of province during the strike (Abas 2023b; 2023c). The strike ultimately lasted for more than two months, with bargaining essentially at a standstill for weeks. This sort of foot dragging in negotiations would likely be less likely if a replacement worker ban put pressure on a resolution and prevented corporations from continuing business as usual.

The presence of anti-scab legislation is particularly important for workers in low-wage sectors, where part-time and casual work is commonplace and where staff turnover is high. The possibility of replacement is far higher for workers in these sectors, making the prospect of forming a union and seeking improvements through collective bargaining more difficult. Workers who work for low wages also face higher consequences when replacement workers are used, as these workers are less likely to have the savings to cover the difference between their typical income and strike pay during extended strike action, particularly for single parents with children. This gives employers who bring in replacement workers and wait out striking staff the upper hand.

Two recent strikes involving scab workers, one by MGEU members at Les Tournesols childcare centre and another by Workers United members at Freed & Freed garments highlight this power imbalance. In the case of Les Tournesols, workers struck for four weeks to protect their existing sick leave and bereavement leave benefits, while at Freed & Freed workers were fighting for a wage increase 40 cents above the minimum wage. At Freed

The presence of anti-scab legislation is particularly important for workers in low-wage sectors, where part-time and casual work is commonplace and where staff turnover is high. The possibility of replacement is far higher for workers in these sectors, making the prospect of forming a union and seeking improvements through collective bargaining more difficult.

**TABLE 4** Strikes and Lockouts Involving Scabs, 2016 to 2023

Firm or Employer Organization	Union Representing Workers	Starting Wage Rates of Positions Replaced	Sector or Industry	Public or Private Sector
Hanover School Division	CLAC	\$16.78	Education, Health and Social Services	Public
Manitoba Public Insurance	MGEU	\$14.15	Finance, Insurance, and Real Estate	Public
Manitoba Liquor and Lotteries	MGEU	\$14.15	Wholesale and Retail	Public
Freed and Freed	Workers United Canada	\$12.95	Manufacturing	Private
Les Tournesols de Saint-Vital Inc.	MGEU	\$12.11	Education, Health and Social Services	Public
Rolling River School Division	CUPE	\$18.85 / \$17.40	Education, Health and Social Services	Public
Stella's	UFCW Canada	\$11.90	Entertainment and Hospitality	Private
Tim Horton's	Workers United Canada	\$11.75	Entertainment and Hospitality	Private

Source Authors calculations

& Freed many of the workers were immigrant women supporting children at home. In both cases workers successfully negotiated new collective agreements with wage increases and benefits protected, but not without the hardship of strikes extending longer than a month with scabs crossing the picket line. Between 2016 and 2023 scabs have in most cases been used against workers in notoriously low wage, feminized sectors of the economy such as education support, childcare, restaurants, and garment manufacturing (See *Table 4* for a list of strikes/lockouts involving scabs between 2016 and 2023). Strikingly, it is precisely in the low-wage service sector – the area of the economy most difficult to organize and where card-check could make a difference in union density – where employers are most often utilizing scabs.

### The Limits of Arbitrated Settlements

While employers have the upper hand in contract disputes in which they can wait out striking workers, Manitoba has a unique 60-day arbitration provision in the Labour Relations Act, which gives the labour board the power to settle contract negotiations through binding arbitration. The provision allows either the employer or union to request binding arbitration after 60 days of a strike or lock-out. The precursor to Manitoba's current

60-day arbitration was Final-Offer Selection Arbitration (FOS) which was introduced by the Pawley government in 1988 as a means to foster a more ‘collaborative’ approach to labour relations (Black and Silver 1990). FOS emerged following a decade of pressure for anti-scab legislation and a push from sectors of the labour movement to protect smaller bargaining units from strikes where scabs were brought in to break the union. FOS could be initiated either before or during a strike pending a majority vote from employees. A key facet of the legislation was that the union gave up its right to strike while the FOS process was in motion. Manitoba’s labour movement was bitterly divided over FOS, with opponents arguing it would reduce strike power and could open the door to removal of the right to strike, alongside arguments FOS was no stand-in for anti-scab legislation. The legislation also faced opposition from employers and FOS was ultimately repealed by Gary Filmon’s government in 1991.

Using arbitration to settle negotiations was revitalized by Gary Doer’s government in the early 2000s. During the debate over anti-scab legislation in the 2000s, Premiers have pointed to 60-day arbitration as a provision that already limits strike length and ensures balance in negotiations. While the current version of 60-day arbitration is accepted as an important piece of legislation for Manitoba unionized workers, vulnerable workers still require anti-scab legislation to ensure fairness at the bargaining table.

Arbitration is no stand-in for fair collective bargaining supported by a strong labour movement. Arbitration is guided by agreements made by other unions in comparable negotiations. As University of Manitoba Labour Studies professor Adam King writes, “If average annual union wage settlements are up, it’s because other union members fought for pay hikes and won.... In practice, there are no legislated or standardized guidelines that arbitrators follow when making determinations” (King 2023b). The presence of binding arbitration encourages bargaining to slow down, with parties reluctant to move from entrenched positions before bargaining ends. Even with a 60-day arbitration provision, employers have a long window to wait out striking workers and continue business as usual through the use of replacement workers. Given the time it takes for the labour board to review and approve applications, under a scenario in which arbitration is initiated after 60 days, workers would not return to work with a settled contract until well after 60 days. Even for workers earning a living wage, it is unlikely they will have the savings to live off of strike pay for this period, again giving employers the upper hand in negotiations. As Black and Silver (2009) noted, when CUPE 2096 members notified Brandon Clinic they were

While the current version of 60-day arbitration is accepted as an important piece of legislation for Manitoba unionized workers, vulnerable workers still require anti-scab legislation to ensure fairness at the bargaining table.

“If average annual union wage settlements are up, it’s because other union members fought for pay hikes and won.... In practice, there are no legislated or standardized guidelines that arbitrators follow when making determinations”

going on strike in 2009, their employer responded by saying “see you in 60 days”, leaving workers demoralized as their employer posted for replacement workers in local newspapers. Ultimately, it is fair bargaining and the right of workers to withhold their labour when all else fails that pushes forward the interests of workers.

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## Lessons from the Research Literature on Anti-Scab Legislation

Study found no evidence of an increase in overall days lost to strikes due to the implementation of anti-scab legislation. (Duffy and Johnson 2009)

Canadian public policy literature on anti-scab legislation has focused primarily on issues of economic efficiency, measuring the effect of the presence of anti-scab legislation on lost work days, unemployment, wage settlements, and business investment. Empirical research on these public policy effects across Canadian provinces has been limited by a small sample to draw from, as anti-scab legislation is only present in Quebec and British Columbia. This narrow focus on economic efficiency ignores relevant public policy concerns around equity, safety, or a fair distribution of power within the workplace. With that said there are still clear lessons to draw from public policy research on the subject.

Canadian research reveals no evidence that anti-scab legislation increases the overall days lost due to strikes following implementation. There is strong evidence that anti-scab legislation reduces average strike length immediately following implementation and over the long-term (Singh, Zinni, and Jain 2005; Duffy and Johnson 2009; Unifor Research Department 2021). Duffy and Johnson (2009) found that across Canadian provinces, anti-scab legislation was associated with an increase in the incidence of strikes but a decrease in strike length. Overall, their study found no evidence of an increase in overall days lost to strikes due to the implementation of anti-scab legislation. Comparing the length of strikes where scabs are used against strikes without scabs, the Unifor research department found that in Unifor strikes between 2013 and 2021 the average strike length when replacement workers were used was 265.1 days versus a 42.8 day average without scabs. The same dynamic is present when comparing strikes with and without scabs in Manitoba (see *Table 5*). Strikes between 2016 and 2023 involving scab workers lasted on average about twice as long (45 days) as strike where scabs were not used (23.2 days). Opponents of anti-scab legislation fear that these bans tip the balance too heavily in unions’ favour, creating an incentive for unions to strike more often. Evidence from Quebec, British

**TABLE 5** Average Length of Strikes in Manitoba with and Without Scab Workers, 2016–2023

Average Strike Length without Replacement Workers	Average Strike Length with Replacement Workers
23.2 Days	45 Days

Source: Authors calculations, see Appendix A for full list of strikes

Columbia and Ontario show an uneven pattern of days lost due to strike activity following the implementation of anti-scab legislation. However, overall days lost has declined over the long-term in all three provinces due to the insecurity created by neoliberal restructuring and declining union militancy (Savage and Butovsky 2009). This raises the point that low levels of strike activity is not necessarily evidence of a well-functioning industrial relations system. Even if a ban on scabs increased the frequency of strikes, whether this is good or bad is a political question. Insofar as a greater number of strikes indicates greater worker power and could help equalize the income distribution somewhat, this should be considered a positive outcome.

On the question of increasing business costs and the effect these costs may have on employment or business investment, the evidence is far less conclusive. Opponents of anti-scab argue that by tipping the scales in favour of labour, anti-scab legislation will lead to higher wage settlements and labour costs, reducing investment and employment. Statistical modelling by Budd (2000) found a decrease in employment following the implementation of anti-scab legislation; however data for this analysis ends in 1994, one year after the implementation of anti-scab legislation in BC and Ontario, limiting the conclusions that can be drawn from this analysis today. Another analysis by Budd and Wang (2004) finds a correlation between declining business investment and anti-scab legislation, but this is only statistically significant for building construction. The problem with these sorts of models is that it is almost impossible to isolate the impact of just one factor on employment and investment. Business investment has been on a precipitous decline in Canada since the 1980s despite repeated attempts by federal and provincial governments to increase the power of business in the marketplace (Stanford 2011; 2023). Many economists have more recently argued that weak investment and employment growth may be a result of anti-labour policy which has deflated wage growth and choked off aggregate demand (Piketty 2013; Carvalho and Rezai 2016). Studies of the effect of anti-scab laws on wage settlements have found

evidence of both increases and decreases, indicating that wages are still predominantly set by economic conditions (Cramton, Gunderson, and Tracy 1995; Campolieti, Hebdon, and Dachis 2014). Despite several changes in government, anti-scab legislation has not been repealed in British Columbia or Quebec, indicating the effect this legislation has on the overall economy is manageable.

# Methodology

ANALYSIS OF THE effect of card-check and anti-scab legislation on union organizing efforts and collective bargaining in Manitoba presented below relies on qualitative data collected from semi-structured interviews. Interviews were conducted with twelve participants who are either union organizers, union officials, or unionized workers. Each of the participants were part of a union certification drive in the last decade and/or participated in a strike where scab workers were utilized.

This study was approved by the Research Ethics Board at the University of Manitoba. Interview participants were recruited with assistance from the labour movement. All interviewees were given the option to remain confidential or be identified. The twelve interview participants bring representation from both the private and public sectors, and a range of industries. Five participants were affiliated with unions who represent workers in the public sector, having experience with organizing and strikes in health care, the provincial civil service, child care, crown corporations (Manitoba Public Insurance and Manitoba Liquor and Lotteries), and federal museums. Seven participants<sup>2</sup> were affiliated with unions who represent workers in the private sector, drawing in experience from retail, hospitality, food production and processing, building trades, fast food, seniors care, manufacturing, warehousing, and security services.

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<sup>2</sup> One union, MAHCP, represents workers in both the public and private sectors

Semi-structured interviews were conducted from September to October 2023 in-person and over video conferencing. Interviewees were asked questions from two sets of questionnaires, one covering union organizing and certification processes and another covering collective bargaining and strike experience. Workers who only had relevant experience with one topic were asked questions only from the relevant questionnaire. Interviews were then transcribed, coded, and analyzed for continuous themes.

This paper offers a picture of the lived experiences of Manitoba unionists engaged in union organizing and certification, and collective bargaining and strikes. These testimonies draw from experiences before and after the adoption of mandatory vote legislation in 2017. These experiences help us gain insight into the potential ways in which card-check and anti-scab legislation can alter the balance of power within Manitoba workplaces as well as assess the concept of ‘balance’ with regard to labour legislation.

# Card-Check Certification and the Balance of Power at Work

THE RESEARCH LITERATURE reviewed above demonstrates the dampening effect that eliminating card-check certification in favour of a mandatory vote union certification process has on union certification success (Johnson 2002; Riddell 2004; Tucker 2014; King 2023a). At the same time this literature makes clear that this is in part because mandatory votes create delays in the certification process, which are negatively correlated with certification drive success (Campolieti, Riddell, and Slinn 2007). With each delay comes additional opportunities for employers with an anti-union bias to influence workers and, in some cases, use their power over the workplace to coerce employees into voting against the union. While it is one thing to understand these effects through labour board statistics, it is worth exploring in more detail how these dynamics unfold within workplaces. The interview data reviewed below provides insight into the effects that mandatory votes and certification process delay have within workplaces in Manitoba.

The outsized capacity of employers to influence employees during a union drive was repeatedly demonstrated by interviewees for this research. In many instances, employers used their management and scheduling discretion to influence employees against joining a union. Although this sort of influence breaks Manitoba's labour code, many workers discussed

The outsized capacity of employers to influence employees during a union drive was repeatedly demonstrated by interviewees for this research.

the difficulty in successfully filing an unfair labour practice claim against their employer. Further, interviewees recounted instances where employers used company communication tools to pass along anti-union materials to employees. While it is clear that card-check certification reduces the friction and struggle required for a worker who wishes to join a union to do so, this is within a context in which employers continue to hold far more leverage over workers than is true of the reverse. Many instances of intimidation, reprisal, or other forms of undue influence noted below would be eliminated by the re-introduction of card-check union certification, indicating the importance of this legislation to level the playing field for workers who wish to join a union.

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## **Intimidation and Fear of Reprisal Remain Commonplace During Union Drives**

Stories of intimidation and fear of reprisal during union drives were common amongst workers, organizers, and union leaders interviewed. Experiences with intimidation were reported from the initiation of a union drive, but were primarily reported during the period between delivering signed union cards to the labour board and the closure of a mandatory vote. The period between the delivery of cards and a vote is supposed to be seven days, however many workers recounted delays in the initiation of a vote.

One union organizer working in the private sector described the fear workers often feel at the initiation of a union drive:

“[the union drive] usually starts off with one person and they speak to their colleagues and that’s how information is passed along. So, usually in those early stages of employees talking to their colleagues; [...] members are pretty scared at that point. Right, because if the employer catches wind of it, their employment can be in jeopardy for whatever reason. [...] They become very scared to sit with an employer that basically has their daily work life in their hands.”

— *Andy Spence, Regional Representative with Workers United Canada Council*

Interviewees repeatedly made clear that management held power over workers promotion, scheduling, and termination, creating fear that management discretion could be used to reprimand workers who were suspected of engaging with the union drive. Increases in intimidation typically occurred once employers learned that a union drive had been started:

“for the direct organizers and the organizers on the ground, their work changes substantially. So even if they were a really, really great employee prior to this. All of a sudden now they have this huge target on their back and they become somebody who is now being targeted by the employer. And I think the rest of the employees see that as well. And then they try to shy away from it and try to stay in line and not challenge things. And that allows the employer to do a lot of really un-nice things in the environment because nobody will stand up to it.”

— *Union Organizer in MB*

At the same time, workers described instances where employers made claims forming a union would lead to wage losses or closing down the business:

“We recently filed a certification on a company and we had more than 40 per cent. You’re never 100 per cent confident until it’s finished. But we had the cards. We filed the certification. The very next day, the supervisor called an all hands meeting and had every hourly worker show up...And for 10 minutes, all he did was threaten and slander the union. If anybody talks union on this site, you know, we’re packing up our stuff. We’re leaving the province, we’re going back back to where we’re from. We won’t work here. You guys won’t have jobs.”

— *Union Organizer, United Brotherhood of Carpenters Local 343*

“So we tried to do education workshops off-site, like in the evenings...we realized that every time we did one of those, the institution would have some sort of staff meeting where they would talk about — oh, if a union does this, you’ll never receive your pay increases while collective bargaining is taking place... so you had a membership that was basically terrified and very reluctant.”

— *MB worker involved in a union drive*

Union members and organizers also noted that the influence employers had over workers were augmented by racial and immigration based precarity. One worker involved in an organizing drive described coworkers who feared deportation or revocation of permanent residency status could occur upon signing a union card. Others described that workers trying to gain hours towards permanent residency were unwilling to sign a union card for fear it would put their immigration process off track.

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## **Procedural Delays and Issues During Certification Votes**

Prior research on the addition of mandatory certification votes to the union certification process noted that the more time that elapses between filing

union cards with the labour board and the final vote, the less likely it is that a union will successfully be formed (Slinn 2005; Campolieti, Riddell, and Slinn 2007; Riddell 2010). This is because delays create opportunities for employers who are opposed to the union to influence staff along the lines noted above. Research also notes that although mandatory votes are legally required to occur on a specified timeline (in Manitoba certification votes are supposed to occur seven days after submitting a sufficient number of signed union cards to the labour board) that these timelines are often extended due to procedural delays. Instances of certification vote delay were noted repeatedly by interviewees. These delays often had significant impacts on the outcome of a union drive, creating opportunities for employers to exert influence on the certification vote. Although in some cases, unfair labour practices (ULPs) claims were filed, interviewees noted barriers to filing these claims which dissuade workers from pursuing ULPs in many cases.

Procedural delays to certification votes were noted by multiple interviewees. These procedural delays typically involved disputes over whether the number of signed union cards filed with the labour board met the forty per cent threshold required to initiate a certification vote. In some cases, employers and the union may operate upon different accounting of who is within the bargaining unit, creating disputes over the number of signed union cards required to initiate a vote. Organizers noted other cases in which management hired additional staff once learning of a union drive in order to increase the number of cards required. Disputes over the number of cards required to initiate a vote typically result in a hearing, which delays the vote by multiple weeks. As one interviewee put it:

“It just delays everything. But usually 2 to 3 weeks. But as soon as there’s an objection or if the employer makes the argument that “you don’t really have the percentage that you need to make this application”, then there has to be a hearing and it gets delayed further. In some cases, the board will conduct a vote anyways, and [withhold the result] until the hearing is completed. But we’ve had some of them go over six weeks from the time that we made the application until the time that the vote was taken – which is an extreme case. Most of them are within the month or a little bit less.”

— *Jeff Traeger, President of UFCW Local 832*

Although not universally the case, delays can create opportunities for anti-union employers to influence workers prior to the vote. Interviewees noted that the period after union cards have been filed with the Labour Board, when the employer learns a vote will be held, is when attempts to

influence workers typically occur. One union organizer noted a particular case in which the employer sent an anti-union handout to all staff without notifying the union, which turned staff against the union in the final vote:

“We had a lot of support. Like we had a lot of applications signed. Some of the stores were completely 100 per cent on board. Once we put in the application and we had the vote, suddenly a complete change of attitude, a complete change of everything towards us, and we weren’t understanding why...And then [between signing cards and the vote], the employers built up their [employees’] distrust towards us. [...] We were told [an anti-union handout was sent to all employees] maybe like half a day before the vote that was happening, and we didn’t even see it until the voting period was on. So we couldn’t even combat it. [...] Whatever information that the people that you’re trying to organize [give you] is what you get.”

— *Loreto Gutierrez, Organizer for UFCW Local 832*

Under Manitoba Labour Relations Act, employers and unions must share campaign materials each side distributes to staff. In this case a ULP was successfully filed against the employer, however the union was never successfully certified.

This case draws attention to the limited efficacy of unfair labor practices claims to protect the rights of workers to form a union without undue interference under Manitoba’s existing mandatory vote union certification process. Although Manitoba’s Labour Relations Act contains clauses intended to protect workers from undue influence by either employers or unions, acting upon these clauses comes with significant barriers for workers. Interviewees pointed to the requirement for documentary evidence as well as the willingness of workers to publicly stand up to an employer as significant barriers. In cases where documentary evidence was available, such as a copy of an anti-union memo or an audio recording of a conversation, interviewees noted ULPs were generally successful, although in many cases the union still was not certified. However instances where staff were influenced in private conversations or closed door meetings were noted by interviewees:

“Most [ULPs] aren’t taken to the labour board for a couple of reasons. I think it’s really hard to prove them. A lot of the allegations that happened, [are] things like intimidation or questions or – and they’re often, you know, they’ll be in a hallway conversation not in an email, so there’s nothing substantial to take there. And then when you put an employee against an employer, that person essentially signed their name to say “this employer did this to me”

without even knowing if a unionization attempt is going to be successful. So they're not — they don't generally do that. Every time I've seen it happen is when that employee has decided that they're either quitting or they're on their way out the door and they will take it to task. That's a very rare occasion.”

— *Union Organizer in MB*

“And we've seen that interference, even with one of those units where we had 100 per cent sign. You know, we saw our support drop 75% after the wait because the employer was actively speaking to people, having them in one-on-one meetings, and we were having a hard time getting a statement so that we could actually file an unfair labour practice. But we know they were interfering in the process [...] and so we did hear from a couple of people, but of course, management denied it and we didn't have any witnesses. It was all hearsay. Right. So our legal advice at that point was that if you take that to the board, you don't have a smoking gun, you don't have proof that they're actually interfering. But we saw our support go from 100 per cent to 75 per cent in two weeks.”

— *Jeff Traeger, President of UFCW Local 832*

Additional ULP cases were noted in which, although a ULP was successfully filed, the settlement did not fully redress the emotional toll on workers targeted for union activity. In one instance, a worker was fired from their job at Tim Hortons for their involvement in a union drive at the restaurant. The employee recorded the discussion with their boss in which they were fired and used this recording to file an ULP. The ULP was successful, leading to the employee being reinstated and the union automatically certified, but the personal toll of being fired is still high. Cases such as this can have a chilling effect on union organizing more broadly:

“The [case] at Tim Hortons when they fired that one person, it was pretty devastating to their lives. So, the unions have to understand that — and it's a part of how we organize. We know that employers are going to try to take actions and we have to prepare them [the employees]. Which is tough to prepare someone to be fired, especially if that's their livelihood there, and they're the ones making money to support their families or pay rent.”

— *Andy Spence, Regional Representative with Workers United Canada Council*

Other union organizers and members noted instances of intimidation during the vote on union certification. One organizer noted that an intimidating atmosphere was inherent to the voting process:

“It was definitely a lot safer for people to want to organize [with] card-check being in place. What it allowed was people could sign a card in the comfort of their home; there weren’t all these steps to jump through. And what happens now is if people sign cards, which is risky to them as an employee, then they have to go to a vote and at that vote the employer sitting across the table from them – it’s generally done electronically now, so it’s not exactly as it used to be – but I sat through a number of them where the employer or HR is sitting at one part of the table, the labour boards on one, and I’m on the other part and people are having to come in. And that’s a huge intimidation factor and it’s really difficult.”

– *Union Organizer in MB*

Another organizer referenced direct interference in a vote that could not be addressed through an ULP due to the influence management held over workers. This claim was not verified, however the potential for this form of interference is certainly possible within a mandatory vote process held electronically:

“[We] heard that some of the managers – again, it’s hearsay – that some of the managers took people’s PIN numbers and voted for them [with online voting]. But without anybody coming forward and willing to testify [to] that, there is no way of being able to do an Unfair Labour Practice [official complaint].”

– *Loreto Gutierrez, Organizer for UFCW Local 832*

Finally, many union organizers and members noted frustration with the additional steps created by a mandatory vote union certification process. Organizers and members noted conversations with workers during union drives who felt the mandatory vote process was redundant and forced workers to ‘vote twice’. One organizer with experience prior to the introduction of mandatory votes described:

“People basically [have] to decide twice if they are going to belong to a union. So I would say that the change meant that people had to vote twice. We had a couple of drives post the [introduction of mandatory votes] where we had 100 per cent of people signed up and they still had to go through the whole vote process. It also provides an opportunity for the employer to interfere in the process. Right. If it’s just – if you have the numbers, you hit that – well before it was 60 per cent, we were pushing for it to be 50 per cent, frankly – . But when it was 60 per cent, we’d hit those numbers, you get a certificate once the board confirmed that the numbers were accurate, and away you go. Now there’s this delay while we wait for – through the

planning meeting to get to the actual vote taking place. And in that time, don't kid yourself, employers will do whatever they can to try to convince people that this was the wrong move. We've seen it time and time again, and that's one of the biggest reasons why I think card check is important, because people make a decision [that] they should have a union. They've already made that decision, already voted effectively when they signed their card."

— *Jeff Traeger, President of UFCW Local 832*

Another organizer, when asked how members feel about the mandatory vote, responded:

"[workers we spoke to] had said that when we signed that card, 'we don't care about the vote. We had already decided right then and there [our intention to join the union]. That was our wish.' So, I mean, the vote to them, they expressed that the vote was just a waste of a week."

— *Union Organizer, United Brotherhood of Carpenters Local 343*

These experiences with delay, intimidation, frustration, and coercion reinforce the long-known reality that workplaces are political spaces in which power over the day to day operations and livelihoods of workers is stacked on the side of employers. The introduction of mandatory certification votes within the union certification process gives employers additional latitude to exercise this power while limiting the capacity of workers to freely express their will to start a union. Card-check certification, by eliminating delays and the additional voting process, levels the playing field for workers in Manitoba trying to join a union.

# Revisiting the Debate Over Anti-Scab Legislation in Manitoba

PREVIOUS PUBLIC POLICY research and debate over anti-scab legislation has drawn attention to picket-line violence resulting from the use of scabs as well as broader questions about the effect of anti-scab legislation on economy-wide trends such as time lost to strikes, wage settlements, unemployment, and private sector investment. With exceptions, less attention has been focused on issues such as workplace safety, damage to collective bargaining relationships, or the complex issue of ‘balance’ in labour relations (Savage and Butovsky 2009). Manitoba-specific data reveals that scabs are used regularly in the province, making the issue an important one for provincial labour relations. The interview data discussed below seeks to fill this gap. Along with the workplace stress that can emerge from the use of scab workers during a strike, the unionized workers, union organizers, and officials interviewed noted issues around workplace training and safety when scabs were hired. Interviewees also stressed the long-term damage to labour-management relations resulting from the use of replacement workers. These issues must be taken into account by the Manitoba government in reviews for labour relations reform.

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## Experiences with Scab Workers in Manitoba

Unionized workers, union organizers, and officials interviewed on their experiences during strikes involving scabs noted various scenarios in which scabs were hired or in which the possibility of replacement was raised either during negotiations or the lead-up to a strike. These scenarios varied depending upon the size of firms, the skills required in the workplace, and the degree of turnover within the workforce. These differences are important since variation in the power of employers to replace workers renders strikes far less effective in particular workplaces. Interviewees who work in private sector firms with high levels of worker turnover and/or franchised operations noted the use of newer workers still on probationary contracts to replace workers taking job action. A union organizer describing a recent lockout at a Winnipeg Tim Hortons location stated:

“[The day before the lockout began] the employer was asking employees [if] they will be in tomorrow. The employer was checking off: Who is not coming in? Who was coming in? Which is interesting because a lot of the new workers were new employees. So what employers do is they’ll hire during bargaining time. And then usually new employees say yes to everything and they have the probation clause [that] doesn’t allow them to use a grievance procedure. So many contracts are like that. [...] So at that time there was new employees and obviously those employees would be coming in if there was a lockout. So the day of the lockout, [our members] came to our office and then we went and had lockout signs and stood on Portage and Main and workers that were brand new hires had come to work as well as workers from the other shops that [the Tim Horton’s location owner/franchisee] owns, came to work and they had — it was like as if there was just new workers that’s helped keep this place open. And those were your replacement workers.”  
— *Andy Spence, Regional Representative with Workers United Canada Council*

The same union organizer describing the 2022 strike at garment manufacturer Freed & Freed noted the use of workers on probation as well as replacements during the strike:

“It was actually the new workers that crossed the picket line, ones that were on probation. But we also knew that the company had a contract that needed work to be done and they were hiring through that process and people were coming into — through a strike — to get hired to work. And some of them actually got the job and they started going in there to do whatever it is that they had asked them. They weren’t running at full capacity, though. It was

just a pretty blatant “We’re still going to try to work if we can” attitude.”  
— *Andy Spence, Regional Representative with Workers United Canada Council*

Another union staff person describing the atmosphere when workers at Dynacare Manitoba passed a strike vote in 2022 noted that although a strike could have been effective in ceasing work in some parts of the company, because the company operates in multiple provinces the employer would have still been able to replace some workers and continue operations by outsourcing work:

“The employers started bringing through nurses to tour the facility [...] basically threatening to replace our folks with, you know, part time nurses or something like that to draw blood. And I don’t even know how they could do analysis, [so] at least to draw blood. Probably what they were going to do is to ship samples to Brampton, Ontario [...] because [...] they’re not unionized in Ontario. So that was a very interesting scenario. We couldn’t even call on [a] sister union in Ontario to refuse work, because they’re not even unionized. [They] could have replaced us in that way. [You] can’t draw blood from Ontario. You’ve got to at least take the samples here [so] they were threatening to bring in nurses to do that.”  
— *Tim Smith, Manager of Communications and Outreach at MAHCP*

Workers at larger firms in retail described the targeted use of job fairs following a strike vote to raise the possibility of replacement during a strike:

“The larger employers, Safeway and Loblaw for example, who have thousands of employees in Manitoba, always do job fairs the same time we take our strike vote. So they watch our website, they see that we’re taking the strike vote. They do a job fair and they offer workers significantly more to be replacement workers than they would if they were under our collective agreement. Which has the effect of pissing off the bargaining committee, pissing off the negotiator and frustrating members. And they do it intentionally.”  
— *Jeff Traeger, President of UPCW Local 832*

Under current provincial law employers are fully within their right to hire workers and use existing staff, whether inside the province or beyond, to continue operations during a strike. The instances noted above raise questions regarding balance in existing labour relations legislation. Three of the four instances noted involve workers in retail, fast-food, and garment manufacturing, sectors that are known for persistently low wages and a disproportionate share of immigrant and migrant workers, many of whom struggle with precarious immigration statuses which diminish their capacity for advocacy at work. The adoption of

anti-scab legislation would increase the power of unionized workers bargaining for improved wages and working conditions in these sectors.

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## **Workplace Safety, Violence on Picket-Lines, and Long-Term Damage to Labour-Management Relations Following Replacement**

Along with heightened tension during a strike in which scabs are used, interviewees noted concerns around training and safety, which furthered indignation workers felt when watching scab workers cross a picket line. In some cases, interviewees described this indignation during the strike having a long-term impact on labour-management relations, with workers feeling their concerns are disregarded by their employers. Furthermore, a number of interviewees noted instances of confrontation and violence between striking workers and scabs in recent strikes. These instances, which are made possible by the absence of anti-scab legislation, again raise questions about balance within labour relations legislation.

When replacing workers with scabs during a strike, employers tend to seek temporary staff from outside the firm, either through recruitment agencies or individual hires. In workplaces where safety training is required to operate machinery or perform basic tasks on the work site, employers often cannot hire replacement workers or must curtail operations in line with safety regulations. In some cases, safety training can be performed on the job. Some interviewees raised concerns with rushed, on the job training provided to scab workers during recent strikes in Manitoba. A warehouse worker at Manitoba Liquor and Lotteries described returning to the warehouse following the 2023 strike to find damaged equipment. This followed repeated back and forth between the union and management over proper safety procedures within the warehouse:

“...they just brought in their guys and trained them. And unfortunately, I don’t know how [comprehensive] the training was. When I came back, I was actually working on the sit down and receiving and I’m sitting on the machine doing my inspection and take a look over and there’s this big, huge dent in the side of the machine. So I had to call a supervisor over and go, you know, when we left that machine didn’t have that damage and that’s significant damage. Somebody could have [been] really hurt and fortunately they didn’t. But yeah, it could have been very unfortunate.”

— *MBLL worker*

Another interviewee described an instance at a chicken hatchery in which poorly trained replacement workers made a mistake at the plant for which the company was fined:

“You’re dealing with eggs and chicks at a Hatchery obviously. Right. And apparently they were fined at one point during the dispute because they had allowed something like 60,000 chicks to die overnight in the facility because somebody [a replacement worker] forgot to put the heaters on. So they all froze to death.”  
–*Jeff Traeger, President of UPCW Local 832*

These examples raise concerns over whether the use of replacement workers encourages unsafe work.

Mitigating violence on the picket line is one of the foremost arguments for the introduction of anti-scab legislation. Across jurisdictions, violence resulting from the use of scabs has been repeatedly noted. Interviewees for this project did not describe first-hand instances of physical violence but noted confrontations between striking workers and replacements. These confrontations were instigated both by striking workers and by replacements, in all instances creating a hostile environment on the picket line. During the 2023 strike at MBLL, a worker at the distribution centre described a confrontation between striking workers and replacements in which a replacement worker attempted to provoke those on the picket line:

“One of their scabs came in and parked right up against the fence where we had people sitting and standing and revved up his car for a while to throw exhaust fumes at the strikers. And a couple of our guys were starting to respond. But luckily, contact was made with our warehouse manager and he came out and got that employee and said no. Park your car over there. There is no reason to do that. And we’re not trying to provoke these employees. So we had a good manager, fortunately.”  
–*MBLL worker*

The same worker described another instance at the same workplace in which workers tried to block trucks from entering the warehouse gates, as workers knew some trucks were there to pick up orders being filled by scabs. These workers had to be restrained by union reps since this tactic is unlawful. As another union organizer described, when union member can see their strike being undermined by replacement workers, the sense of powerlessness can provoke violence:

“When you’ve got a group of workers that are withholding or trying to withhold their work from the employer, generally speaking, they’re not happy people. They’re angry that their employer isn’t paying them properly or treating them well. And then you’ve got the picket line in front of the workplace and you’ve got workers that are being bused or coming in with their vehicles to cross the picket line to go do your work, which effectively takes your power away. So it makes them frustrated and makes them angry. And unfortunately, angry people sometimes do things they shouldn’t do on a picket line.[...] it just creates an environment where violence is possible.”

– *Jeff Traeger, President of UFCW 832*

The same union organizer went on to describe previous violent incidents which have occurred on picket lines in Manitoba:

“Fortunately, we haven’t had a lot of that lately. But when we were representing Burns [Meat] Plant and there was a strike at Burns. There was a lot of that. There was a lot. There were 16 people that were arrested. A president, the person in my position, was arrested in ‘87 on the picket line at Loblaw for going after scabs. [...] We had a negotiator hit by car that was driven by the CEO of a company two years back. So those types of things. I think that if you didn’t have scabs, it would mean that the strike has to be settled at the bargaining table and not in the street, you know.”

– *Jeff Traeger, President of UFCW 832*

These examples add further evidence that the absence of anti-scab legislation creates the conditions for picket line violence during strikes.

Finally, some interviewees described long-term negative impacts on labour-management relationships resulting from the use of scab workers. One worker at a Manitoba Liquor Mart described colleagues leaving following the 2023 strike:

“When I went back to my workplace, I told my store manager, who I have a good working relationship with – and look, I don’t hold anything against him, he was told to open up his store. He was told to run it. – ... But I told him, I said there’s going to be major fallout. Well, you know, because of all of this, I told him to his face that we were going to lose a minimum of two people to as many as six. We’ve lost five already.”

– *Worker at MBLL*

Describing frustration when replaced by untrained workers during a strike, a union organizer walking alongside striking daycare workers at Les Tournesols Daycare in Winnipeg stated:

“And so this entire daycare walked out and was on the line. [...] And then all of a sudden they started noticing other people showing up. They had untrained people working in this daycare and the people on the line, it really, really hurt them. Because when an employer decides to do that, what it really says to them is that, you know, we’re not going to sit down and talk to you. Number one, we’re not going to offer you a fair deal. And two, we’re just going to replace you.”

— *Union Organizer in MB*

These experiences with replacement workers again underline the long-term impacts of this practice, which can weaken unions and substantively erode workers rights to union membership and collective bargaining. Under Manitoba’s LRA permanently replacing union members (i.e. breaking a union) is prohibited. However in practice, the line between temporary replacement and permanent replacement can be fuzzy. The division and damage that the use of replacement workers generates in many cases severely weakens unions – and may even completely undermine their continued viability at particular workplaces. In these instances, allowing employers to use scabs in effect weakens workers’ rights to union membership and collective bargaining, in general.

# Conclusion

CARD-CHECK (SINGLE-STEP) UNION certification and a ban on replacement in Manitoba are important steps towards rebalancing the power of workers vis-a-vis employers within provincial labour relations. The absence of single-step certification and a ban on replacement workers in Manitoba leaves workers exposed to harassment and bullying from anti-union employers while frustrating collective bargaining. Further, the absence of a ban on replacement workers promotes hostilities within Manitoba's unionized workplaces while potentially promoting unsafe working environments. These effects are widespread across unionized workplaces in Manitoba, with 34.7 per cent of strikes since 2016 involving replacements. At the same time, the existing system of enforcing the Labour Relations Act through unfair labour practices claims fails to fully protect workers from undue influence by anti-union employers. Reinstating card-check union certification and adopting provincial anti-scab legislation should be supported by the Manitoba government in order to ensure the rights to strike and to join a union, foundational to workers rights in Canada, are substantively upheld in Manitoba.

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# Appendix A

## Manitoba Strike and Lockout Length (Days), 2016–2023

Firm or Employer Organization	Union Representing Workers	Strike Start Date	Strike End Date	Strike Duration
Hanover School Division	CLAC	11/1/2023	11/23/2023	22 Days
Manitoba Public Insurance	MGEU	8/28/2023	11/1/2023	65 Days
Teranet	MGEU	7/21/2023	8/25/2023	35 Days
Manitoba Liquor and Lotteries	MGEU	7/19/2023	8/27/2023	39 Days
Manitoba Hydro	IBEW Canada	6/30/2023	7/19/2023	19 Days
Freed and Freed	Workers United Canada	9/27/2022	10/28/2022	32 Days
Les Tournesols de Saint-Vital Inc.	MGEU	9/26/2022	10/23/2022	28 Days
Manitoba Hydro	UNIFOR	6/17/2022	6/18/2022	1 Day
Rolling River School Division	CUPE	11/1/2021	2/2/2022	84 Days
University of Manitoba	UMFA	11/2/2021	12/6/2021	34 Days
School District of Mystery Lake	USW	8/30/2021	9/3/2021	4 Days
Welcome Place – Manitoba Interfaith Immigration Council ( <b>Lockout</b> )	CUPE	4/27/2021	7/13/2021	77 Days
Manitoba Hydro	IBEW Canada	3/23/2021	5/13/2021	51 Days
Stella's	UFCW Canada	9/21/2020	11/5/2020	45 Days
Winnipeg School Division	UFCW Canada	9/8/2020	12/3/2020	86 Days
Black Cat Wear Parts ( <b>Lockout</b> )	USW	6/20/2020	8/27/2020	68 Days
Tim Horton's ( <b>Lockout</b> )	Workers United Canada	1/3/2020	1/10/2020	7 Days
Aryzta	UFCW	5/1/2018	5/12/2018	11 Days
PTI Manitoba ( <b>Lockout</b> )	USW	8/24/2017	9/24/2017	31 Days
Nisichawayasihk Personal Care Home	MGEU	11/28/2016	12/15/2016	17 Days
University of Manitoba	UMFA	11/1/2016	11/21/2016	20 Days
Macdonald Youth Services	MGEU	8/2/2016	8/19/2016	17 Days
Diageo Canada	UFCW	3/5/2016	4/25/2016	51 Days

# Appendix B

## Manitoba Labour Board Rulings Related to Employer Intimidation During Union Drives (2000–2024)

Date	Employer	Union	Case	Outcome
December 2019	Canada Goose Inc.	Workers United Canada Council	CASE NOS. 64/19/LRA 76/19/LRA	Fine \$2000.00
July 2019	Wintec Building Services	LiUNA 1258	MLB Order 1670	Discretionary certification*
June 2019	Darco Group	Operating Engineers 987	MLB Order 1669	Fine \$2000.00
January 2019	Crown Utilities Ltd	Operating Engineers 987	MLB Order 1165	Discretionary certification
April 2017	Fresh Hemp-Manitoba Harvest	Workers United Canada Council	MLB Order 1644/ CASE NO. 260/15/LRA	Fine \$2000.00
June 2014	Winnipeg Dodge Chrysler	USW 9074	Judgement June 20, 2014	Discretionary certification
October 2009	Triple Seal t/a Northwest Glass Products	UFCW 832	Order No 1466: October 2, 2009	Fine and compensation for a wrongly terminated employee
October 2005	Praxair Canada	Teamsters 979	MLB CASE NO. 171/05/LRA	Discretionary certification
November 2001	J.C. Foods Ltd.	UFCW 832	Judgement: November 20, 2001	Discretionary certification
October 2000	Emerald Foods	UFCW 832	MLB Order, Oct 16, 2000	Discretionary certification

**Source** Manitoba Labour Board Case Files and Annual Reports, 2000–2023

\* A discretionary certification orders the union to be automatically certified. Discretionary certifications are awarded in cases where interference by employers goes against the clear will of employees. Discretionary certification is the highest penalty awarded by the Manitoba Labour Board in certification cases.







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