

RESEARCH - ANALYSIS - SOLUTIONS

CCPA REVIEW

Labour Notes

August 2012

The Threat of Right-to-Work Laws and the Need for Social Solidarity

A major confrontation is shaping up between progressive elements of Canadian society associated with the trade union movement and social democracy, and anti-union organizations (many of them inspired and guided by the National Right-to-Work Committee based in Virginia) that are seeking to eliminate the institutional arrangements that protect trade union rights and secure their role in the life of Canada. This conflict involves a clash over fundamental values. At stake is the very nature of Canadian society—the kind of society we bequeath to future generations.

Building A Better World: The Values and Vision of Canadian Trade Unions

The contemporary labour movement in Canada has its origins in the friendly societies that emerged in Britain in the 18th century. At a time when the formation of trade unions and collective action by workers was illegal, they organized, in secret, “friendly societies” to establish voluntary mutual-aid programs to assist workers and their families

during periods of hardship caused by unemployment, illness and injury, premature death, and old age. As well, more broadly-based worker organizations sought to promote the rights and conditions of trade union members, and indeed all workers, by promoting an extension of voting rights, legislation to establish trade union rights, and various reforms to improve the conditions of workers and their families, including restrictions on the use of child labour.

Along with much else British, Canada inherited the philosophy, values, practices and vision of early unionism in Britain, all of which are reflected in the constitutions, documents and other paraphernalia of contemporary trade unions and trade union centrals. For example, on May 1, 2000—May Day—the Brandon and District Labour Council unveiled a new banner commemorating the struggles and gains of trade unions over a century and a half. Its theme, “Strength in Solidarity,” reflects an appreciation of the fact that advances are only achieved when workers act together in their places of work and

The Review is available free from the **Canadian Centre for Policy Alternatives**. Each issue features new independent research and analysis on topics important to Manitobans. For more information or to provide feedback please call or write:

309 - 323 Portage Avenue
Winnipeg, MB R3B 2C1
ph: (204) 927-3200 fax: (204) 927-3201

ccpamb@policyalternatives.ca

www.policyalternatives.ca

in society. The banner also highlights the core values of the labour movement, namely “Democracy, Freedom, Social Justice and Equality,” and depicts labour’s historical struggles for “bread, and roses too.” These core values include health and safety in the workplace, schools instead of sweatshops for our children, and protection for our natural resources and environment.

In sum, these values define a vision of an inclusive society where all workers contribute to, and share in the benefits of, collective activities that enhance the general welfare. These are the values and vision that have always guided the activities of trade unions in Canada. These are the values and vision that are being challenged by the organizations that march under the Right-to-Work banner in Canada.

Creating a Docile and Dependent Work Force: The Retrograde Values and Vision of Anti-Union Elements

The National Right-to-Work Committee (RTWC) was established in Virginia in 1955 for the express purpose of trying to establish Right-to-Work laws (explained in full below) in individual states. At present, 23 states have such laws, most of them former slave and/or agrarian states. The Committee claims it is a friend to employees. This is a lie. It doesn’t do anything directly for workers. All of its campaigns are aimed at attacking unions. It is interesting to note that the National Right-to-Work Committee refuses to identify where it gets its funding.

In Canada, the main organizations promoting anti-union policies and legislation are the Fraser Institute and The Canadian Labour Watch Association (CLWA).

The Fraser Institute is a right-wing “think tank.” A major part of its research and policy agenda is its heavy emphasis on anti-union publications and support for anti-union legislation, including Right-to-Work legislation. It does research comparing and ranking labour laws in North American states and provinces. In its ranking on a score of 0-10, states with Right-to-Work laws are marked above

nine. Alberta is tops in Canada with a score of six, while the federal jurisdiction is at the bottom with a score of one.

Like the Right-to-Work Committee, the Fraser Institute will not identify its major patrons and donors, although the CCPA national office published a ten-year-old list of its supporters which included: corporations from the resource, communication and banking, finance and insurance sectors. Other supporters on the list include Canadian Tire, Dow Chemical Canada Inc., John Deere Ltd., John Labatt Ltd., Kodak Canada Ltd., Toyota Canada Inc., to name a few. The list will have changed since it was made available, but one can assume that the majority of these corporations still support the Fraser Institute.

The Canadian Labour Watch Association (CLWA), based in British Columbia, models itself on the U.S. National Right-to-Work Committee. Business-related associations and law firms can take out memberships for \$1,000 per year. Member associations include the: Agricultural Manufacturers Association of Canada; Canadian Federation of Independent Business; Canadian Restaurant and Food Services Association; Human Resources Management Association of Manitoba; Independent Contractors and Businesses Association; Retail Council of Manitoba; Motion Picture Theatre Association of Canada; Conseil du Patronat du Quebec; and six Merit Contractors Associations based in Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland and Labrador, and Nova Scotia. Oh yes, the National Citizens Coalition is also on the list. CLWA also has 66 law firms (20 representing employees and 46 representing employers) as members. Thirteen lawyers advise the organization on the content of labour legislation in each of the federal and provincial jurisdictions. Grant Mitchell, an aggressive employer lawyer, is the Content Advisor for Manitoba.

Everything that the trade union movement stands for, these organizations oppose. The list includes: the establishment of the rule of law and democratic practices in the workplace; decent wages and benefits; employment standards to put a floor under wages and working conditions in the

economy as a whole; government funded and administered universal health care; respect for labour standards and protocols established by the International Labour Organization; and progressive taxation.

The concept of Utopia advanced by these right-to-work organizations is a society characterized by employment at will (an employment relationship that enables management to get rid of employees at will), and the complete absence of trade unions. All working people would face a much more precarious and difficult future if we were to allow these right-wing organizations to create the society that they want.

What's Been Happening in the U.S.A.?

In the U.S.A, the National Labour Relations Board certifies unions. Once certified, a union has a duty to provide fair representation to all members of the bargaining unit. At the same time, individual states have the power to prohibit all forms of union security ranging from the closed shop to the agency shop. The 23 Right-to-Work states have done this, which means that unions in those states are obligated to represent the interests of all members of the bargaining unit, but have no power to collect from individual members, the dues that they require to finance union activities. In this way, the proponents of Right-to-Work laws promote “free riding,” or “free loading,” as a way of undermining trade unions.

The proponents of Right-to-Work laws call this “freedom,” or the “right to choose.” Note the clever (devious) use of language, making it appear that Right-to-Work laws advance workers’ freedom. Each union member should be, they say, free to choose whether to pay union dues, in return for the benefits they get from unions, or not to pay their dues. Moreover, they tend to laud such behaviour—that is, not paying union dues—as somehow morally superior to the behaviour of trade union members who do pay dues either because they believe in the merits of trade unionism, or because they recognize the quid pro quo inherent in their relationship with the union.

The promotion of free ridership is, we would suggest, the moral equivalent of helping yourself to the money in a collection plate as it makes its rounds at a Sunday service. There is no way that Right-to-Work advocates can claim the moral high ground on this issue.

In summary, in Right-to-Work states, votes are held to determine the outcome of certification applications. With a majority vote, a union is certified. However, no members of the bargaining unit can be compelled to join or remain a member of a union, nor can non-members be compelled to pay union dues. Thus, in some situations unions may end up with a minority of bargaining unit members who actually retain membership status and pay union dues.

The Coming Conflict in Canada

In Canada, the federal jurisdiction and provinces certify unions and set the laws that govern labor-management relations. Certification outcomes may be obtained with either a card-based majority or a secret ballot majority. In Quebec, PEI, and the federal jurisdictions, a 50 percent card sign-up results in automatic certification, while New Brunswick and Manitoba require super majorities of 60 percent plus 1 and 65 percent, respectively. When card sign-ups are less than the required levels, a vote must be held. In all other jurisdictions the certification outcome is determined in a secret-ballot vote. All jurisdictions impose a duty of fair representation on certified bargaining units.

By and large, workers in Canada respect the majority outcome of a union certification bid whether it is card-based or the outcome of an election. When it comes to the collection of dues, most jurisdictions require that employers collect dues when employees provide written authorization for them to do so. The federal jurisdiction, Newfoundland/Labrador, Quebec and Manitoba require an agency shop (Rand formula) provision in all collective agreements. The Rand Formula is a provision in many collective agreements that requires employers to deduct union dues from all employees in the bargaining unit, and remit them

to the union. It takes its name from Chief Justice Ivan Rand of the Supreme Court of Canada, who included the provision in his arbitration of a dispute between Ford and the United Auto Workers in 1945. The Chief Justice believed that unions were obliged to look after the interests of all employees, and must, therefore, have the resources required to discharge this obligation. Thus, those who benefit from the efforts of the union should pay their dues, even if they choose not to be members of the union. In Canada, those who choose not to join a union seem to accept that payment of dues for the services provided by bargaining units is fair.

The purpose of the campaign by Right-to-Work organizations now underway in Canada is to persuade governments that “free riders” should be able to trump the democratic outcome of certification campaigns. Either they will insist that employers not be required to collect dues even when they have been authorized to do so by employees, or they will insist on laws that prohibit various forms of union security, including Rand formulas in collective agreements.

Conservative governments provide fertile breeding grounds for anti-union initiatives

The record shows that anti-union initiatives tend to show up in jurisdictions that have right-wing conservative governments and/or during times of economic instability and crisis.

There have been two initiatives in recent memory.

In 1977, Manitoba elected a Conservative government under the leadership of Sterling Lyon, committed to entrenching a neoconservative agenda. In this new climate, the Construction Labour Relations Association, the Union of Manitoba [rural] Municipalities, and the Manitoba Chambers of Commerce pushed this issue. A Chambers of Commerce convention in Brandon called on the Tory government to “study the possibility of right-to-work legislation which would outlaw closed shops in which all workers must belong to a union.” Other organizations went further and argued not only that workers should not be compelled to join a union, but also that they should be able to claim

“free rider” status, that is, get the benefits negotiated by the union, but not have to pay union dues.

These proposals were vigorously opposed by Ross Martin, President of the Brandon and District Labour Council, and other local labour leaders. Lyon and his government retreated from the issue when Dick Martin, Manitoba Federation of Labour President, said he would, if need be, organize a general strike to stop such legislation.

Later, in 1995, Stockwell Day, Labour Minister with a Conservative government in Alberta, asked the Alberta Economic Development Authority to investigate the feasibility of establishing such a right-to-work law in Alberta. The Economic Development Authority gave thumbs down to the idea on the grounds that it would simply create problems where none existed. They might have added that such a law would be contrary to the Canadian Way.

Today, however, it seems we have conditions that constitute a “perfect storm” for the advocates of Right-to-Work laws.

First, ever since the onset of economic crisis in 2008, labour in the United States has been under siege, especially in states with right-wing, anti-union Republican Governors and majorities in legislatures. This assault has taken the form of legislation curbing the rights of public sector workers and their unions, and renewed campaigns for Right-to-Work Laws. On February 1, 2012, Indiana became the first state in the industrial Midwest to adopt such a law. This assault shows few signs of abating in the immediate future. All events that have an adverse impact on unions are picked up by right-wing organizations for report and comments on their websites. For example, after Indiana approved a Right-to-Work law, the Fraser Institute published a piece on its website titled, “Follow Indiana’s Lead: Canadian provinces should give workers choice.” The body of the piece suggested that comparable laws here would be good for business: “Any Canadian province looking for a boost to business investment would do well to follow Indiana’s lead and adopt worker choice [aka, Right-to-Work] laws.”

Second, we now have a Prime Minister and government in Ottawa that have demonstrated by word and deed that they are opposed to trade unions. The Prime Minister was at one time head of the National Citizen's Coalition, an organization opposed to organized labour, and opposed also to the use of union dues to support progressive causes. In the 1980s the Citizens' Coalition bankrolled a challenge by Mervyn Lavigne, a community college instructor, against the Ontario Public Services Employees Union. Lavigne opposed the use of union dues for "political purposes." That is, he opposed unions using members' dues to advance members' interests. The challenge was rejected by The Supreme Court of Canada in 1991.

Many provinces today have conservative governments that oppose unions. Brad Wall's Saskatchewan Party government is currently seeking feedback on proposals to radically change labour laws, including the adoption of Right-to-Work Laws. In Manitoba, the City of Brandon, which recently used Canadian Labour Watch lawyer, Grant Mitchell, and Canadian Professional Management Services, to handle collective bargaining with police, firefighters, and transit workers unions, sent a letter to the Manitoba government requesting that an all-party committee be established to review labour relations legislation in Manitoba for the purpose of determining how strikes could be prevented in universities (such as the 45 day strike at Brandon University in 2011, a strike provoked by the University administration, and their chief negotiator, Grant Mitchell). This letter was subsequently converted into a Legislative Resolution by Reg Helwer, Conservative MLA for Brandon West. And now we have Ontario Conservatives, led by Tim Hudak, promising to bring Right-to-Work Laws to Ontario.

These pressures will likely intensify unless the national and provincial economies are able to achieve more robust growth that brings down unemployment. Higher rates of growth and lower unemployment would shift power back to individual workers and trade unions. Moreover, when conditions are improving it becomes more difficult for anti-union governments to divide the workforce by scapegoat-

ing immigrants, the unemployed, trade unions, etc. as responsible for our economic difficulties.

In the meantime, however, we must counter and derail the anti-union, right-to-work campaigns emerging from the political Right.

Actions to Counter the Right-to-Work (Anti-Union) Campaign in Canada

It is important to recognize that this is a battle that could potentially be fought in the federal jurisdiction, and 10 provincial jurisdictions, each with quite different economic, social and political conditions. At present, the jurisdictions that seem most susceptible to the pressures and propaganda churned out by Right-to-Work organizations are: Saskatchewan, where the Brad Wall government has taken a strong anti-union position since first taking office; Ontario, which has a minority government faced with significant economic problems; Manitoba, where the Conservative opposition has already signaled that it is prepared to go after labour should it ever form a government; and the federal jurisdiction, where the government has demonstrated that it has no time for trade unions and collective bargaining.

To counter the threats in these jurisdictions we would offer three suggestions.

First, it is important that every piece of material that is generated by the Fraser Institute and other right-wing, so-called think tanks, employer organizations, and political parties be countered immediately by critiques which demonstrate their bias and vacuity and connect the dots between them and the organizations they serve. A lot of work in this regard is already being circulated on various social media. Turc@policyalternatives.ca is an excellent source for such materials. These materials should be distributed to labour leaders, activists and their allies.

Second, it is vital that the people and organizations that are directly involved in these struggles in a particular jurisdiction mobilize the labour movement so that challenges to any initiatives related to

Right-to-Work legislation or other forms of regressive legislation can be activated quickly and moved forward expeditiously. These battles are almost certain to be fought first in Saskatchewan and Ontario. And they will be fought by the labour movement in those jurisdictions alongside other people and organizations who recognize the vital contributions that trade unions make to the political, social and economic life of this country. Therefore, it is important that mobilization efforts be led by provincial federations of labour and that they involve local labour councils and all trade unions and other progressive organizations opposed to regressive legislation. One way to start this process is by holding town hall meetings in all communities with local labour councils and/or significant concentrations of trade union members.

And third, since the most desirable outcome would be to stop the spread of this stuff by derailing the effort in Saskatchewan and/or Ontario, it is important that trade union resources be channeled into jurisdictions where the battle is going to be fought.

The Importance of the Battle

In conclusion, we would say that we can't stress enough just how important this struggle is to the trade union movement in Canada, and to the very future of this country. For the country as a whole, the stakes are especially high, since the forces promoting anti-union legislation are the same forces that want to do away with employment standards legislation, Medicare, most elements of the social safety net, and other programs that benefit working people. These are all programs that were put in place over the years because of the determined and informed efforts of working people in this country.

Union members and their many supporters have to be made aware of what is happening to unions, and what the implications are, both for themselves and for the country. They won't learn this from newspapers, TV news, or other forms of mainstream media. They will only learn about the challenge unions now face when unions themselves carry out an intensive education campaign. And then we have to fight, not only to stop the right-wing forces, but also to build a better world—a world characterized by social solidarity and greater equality.

Vibrant unions are a central part of building a better world. That's why the right-wing forces are working so hard to destroy them. We can let this happen.

Errol Black and Jim Silver are both Founding Board members and Research Associates with CCPA-MB.

The Canadian Centre for Policy Alternatives is an independent non-profit public policy research institute. For information about publications or forthcoming events, or to become a member please phone or write:

309-323 Portage Avenue
Winnipeg, MB R3B 2C1
ph: (204) 927-3200 fax: (204) 927-3201
ccpamb@policyalternatives.ca
www.policyalternatives.ca