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Equal Rights in the Workplace: Why We Need Anti-Scab Legislation in Manitoba

The power imbalance between employers and workers has always been wide, and in recent decades has been growing wider. We can see this by the fact that average wages have been flat over the past 20 years---most Canadians have made no gains in real terms, while incomes of the top 10 percent of Canada's earners have soared, and inequalities have widened. Unions in particular are under assault, as evidenced by the fact that the current economic crisis is being addressed, in part, by attacking unions, though unions have played no part in creating the problems.

Labour relations legislation, including anti-scab laws, is an especially important means of redressing this power imbalance. But NDP governments in Manitoba won't enact anti-scab legislation, nor offer good reasons for their failure to do so.

Resolutions calling for the enactment of anti-scab legislation were presented at the March 2009 NDP Convention in Brandon, but were so far down the priority list they didn't reach the floor for debate. Not that that matters a great deal since, as the preamble to the Assiniboia resolution noted that "resolutions to this effect have been passed without result for more than a quarter of a century." Anti-scab legislation was first adopted as party policy in 1978, when the NDP was in opposition, and has been endorsed at many conventions since. All to no avail.

Why do NDP governments in Manitoba steadfastly reject the inclusion of anti-scab legislation in the Manitoba Labour Relations Act?

The MFL Campaign for Anti-Scab Legislation

The campaign for anti-scab legislation was initiated by the Manitoba Federation of Labour (MFL) in1978, in the wake of a protracted and violent strike at Griffin Steel in 1976-77, the use of scab workers by Safeway in a confrontation with the Retail Clerks Union in 1978, and Quebec's passage of anti-scab legislation in 1977.

Prior to the provincial election in 1981, the NDP removed anti-scab legislation from its policy platform. The NDP won that election, and won again in 1986. In 1987 the MFL submitted a statement to the government

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which again spelled out the justification for anti-scab legislation. It is necessary, the MFL argued, to correct the power imbalance that exists during a strike:

"If both sides, labour and management, had equal rights in that workplace, then the operation would be suspended until such time as a new agreement is negotiated. Instead, management has the right to continue conducting its business as if the employees had never existed."

The absence of such legislation is especially detrimental to workers in relatively unskilled, low paid, often part-time or casual jobs where turnover is high. Many such jobs have recently been created. Such workers would be easy to replace if they were to go on strike, making much more difficult their prospects of forming a union and seeking improvements through collective bargaining.

Waiting for Anti-Scab Legislation

Instead of anti-scab legislation the Pawley government established, in1988, Final-Offer Selection Arbitration (F0S) as a means of resolving impasses either before strike action, or when a strike went beyond 59 days. FOS was accepted by the MFL and NDP as a second-best solution for workers on strike. FOS had a short life; it was repealed by a Conservative government effective March 31, 1991.

Ontario's first ever NDP government passed an anti-scab law in 1992. A year later, in 1993, the NDP government in British Columbia followed suit. The law in Ontario was repealed by a right-wing Conservative government in November 1995. But the law in BC has endured.

In Manitoba, Conservative governments in the 1990s instituted a series of retrogressive changes to the Labour Relations Act intended to restrict the ability of workers to form unions, and to curb the ability of unions to make gains in collective bargaining. The two most notable changes, made in 1996, were the replacement of card-based certification with vote-based certification, and restrictions on strike action by workers in jobs deemed to provide essential services.

In 1999, a new NDP government led by former Manitoba Government Employees Union leader Gary Doer was elected. Early in its first term the Doer government brought in legislation to partially reverse some of the labour legislation changes made by Conservative governments. Certification rules were amended to allow for automatic certification with a 65 percent sign-up of bargaining unit members (more difficult to achieve than the 55 percent in effect prior to 1988, when the NDP was in office), and new procedures, similar to FOS, were established to allow for settlement by arbitration of strikes/lockouts in effect for at least 60 days.

Doer has proved to be a very effective premier. There is much in the policy and program agendas of the NDP government that is effective and even innovative. As a result, Doer and the NDP government are now into a tenth year and third term, with continued strong public support.

Despite this record, and the political capital it has created, the Doer government continues to back away from anti-scab legislation; indeed, every time the issue is debated at Convention, the Premier takes pains to reassure the media that an NDP government will not institute anti-scab legislation.

Two Strikes in Brandon Show Why We Need Anti-Scab Legislation

Manitoba is not given to intense conflict between workers and employers. Over the 10-year period 1999-2008, there were on average 7 strikes per year involving 1,463 workers, resulting in 28,955 person days lost.

There are times, however, when strikes are bitter and protracted. Often these involve workers who are relatively unskilled with few resources, and employers that seek to exploit their vulnerability by using replacement workers to maintain operations.

This is exemplified by the recent history of labour-management conflict in Brandon. Since January 1, 1999, there have been three Brandon-specific strikes (strikes restricted to a Brandon employer and a Brandon local union). In two of them, the employer hired replacement workers, and encouraged striking workers to defy the union and return to work.

The first involved the Victoria Inn and United Food and Commercial Workers Local 832. It started October 8, 2000, when there was no legislation providing for arbitration to end a strike. There were 200 people in the bargaining unit, but not all of them joined the strike. Of those who did, many were young people, including women heading single-parent families. Those who stayed on the job were joined by replacement workers responding to ads in the local

media. By the end of December, 2008, almost three months later, only 24 people were left doing picket-line duty. The hotel claimed 51 had returned to work. An agreement recommended by a government-appointed mediator in January, 2011, was rejected by those who voted. The Brandon Sun reported that the 40 people who voted against the proposed agreement were individuals who defied the union and either remained at, or returned to work. The 28 who voted for it included those still on the picket line. The strike dragged on for a total of five months until the union threw in the towel on March 7, 2001. The agreement ending the strike offered the 20 workers still on strike a severance package or their jobs back; 16 chose the severance package. As well, the UFCW agreed not to oppose an application for decertification. The net result: those who were principled enough to fight lost; the scabs won a short-term victory; everybody lost because the union was decertified. The injustice is clear.

Almost 10 years later, on February 10, 2009, 57 women in CUPE Local 2096 (receptionists, stenographers and related jobs) took strike action against their private-sector employer, the Brandon Medical Clinic. The central issue was better pay. However, the women on the picket line insisted the conflict over wages reflected other issues beneath the surface that had been festering for a long time and souring the relationship between members of the local (many of them with 20-30 years of service) and their employer. Yes, they wanted better pay; but they also wanted respect and fair treatment: "We get respect from the individuals who use clinic services and appreciate our efforts to assist them, but not from our employer."

Some things had changed since the Victoria Inn strike in 2000. While employers could still hire replacement workers, the Labour Relations Act now included a provision allowing unions and/or employers to apply for binding arbitration to settle a strike or lockout once it had gone beyond 60 days.

But this change did not significantly improve the situation of workers with limited bargaining power. Most workers earning modest wages find it near impossible to accumulate sufficient savings to make up the difference between their earnings and strike pay over an extended period. This is especially true for heads of single-parent families. Employers understand the situation of their employees and this influences the way they deal with them during collective bargaining. A number of the CUPE Local 2096 strikers told us that when they advised the employer they would be going on strike, the response was: "See you in 60 days." Not surprisingly, workers started day 1 of the strike demoralized by these comments and the prospect of facing 60 days of rotten weather on the picket line, and two long months of reduced income and mounting credit card debt. The Clinic covered some of the vacant positions and advertised in the local media for replacement workers.

As it turned out, the strike didn't last 60 days. It ended one month later, March 11, 2009, when workers approved a new wage offer from the Brandon Clinic raising it from 4% per year over three years, to 6%, 4% and 4%. It's not clear what prompted Clinic management to raise their offer, but an inability to attract replacement workers in a tight labour market was an especially important factor, as were ongoing demonstrations of solidarity from the Brandon and District Labour Council and local unions, and concerns about the Clinic's image.

What Can We Learn From the Experience in Brandon?

The strikes at the Victoria Inn and Brandon Medical Clinic confirm that the present legislation governing labour-management relations in Manitoba continues to reproduce the power imbalance between workers and employers. In the case of the Victoria Inn, the absence of anti-scab legislation led to some improvement of job conditions for those who did not strike at the expense of those who did, and decertification of their local union. At the time of the Brandon Medical Clinic Strike, there was a provision in the legislation for ending a strike or lockout through binding arbitration. The members of CUPE Local 2096 got a settlement after 30 days so they didn't need to submit an application for arbitration. However, as a number of the strikers said, the 60 day provision (which meant in effect more than 60 days, because of the time involved in reviewing and approving applications) was not useful to them: many would have been forced back to work because they had run out of resources.

The lack of anti-scab legislation works to the disadvantage of unionized workers with limited bargaining power, as shown by these two strikes. But it also inhibits the formation of new union locals in similar situations, because employers can defeat unionization efforts with the use of scabs. These are two good

reasons for the Manitoba government to bring in such legislation. After all, we know that those countries that have the highest rates of unionization also have the lowest rates of poverty, the greatest degree of equality, and the best health outcomes. In this and many other ways, we all benefit when unions are established and fair collective agreements are negotiated on more equal terms.

In the many years this debate has been going on, NDP governments have never been able to offer a logical defence of their position. The evidence from Quebec and British Columbia suggests that such legislation tends to initially increase the incidence of strikes, but at the same time, reduce their length. Moreover, while these effects are moderated as unions and employers adjust to the new circumstances (Duffy and Johnson 2009), the important thing is that total days lost to disputes does not change appreciably as a result of legislative prohibitions on the hiring of replacement workers during an industrial strike. So we know that the sky does not fall when anti-scab legislation exists.

The only reason for the failure to establish such legislation appears to be a concern about the reaction of small business organizations to such legislation. This concern needs to be weighed against the potential gains to Manitoba arising from legislation that encourages workers to form trade unions and negotiate collective agreements under more fair and balanced circumstances.

Reference

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