SUBMISSION TO THE

STANDING COMMITTEE ON HUMAN RESOURCES, SKILLS AND SOCIAL DEVELOPMENT AND THE STATUS OF PERSONS WITH DISABILITIES

ON

BILL C-58, *AN ACT TO AMEND THE CANADA LABOUR CODE AND THE CANADA INDUSTRIAL RELATIONS BOARD REGULATIONS, 2012*.

BY THE

PUBLIC SERVICE ALLIANCE OF CANADA

MARCH 21, 2024

The Public Service Alliance of Canada is very pleased to have the opportunity to address the Committee and provide input on Bill C-58, *An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012*. As the largest union in the federal public sector representing over 230,000 members from coast to coast to coast, our union has a fundamental interest in preserving and promoting the rights and well-being of workers, particularly as it relates to their right to engage in effective collective bargaining.

The *Canada Labour Code* is the labour relations statute of general application in the three northern territories and covers federally regulated industries and workplaces, including transportation, banking, telecommunications but *not* the federal public service. However, 13,000 PSAC members working at airports, museums, port and pilotage authorities, NAV CANADA, the Mint, Canada Post, and many other employers including First Nations and northern territorial and municipal governments fall under this legislation.

Bill C-58 contains important amendments to the Code. The use of replacement workers drags out labour disputes and divides communities by pitting workers against each other. PSAC members experienced this during the Iqaluit Housing Authority strike. Housing authority workers were on the picket line for over four months while their employer brought in replacement workers to do their jobs instead of sitting down and negotiating with them at the table.

PSAC members who work for the Staff of the Non-public Funds providing crucial services to Canadian Forces members, their families, and veterans are also experiencing the negative impact replacement workers have on the ability to

achieve a collective agreement. Non-public Funds workers have been on strike for over two months and wages are one of the core issues.

The employer, Canadian Forces Morale and Welfare Services continue to claim that there are no additional funds for wage increases beyond what has been offered yet is opting instead to invest their resources in replacement workers. They are spending money to keep workers on strike rather than negotiating a fair deal. Strike-breaking scab labour interferes with the bargaining process, drags out labour disputes, divides our small communities by pitting neighbours against neighbours, and erodes the rights of workers.

Free and fair collective bargaining – without the threat of replacement workers taking unionized workers' jobs – is the best way to reach fair collective agreements and stable workplaces.

PSAC is believes that the legislation, as written, is an excellent start, however the legislation can be improved and strengthened by:

- Increasing the scope of prohibitions on performing struck work;
- Clarifying confusing provisions around the use of "dependent contractors";
- Bringing forward the date at which the legislation comes into force; and
- Shortening the timeframe for decision-making regarding essential services.

PSAC's rationale and proposed changes to the legislation are outlined below. These amendments will ensure that Bill C-58 is a progressive, robust piece of legislation that protects the rights of workers.

Increase the scope of prohibitions on performing struck work.

The current provisions outlined in s.94(4)(a) and s.94(4)(b), which determine who is restricted from performing struck work, are inadequate in their scope. They allow students, volunteers, and family members of an employer/owner (those not employed by the employer) to undertake bargaining unit work during a labour dispute. In addition, they allow managers and confidential staff to perform bargaining unit work during a labour dispute, provided they were hired prior to the date that notice to bargain was delivered. Still further, the provisions permit employers to use dependent contractors to perform bargaining unit work during a strike or lockout.

There is no justifiable reason for permitting employers to use any of these groups to perform the work of a bargaining unit that is on strike or locked out, regardless of their hiring date or status. Allowing them to do so poses the same risks and harms as permitting any other replacement workers to take on the work.

The sole purpose of allowing these groups to undertake struck work is to maintain production, a goal that contradicts the intentions behind anti-scab legislation. In addition, it is sometimes the case that the use of managers or confidential staff to perform struck work can pose serious safety risks to those individuals.

This issue could be easily resolved by extending the prohibition against performance of bargaining unit work during a labour dispute to "any person, except in accordance with maintenance of activities requirements" or by explicitly listing additional groups under the prohibition. PSAC feels the former approach would be more effective.

It would be preferable to eliminate the ability for employers to use the services of managers, confidential staff, or others entirely by eliminating the exception provided for those hired prior to the date of notice to bargain, in order to best ensure that the legislation achieves its important objectives.

However, if the amendments to the Code must contain a trigger that is activated by delivery of notice to bargain, it should be noted that as presently drafted, the Bill invites employers to engage in certain obvious forms of manipulation.

This concern arises from the ambiguity regarding which notice to bargain triggers the prohibition. Specifically, Bill C-58 does not specify that the relevant trigger date is that of the first notice to bargain delivered by either the union or the employer during a specific negotiation round. The term “notice to bargain” is not defined in the Code, but it is abundantly clear that either party is entitled to serve a notice to bargain (see sections 48 and 49.)

Here is how this ambiguity could be exploited:

If a union delivers a notice to bargain four months before the expiry of the collective agreement (as allowed by s.49(1)), and the employer delivers a legally redundant notice to bargain to the union just one day before the expiry of the collective agreement, the employer could argue that individuals hired into managerial or confidential positions between the date of the union's delivery of notice and the date of the employer's redundant notice can be lawfully employed as replacement workers. An employer could also rely upon this ambiguity in order to retain contractors whose use during a labour dispute could thereby become permissible under the new s.94(5) contained in the Bill.

This allows the employer a window of four months minus one day to hire excluded managers and confidential staff or to retain contractors and then potentially use them as strike-breakers. Moreover, during this period, the employer may not need to compensate these individuals. It can simply “hire” them on paper, in anticipation of a need or desire to deploy them as strike-breakers.

It is far preferable then, if a trigger tied to notice to bargain is to be included in the Bill, that Parliament pre-empt the present invitation to mischief by an amendment that clearly stipulates that the trigger is activated as of the earliest date upon which either party to a collective bargaining relationship has delivered a notice to bargain to the other party.

Again, however, we wish to emphasize that entirely eliminating the trigger date and the exceptions that result from its inclusion would be the preferable course.

Clarify confusing provisions around the use of "dependent contractors"

Bill C-58 contains a significant inconsistency regarding the usage of "dependent contractors" during strikes or lockouts.

Firstly, the proposed s.94(4)(a) prohibits employers from utilizing the services of "any employee" hired after the notice to bargain was given. Conversely, s.94(4)(b) allows employers to engage dependent contractors during a strike or lockout.

Furthermore, s.94(5) permits the use of individuals mentioned in s.94(4)(b) if their services were already being utilized before the notice to bargain, under the same conditions. However, s.94(6) prohibits the use of "any employee" in the bargaining unit during a general strike or lockout.

The complication arises because dependent contractors fall under the definition of "employee" as per s.4 of the Code. Hence, where a dependent contractor is an employee, it becomes unclear whether that dependent contractor's services can be lawfully used by the employer during a labour dispute.

It would be preferable that the exception permitting the use of dependent contractors be removed from the Bill entirely. Failing that, this ambiguity must be addressed through an amendment clarifying that the services of a dependent contractor who is also an employee cannot be used during a strike or lockout.

Bring forward the date at which the legislation comes into force

The decision to wait a full 18 months after Royal Assent before the amendments to the Code would come into force is overly long. Workers need and deserve this legislation as soon as possible.

It may also be appropriate to recognize that implementation of some provisions of the Bill, if passed, may require significantly more or less time than other provisions. For example, it is difficult to understand why the provisions relating to Maintenance

of Activities requirements should require 18 months to implement. A greatly abbreviated timeframe is appropriate in the case of those provisions.

However, it is also PSAC's view that the 18-month period prior to the coming into force of the amendments relating to replacement workers is excessive. While we believe that it is more important that the regulations that must be developed under the Bill be crafted *well and with care* than it is that they be crafted *swiftly*, we nevertheless believe that 18 months is greatly excessive.

It should be possible to bring the Maintenance of Activities proposals into effect within 90 days of Royal Assent, and PSAC recommends full implementation of Bill C-58 no longer than 9 months after Royal Assent.

Shorten the timeframe for decision-making regarding essential services

If employers and unions cannot come to an agreement in the 15 days following the issuance of the notice to bargain, and either party applies for a Canada Industrial Relations Board decision, there is a 90-day time limit for that decision to be issued.

PSAC views this time limit as excessive. A 60-day time limit on the decision would be more appropriate. This perspective stems from the understanding that within 90 days, significant developments can occur in labour relations.

The intent behind Bill C-58 is to prevent employers from employing replacement workers and utilizing the Maintenance of Activities Agreement (or Essential Services) process as a means to stall, thereby weakening the resolve and morale of union members or postponing strike actions to a time favorable to the employer, minimizing its operational impact.

While acknowledging the complexity of such decisions and the need for thorough research and reflection, it is important to note the wealth of jurisprudence and existing agreements that inform both current and future essential services applications. Knowledge regarding the maintenance of essential activities also accumulates over time. In essence, as more Maintenance of Activities Agreements are enacted during legal strikes, there is a growing body of evidence delineating what actions do or do not jeopardize public health and safety.

The freedom to delineate essential services and regulate strikes is now constrained by the Supreme Court of Canada's interpretation of the Charter's protection of the freedom of association, particularly following the 2015 Saskatchewan Federation of Labour decision. This ruling emphasizes that the government must demonstrate that the services being protected are sufficiently essential to justify such protection as a pressing and substantial objective.

The establishment of essential services was never intended to hinder the rights of unionized workers, be it in the public or private sector. Leveraging essential services processes to delay union and employer actions runs counter to the spirit of the Supreme Court interpretation.

Therefore, PSAC is recommending an amendment that shortens the time limit for board decisions, thereby reducing any potential waiting period between collective bargaining and legal strike actions.