Tilt:

How the SaskParty plans to shift the scales in favour of employers

CUPE Saskatchewan

An Analysis of Bill 5 and Bill 6
by CUPE Saskatchewan
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Executive Summary

In December 2007, less than a month after being sworn into office, the new Saskatchewan Party government introduced two bills that it claimed would establish a "fair and balanced" labour environment. In reality, Bill 5 (*The Public Service Essential Services Act*) and Bill 6 (*An Act to Amend the Trade Union Act*) would tilt the scales overwhelmingly in favour of employers. Combined, these two pieces of legislation constitute the most aggressive assault on the labour rights of Saskatchewan working people this province has ever seen.

Bill 5 – Public Service Essential Services Act

- Saskatchewan's proposed essential services legislation is the most far-reaching in the country. It will cover government employees, Crown corporations, regional health authorities, Saskatchewan Cancer Agency, universities, SIAST, municipalities, police boards and "any other person, agency or body, or class of persons, agencies or bodies, that is prescribed" by the provincial government.
- Essential services legislation could very well prolong strikes since it alleviates pressure on both parties to come to a speedy resolution. It also does not guarantee the resolution of key workplace issues that lead to strikes in the first place. In a health care strike, essential services legislation could also result in even longer delays for elective surgeries.
- Essential services designations that are imposed by governments and employers are typically excessive. In Manitoba, employers have designated groundskeepers and library technicians as "essential employees." In Quebec, legislation designates up to 90% of hospital employees as essential, a proportion that sometimes requires more employees to be at work during a strike than would ordinarily be present under normal conditions.
- If passed, Bill 5 will take away the right to strike from thousands of public sector workers, which will seriously weaken their collective bargaining power. Without the possibility of a strike, employers will have little or no incentive to seriously negotiate wages, benefits and working conditions with public sector unions.
- A strike is always a last resort for trade unionists, especially public sector workers. Over the last two decades, 96% of public sector settlements in Saskatchewan were reached without a work stoppage, a figure that is significantly higher than the percentage of private sector settlements reached without a work stoppage (89%) during the same period.
- The most effective essential services agreements are those that are voluntary. Public sector unions have always provided emergency services when health care strikes have occurred and in other disputes where public safety is a genuine concern.

Bill 6 – An Act to Amend the Trade Union Act

- Bill 6 will abolish automatic certification, which would essentially require employees to vote twice to form a union: once with the signing of a card, and again with the secret ballot. It will also give the employer more time to discourage employees from forming a union.
- Provinces that have automatic certification typically have higher unionization rates compared to those that have mandatory vote certification.
- The minimum percentage of signed cards needed to trigger a representation vote in Saskatchewan will increase from 25%, the lowest in the country, to 45%, the highest threshold in Canada (tied with B.C.).
- Bill 6 would give even more power to employers, by allowing them to communicate "facts and its opinions" to employees. This amendment would substantially weaken the restrictions against employers that prohibit interference in union organizing drives and union affairs more generally.
- With the possible exception of B.C., Saskatchewan's proposed legislation would place the least restrictions on employer's abilities to "communicate" with employees about union affairs.
- Bill 6 will reduce the time limit for signing up union members during organizing drives from six months to 90 days prior to the application.
- Bill 6 would remove the current provision of the *Trade Union Act* that limits collective agreements to a length of no more than three years As a result, workers may be pressured into signing longer collective agreements that see wage increases eaten up by higher than anticipated inflation over the long-run.
- The overriding intent of the proposed amendments is not to promote democratic workplaces, as the government claims, but to discourage the organizing of unions, which will ultimately lower the living standards of working people in Saskatchewan, since union members enjoy significantly higher wages and more benefits than their non-union counterparts.

Recommendations

- CUPE Saskatchewan strongly recommends that the Government of Saskatchewan not proceed with Bill 5 (*Public Service Essential Services Act)* and Bill 6 (An *Act to Amend the Trade Union Act)* until an independent committee comprised of equal numbers of employer and labour representatives, and chaired by a neutral chair, can fully review the merits and drawbacks of the proposed legislation, solicit feedback from employers, unions, academics, other interested parties and individuals through public hearings held throughout the province, and report its findings back to the government and the citizens of the province.
- In the meantime, CUPE Saskatchewan recommends that the Government of Saskatchewan publicly release any background studies it may have conducted that would explain the rationale for the two pieces of legislation.

Introduction

The Canadian Union of Public Employees represents 27,000 public sector workers in Saskatchewan who work at health care facilities, municipalities, school boards, universities, libraries, the Legal Aid Commission and the Saskatchewan Human Rights Commission, and community-based organizations like daycares and group homes. CUPE is the largest union both in Saskatchewan and in Canada, where we represent 570,000 members.

Saskatchewan has a proud history of pioneering progressive labour legislation. Saskatchewan was the first province to allow working people, including public servants, to organize and bargain collectively when it introduced the *Trade Union Act* in 1944. Our province led the way with the introduction of the *Occupational Health and Safety Act* in 1972. During the 1970s and early 1980s, Saskatchewan maintained a minimum wage that was the highest or among the highest in the country. Our province leads the rest of the country by providing three weeks of vacation after one year of employment under our *Labour Standards Act*. Working people have fought hard for several decades to establish these rights.

Although Saskatchewan's labour legislation compares well with many other jurisdictions across the country, it would be inaccurate to conclude that our labour laws are somehow biased towards unions or are "anti-business." After all, nearly two-thirds of Saskatchewan's workforce is non-unionized despite the many advantages that accrue with union membership.

Our province is one of the few Canadian jurisdictions that does not have pay equity legislation to ensure that women receive equal pay for work of equal value. Our Labour Relations Board does not have the power that several other jurisdictions have to automatically certify a union when an unfair labour practice is committed. Finally, despite repeated calls from the labour movement, Saskatchewan still does not have anti-scab legislation, which exists in Quebec and British Columbia.

Nonetheless, in the years leading up to the November 7th, 2007 provincial election, the Saskatchewan Party called for "fair and balanced" labour laws. This pledge was repeated in the party's election platform and, following the election, in the recent Throne Speech. However, Bill 5 (*The Public Service Essential Services Act*) and Bill 6 (*An Act to Amend the Trade Union Act*), introduced in late December, are anything but fair and balanced.

The latter piece of legislation would significantly weaken the existing *Trade Union Act* by abolishing the automatic certification or card-check system, providing employers with the ability to intervene in union affairs, including organizing drives, and cutting in half the amount of time unions would have to sign up new members. The overall effect of these proposed amendments, and others, would tilt the scales overwhelmingly in favour of employers.

Bill 5 (*The Public Service Essential Services Act*) would take away the right to strike, and by extension free collective bargaining rights, from

thousands of public sector workers — including, quite possibly, the majority of CUPE members — for the alleged purpose of ensuring public safety. But, as will be shown below, Saskatchewan unions already have a well-established practice of voluntarily providing emergency services during health care strikes and other public sector disputes.

Even the Saskatchewan Party's 2007 election platform did not call for legislation. Instead the party promised to protect public safety "by working together with the province's public sector unions to ensure essential services are in place in the event of a strike or labour action."[1]

Don McMorris, Saskatchewan Party health critic prior to the 2007 provincial election, reiterated that essential services legislation was not required. A week before the vote, McMorris said, "I'm quite confident they can be negotiated. I don't think we need to get to legislation."[2] Yet, less than a month after being sworn into office the new Saskatchewan Party government introduced Bill 5, *The Public Service Essential Services Act*.

Combined, the above two bills constitute the most aggressive assault on the labour rights of Saskatchewan working people this province has ever seen. As such, we do not feel that the limited, private consultations that the provincial government has agreed to are sufficient to adequately study and consider the consequences of enacting such sweeping legislation.

We realize though, that however inadequate, these consultations may represent the only opportunity that CUPE Saskatchewan may have to outline our concerns. Therefore, we will attempt in this report to outline our many concerns with Bill 5 and Bill 6 in the space below.

[1] Saskatchewan Party, Securing the Future: New Ideas for Saskatchewan, 2007, p. 20
[2] Angela Hall, "Party's position was 'quite clear', says minister Norris," The Regina Leader-Post, December 6, 2007, p. A9.

Bill 5 – Public Service Essential Services Act

Definition of essential services

Section 2(c) of the *The Public Service Essential Services Act* defines "essential services" as services necessary to enable a public employer to prevent: (i) danger to life, health or safety; (ii) the destruction or serious deterioration of machinery, equipment or premises; (iii) serious environmental damage; or (iv) disruption of any of the courts of Saskatchewan.

Negotiation of essential services agreements

Under Section 7 of the legislation, a public employer and union must negotiate an essential services agreement (ESA) at least 90 days prior to the expiration of a collective agreement. The ESA must identify the essential services to be maintained, the classifications of the employees, and the number and names of the employees who must work during a stoppage. The contents of the ESA are "to be determined without regard to the availability of other persons to provide essential services."

If the employer and union cannot come to an agreement, then the public employer must serve notice of the essential services to be provided, the classifications of employees who must work, and the numbers and names of employees within each classification. (Under this provision, employers could presumably name members of the union's bargaining committee as essential employees.)

Under Section 10 of the proposed bill, the union can apply to the Saskatchewan Labour Relations Board to vary the number of employees deemed essential by the employer if it believes it can provide the essential services with fewer employees. (The union cannot, however, appeal the designation of classifications deemed essential.) The LRB may then hold a hearing or conduct an investigation prior to issuing an order confirming or varying the number of essential services employees within 14 days after receiving the application "or any longer period that the board considers necessary." Either the public employer or union may further apply to the LRB to vary or rescind the original order.

If neither party serves notice to terminate the agreement (with a view to renegotiating), then the ESA will remain in effect indefinitely and apply to any future work stoppage,

Saskatchewan legislation broadest in scope

Saskatchewan's *Public Service Essential Services Act* "applies to every public employer, every trade union and every employee." Public employer is defined to include: the Government of Saskatchewan, Crown corporations, regional health authorities, Saskatchewan Cancer Agency, University of Saskatchewan, University of Regina, SIAST, municipalities, police boards and "any other person, agency or body, or class

of persons, agencies or bodies, that is prescribed" by the provincial government.

As Appendix I shows, five provinces and the federal government have essential services legislation, while Ontario, Alberta and Prince Edward Island ban strikes and lockouts altogether for health care workers in favour of interest arbitration. In Ontario, ambulance workers have the right to strike but are covered by essential services legislation. Saskatchewan and Nova Scotia are currently the only provinces without essential services legislation.

If passed, Saskatchewan's essential services legislation will be the most far-reaching in the country. Unlike other jurisdictions, whose legislation primarily targets health care workers, police or firefighters with a strike ban or essential services legislation, Saskatchewan's proposed legislation would cover universities and other post-secondary institutions as well — a sector that is not specifically designated in any other provincial legislation. In addition, Quebec would be the only other jurisdiction to cover a broad range of municipal services as essential services.

While the above public services are all critically important, it certainly does not follow that they are all "essential" in the sense that they are necessary to prevent "danger to life, health and safety." Furthermore, as will be described below, legislation is not necessary to ensure the provision of emergency services.

Enforcement

Public employees who are designated as "essential employees" must continue to work during a work stoppage or face a fine of up to $2,000 and further fines of $400 per day for violation of the Act. Trade unions that impede, prevent, or attempt to impede or prevent any essential service employee from complying with the legislation will face an initial fine of up to $50,000, plus an additional $10,000 for each day for which the offence continues.

These fines are double those set out in Manitoba's *Essential Services Act*. The employee fines in Saskatchewan's proposed legislation are also much more onerous than those set out in Quebec's essential services law where employees, who are not union representatives, are liable to fines of $50 to $125 per day for contravening the act.

Residual powers for the provincial government

The provincial government will prescribe the specific essential services to be provided by the Government of Saskatchewan in forthcoming regulations. The provincial government has also given itself broad powers under Section 21 of the legislation to make regulations to define, enlarge or restrict the meaning of any word or expression in the Act, prescribe additional entities as public employers, add provisions to be included in the contents of essential services agreements and prescribe anything else that is authorized and required by the Act or needed to carry out the intent of the Act.

Eroding the right to strike

The right to strike is a fundamental right for all workers and an integral element of free collective bargaining. Without the possibility of a strike, employers have little or no incentive to seriously negotiate wages, benefits and working conditions with the employee's union.

In their landmark ruling on June 8, 2007, the Supreme Court of Canada confirmed that

collective bargaining is protected by the Charter of Rights and Freedoms. As Chief Justice Beverley McLachlin and Mr. Justice Louis LeBel stated in their ruling: "The right to bargain collectively with an employer enhances human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work."[3] According to some legal analysts, this Supreme Court decision sends an important signal to governments that they must consider the collective bargaining rights of workers before they enact legislation that may negatively impact on these rights.[4]

In addition to strengthening collective bargaining rights, the right to strike in a public sector context serves other important functions. As management professors Judy Haiven and Larry Haiven have pointed out, "the right to threaten or implement a work stoppage is the only effective mechanism workers now have to warn employers and the public of impending problems."[5] For example, Saskatchewan health care unions have recently focused on concerns relating to workload, recruitment and retention of staff — key issues that also concern the public.

The stated intent of essential services legislation is to ensure public safety by providing some level of essential services, while simultaneously preserving the right to strike for employees. While the *Public Service Essential Services Act* will not completely ban health care and other public sector strikes, as other jurisdictions have done, experience elsewhere has shown that employers often wildly exaggerate the number of essential services employees required during a strike. In such a scenario, the right to strike is effectively nullified. Ironically, unionized workers in those jurisdictions that officially ban health care strikes, like Ontario for example, would at least have guaranteed access to an interest arbitration process if a negotiated agreement cannot be reached.

Quebec's essential services legislation typically designates 60% to 90% of hospital employees as essential. These numbers are so high that sometimes more employees are required to be at work during a strike than would ordinarily be present under normal conditions.[6]

In 2001, the New Brunswick Labour Relations Board ruled that over 75% of positions at hospitals in seven regional health authorities were "essential." Nonetheless, employers claimed they were still not able to maintain adequate services when the remaining 25% of staff went on strike, and they consequently demanded back-to-work legislation.[7]

Closer to home, Manitoba employers have used their province's *Essential Services Act* to designate groundskeepers and library technicians as "essential employees." In 2002, with an impending strike deadline by the Manitoba

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[3] Errol Black and Jim Silver, "Automatic Certification at Fifty Percent Plus One: Now is the Time," *Canadian Centre for Policy Alternatives Fast Facts*, July 18, 2007, p. 1.
[4] See Valerie Matthews Lemieux and Steven Barrett, "Charter Protection Extended to Collective Bargaining - How Far Does it Reach?", *CCPA Review: Labour Notes*, December 2007.
[5] Judy Haiven and Larry Haiven, "Health Care Strikes: Pulling the Red Cord", *The Right to Strike in Nova Scotia Series, Canadian Centre for Policy Alternative – Nova Scotia*, Number 2, November 2007, p. 1.
[6] Judy Haiven and Larry Haiven, "A Tale of Two Provinces: Alberta and Nova Scotia: The Right to Strike in Nova Scotia Series " *Canadian Centre for Policy Alternatives – Nova Scotia*, Number 1, October 2007, p. 7.
[7] See the Government of Nova Scotia, Environment and Labour, *Dispute Resolution in Healthcare and Community Services Collective Bargaining*, Discussion Paper, June 2007.

Nurses Union, one hospital employer designated 125% of its normal complement as "essential."[8]

The experiences in other jurisdictions with such legislation and employer's actions here in Saskatchewan suggests that Bill 5 could very well result in thousands of public sector workers being designated as "essential."

In the last round of provincial health care bargaining, after 14 months of negotiations CUPE members voted to support job action, if necessary, to achieve a fair collective agreement. Shortly after the announcement of the strike vote, the Regina Qu'Appelle Health Region called an urgent meeting to present CUPE with their "Essential Services Planning Framework." The RQHR's "framework" was over 400 pages long, and covered every RQHR department and program. In many departments, there appears to be little difference between the allotment of normal shifts and essential shifts.

During the 2007 strike at the University of Saskatchewan, concerns were raised that the absence of clerical employees, who were walking the picket line, was resulting in the postponement or cancellation of medical appointments at the Royal University Hospital, Eye Centre at the Saskatoon City Hospital and Westwinds Primary Health Centre. Yet, U of S management apparently determined it was more important to staff the Tim Horton's campus outlet than to backfill clerical workers to schedule medical appointments. "We're hoping senior administrators can go and pour some coffee," said Barb Daigle, U of S vice-president of human resources, at the time. "There are some things that are part of the campus culture and that seems to be one of them."[9]

The process of determining and designating "essential services" is difficult for third parties, who lack inside knowledge of the workplace. If the union appeals an employer's designation, a Labour Relations Board may come down somewhere in the middle, but resulting in a decision where an abnormally high proportion of employees are designated essential.

This problem could be further exacerbated if the new provincial government stacks the Labour Relations Board with anti-union members, as the Conservative government of Grant Devine did in the 1980s.

Strikes prolonged while key workplace issues ignored

Essential services legislation does not guarantee the resolution of key workplace issues that lead to strikes in the first place. In fact, the presence of such legislation may prolong strikes since it can alleviate pressure on both parties to come to a speedy resolution. In a limited strike, where most employees are deemed essential, employers will have even less incentive to seriously bargain, since they will be saving money on the wages of striking workers while still receiving the same amount of government funding. No dispute resolution mechanism may exist in such a situation if there is no recourse for the union to choose binding arbitration.

Essential services legislation could also, ironically, increase the negative impact on the public. As Dan Cameron, a lecturer in Industrial Relations and a former chief spokesperson for

[8] Haiven and Haiven, "Health Care Strikes: Pulling the Red Cord," p.10.
[9] Lana Haight, "Essential jobs disputed; CUPE, U of S fail to agree on who works during strike," *The Saskatoon Star Phoenix*, November 6, 2007, p. A1.

the employer in public service negotiations, notes: "Given essential services continue, there's less incentive to settle so strikes are longer. In a health strike this may mean the already long delays for elective surgery will increase. The provision of non-essential services will be interrupted for longer periods."[10]

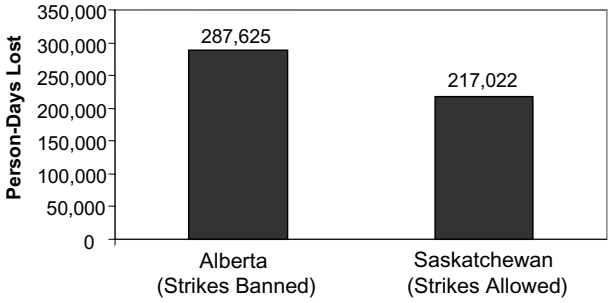
Essential services legislation and strike bans do not stop illegal strikes

Essential services legislation does not prevent those employees who are designated as "essential" from engaging in illegal strike activity. As mentioned above, Quebec's essential services legislation has resulted in up to 90% of employees at some hospitals being declared essential, which has led many workers to defy the law and provide more modest emergency services instead. As Chart 1 shows over the last two decades, there have been more days lost to health care strikes in Alberta, where health care strikes are banned, than in Saskatchewan, where health care workers have the legal right to strike.

The current dispute resolution process works

The overwhelming majority of public sector contract settlements are reached without a strike or lockout. As Appendix II shows, during the period 1987 to 2007, 96% of public sector settlements in Saskatchewan were reached without a work stoppage.[11] This figure is significantly higher than the percentage of private sector settlements reached without a work stoppage (89%) during the same period.

Chart 1 – Person-days lost due to health care strikes and lockouts in Alberta and Saskatchewan, 1988-2007



Source: Saskatchewan statistics compiled from Saskatchewan Labour figures. Alberta figures calculated by Judy Haiven and Larry Haiven, A Tale of Two Provinces: Alberta and Nova Scotia, Canadian Centre for Policy Alternatives, October 2007.

According to statistics provided by Saskatchewan Labour, during the period 1987 to 2007 there were nearly twice as many private sector work stoppages as public sector work stoppages.

Public sector strikes are also typically much shorter than private sector strikes. There have been a number of bitter strikes in Saskatchewan's retail and accommodation industries that have lasted over a year or more. By comparison, eight of the 11 health care strikes that have occurred over the last two decades have lasted no more than 10 days.

Emergency services are provided voluntarily

As management professors Larry Haiven and Judy Haiven argue, "it is a fundamental principle of industrial relations … that good labour-management relations thrive through voluntarism and wither from compulsion." They

[10] Dan Cameron, "Act may have unintended consequences," *The Saskatoon StarPhoenix*, December 28, 2007, p. A11.
[11] These statistics were calculated from data provided by the Policy and Planning Branch of Saskatchewan Labour. Since Saskatchewan Labour relies on voluntarily submitted settlement reports, the above percentage of public sector settlements reached without a work stoppage may be underestimated.

continue, "Left to rely on their own expertise without excessive legal compulsion, the negotiating parties themselves will fashion the most practical and workable solutions to problems where they are." Accordingly, the most effective essential services agreements are those that are voluntary, directive and temporary, while the most ineffective are compulsory, binding and permanent.[12]

In Saskatchewan, health care unions have always agreed to voluntarily provide emergency services prior to or during job actions. For instance, prior to the six-day strike by 12,000 health care providers in 2001, CUPE signed a voluntary agreement with the Saskatchewan Association of Health Organizations regarding essential services situations. The agreement included provisions to have CUPE members, such as laboratory and x-ray technologists, available to respond to emergencies. During the subsequent strike, technologists took turns walking the picket line or being stationed in hospital rooms where they could be reached to respond to emergencies. A number of other classifications provided emergency services during this strike. Engineers throughout the province provided boiler checks when managers were unable to do so. Information technologists ensured networks were running properly. Licensed practical nurses provided emergency care to residents at Wascana Rehabilitation Centre in Regina who were on ventilators. These are just a few examples.

Over the last two decades, union members have also voluntarily provided emergency services in the following strikes:

- During the one-day strike by CUPE health care workers in January 1999, CUPE health care workers, such as lab and x-ray technologists, engineers and IT technologists remained on-call for emergencies.
- During their 1999 province-wide strike, members of the Saskatchewan Union of Nurses provided emergency services, as they did during their 1988 and 1991 strikes.
- During the 1999 strike by SGEU members at the Saskatchewan Cancer Agency, enough staff was left at work to provide emergency services.
- During their 2002 province-wide strike, members of the Health Sciences Association of Saskatchewan provided essential services. Only 28 of the 2,500 HSAS members withdrew their services during their 2007 strike.
- During the 2006-07 strike by members of SGEU's public service/government employees unit, highway workers returned to their snowplows and sand trucks to help deal with an oncoming winter storm. SGEU agreed in the subsequent settlement to negotiate an essential services provision in their collective agreement.
- During their 2007 strike, CUPE Local 1975 reached a voluntary agreement with the University of Saskatchewan to allow 20 members to provide essential services at the Western College of Veterinary Medicine, the in vitro fertilization laboratory and elsewhere at the university.

In addition, out-of-scope managerial staff is usually trained and capable of filling in for striking public sector workers, at least for a limited period of time.

Public sector unions take public safety seriously. That's why public sector unions have

[12] Haiven and Haiven, Health Care Strikes: "Pulling the Red Cord", p. 8-9.

voluntarily provided emergency services when they have had no option but to resort to job action. By their nature, public sector strikes create inconvenience and disruption, but no public sector strike in Saskatchewan has resulted in a tragedy. Indeed, it is not in the best interests of public sector workers to permit such tragedies to occur, since public support is critical to the success of the strike.

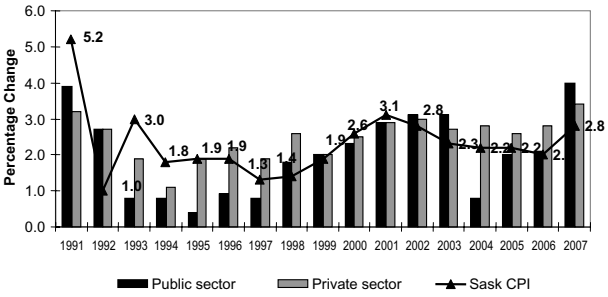
The proposed *Public Service Essential Services Act*, which could very well strip most public sector workers of their right to strike, represents a clear case of overkill. Even Dan Cameron, a former chief spokesperson for the employer in public service negotiations, notes in his criticism of the proposed legislation, "[T]his act treats every negotiation as if a strike or lockout is inevitable. What's forgotten is this is not about controlling strike or lockout action but rather insuring the continued provision of essential services."[13]

By contrast, under B.C.'s Labour Relations Code, essential services can only be designated after a labour dispute arises following the commencement of collective bargaining. Under these circumstances, the designation of essential services may not take effect until a strike or lockout has actually begun.

Depressing public sector wages

The Public Service Essential Services Act threatens to roll back free collective bargaining for thousands of public sector workers. In this sense, the legislation will serve as a useful mechanism for the provincial government to curb future real wage gains and benefit improvements for public sector workers, most of whom are women.

Chart 2 – Average annual negotiated wage settlements in Saskatchewan vs average annual change in Sask CPI, 1991-2007



Sources: Saskatchewan Labour, Statistics Canada

As Chart 2 above shows, average public sector wage settlements, per employee, fell below both the rate of inflation and private sector settlements for much of the past two decades. Public sector workers bore the brunt of much of the provincial government's deficit reduction efforts in the early 1990s through job cuts and wage restraint. Most recently, the provincial government imposed a 0-1-1 percent public sector wage mandate in 2004.

In fact, average public sector wage settlements only exceeded increases in Saskatchewan's Consumer Price Index in seven of the last 17 years. Likewise, average private sector wage settlements, per employee, exceeded public sector settlements in 10 of the last 17 years. Average public sector settlements only edged out the private settlements in five of the last 17 years.

Only in the last year — a period marked by strong economic growth, surging oil prices and rising government revenues — has the average public sector worker finally seen a significant increase in their real wages or purchasing power.

[13] Cameron, "Act may have unintended consequences," p. A11.

Bill 6 – An Amendment to the Trade Union Act

The elimination of automatic certification

Bill 6 proposes a number of sweeping amendments to the *Trade Union Act*, but the proposal to eliminate automatic certification, also referred to as the card-check system, is undoubtedly the most significant change.

Under the current *Trade Union Act*, unions that submit cards signed by over 50% of the employees in an appropriate bargaining unit will be automatically certified. Unions can also trigger a secret ballot vote with the submission of 25% or more signed union cards, a provision that is often utilized in cases where an organizing drive is faced with a hostile employer.

Bill 6 will amend Section 6 of the current act to abolish automatic certification and instead require a mandatory secret ballot vote for all union certifications. The bill will also require a minimum of 45% written support, instead of 25%, in order for the Labour Relations Board to conduct a vote for certification. As can be seen by Appendix III, which compares certification rules across Canada, the minimum percentage of signed cards needed to trigger a representation vote in Saskatchewan will move from the lowest in Canada to the highest (tied with B.C.).

Another change to the certification rules would see a regulation establish the acceptable form of evidence for certification or decertification applications, instead of the LRB, which is the current practice.

On the surface, the requirement for a secret ballot vote to determine union certifications may seem reasonable. But the elimination of automatic certification would essentially require employees to vote twice to form a union: once with the signing of a card, and again with the secret ballot. Even if 100% of employees in a workplace sign union cards, a secret ballot vote will still be required.

The real intent of requiring a mandatory secret ballot vote is not to further democracy in the workplace, but rather to provide anti-union employers with more time to discourage their employees from joining a union. This is one reason why B.C.'s Committee of Special Advisors, a committee comprised of both management and labour experts, unanimously recommended in 1992 a return to automatic certification based on the signing of union cards. Their rationale for replacing the mandatory vote system with automatic certification is worth quoting at length:

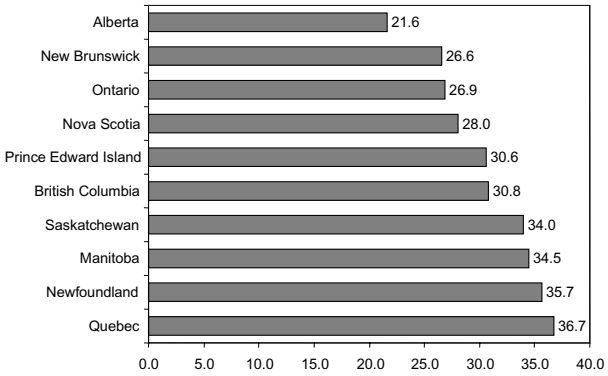
> The surface attraction of a secret ballot vote does not stand up to examination. Since the introduction of secret ballot votes in 1984 the rate of employer unfair labour practices in representation campaigns in British Columbia has increased by more than 100%. When certification hinges on a campaign in which the employer participates the lesson of experience is that unfair labour practices designed to thwart the organizing drive

will inevitably follow. The statistical profile in British Columbia since the introduction of the vote was confirmed by the repeated anecdotes our Committee heard in its tours across the Province. It is also borne out in decisions of the Board and Council. Unions would sign up a clear majority of employees as members and a vote would be ordered. Then key union supporters would be fired or laid-off while threats of closure dominated the campaign and the vote itself was viewed as a vote on whether or not to continue with employment rather than as a vote on redefining the employment relationship. It is not acceptable that an employee's basic right to join a trade union be visited with such consequences and illegal interference. Nor is there any reasonable likelihood of introducing effective deterrents to illegal employer conduct during a representational campaign. A shorter time framework will not deter an employer intent on "getting the message" to his employees. Neither is the imposition of fines and/or the expeditious reinstatement of terminated employees likely to introduce attitudinal or behavioural changes in employers intent on ensuring that their employees do not join unions. The simple reality is that secret ballot votes and their concomitant representational campaigns invite an unacceptable level of unlawful employer interference in the certification process.[14]

In contrast to labour codes in other provinces, it should be pointed out that Bill 6 does not specify a time limit for the holding of the secret ballot vote following the application for certification. This would give employers an indefinite amount of time to interfere with organizing drives.[15]

Appendix III shows that seven of eleven Canadian jurisdictions (including the federal government) currently have automatic certification rules as part of their labour relations acts. As can be seen by Chart 3, these provinces generally have higher unionization rates. Indeed, the provinces that have automatic certification (Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Newfoundland and Labrador) have an average unionization rate of 33.0 percent, compared to an average unionization rate of 26.8 percent for those provinces that have mandatory vote certification (B.C., Alberta, Ontario, and Nova Scotia).

Chart 3 – Percentage of workforce covered by unions, 2005



Source: Statistics Canada, Perspectives on Labour and Income, August 2006, p. 23.

The experience in other jurisdictions that have had both automatic certification and mandatory vote systems clearly shows that union certifications are higher under the former system. This has been the experience in Ontario since 1995 and in B.C. where automatic certification was replaced by the mandatory vote system twice.

[14] V. Ready, J. Baigent, and T. Roper, Recommendations for Labour Law Reform, Victoria: Queen's Printer for British Columbia, September 1992, p.26.

[15] In Ontario, representation votes are normally held five working days after the filing of an application for certification.

Table 1 below illustrates how the card check system helped facilitate the organizing of more unorganized employees in B.C. in the two periods it was in effect, compared to the two periods when the mandatory vote system was in place.

Table 1 – Average Annual Number of Unorganized Employees Certified in B.C.

1974-1983 (Card Check)	7,411
1985-1992 (Mandatory Vote)	4,106
1994-2000 (Card Check)	8,762
2002-2004 (Mandatory Vote)	1,739

Source: Patrick Dickie, Hastings Labour Law Office, "The Crisis in Union Organizing under the B.C. Liberals," unpublished paper, November 21, 2005.

Of course, the degree of unionization is not completely attributable to the presence of automatic certification or mandatory vote systems alone. A variety of economic, political and social factors impact the success of union organizing. Other provisions of labour relations legislation, and the interpretation by labour relations boards of these laws, also play a significant role in determining unionization rates, as will be discussed below. Nonetheless, the importance of automatic certification in facilitating union organizing should not be understated. Right-wing governments and others who are hostile to unions have come to the same conclusion.[16]

Shorter time period to sign up members

Under the current *Trade Union Act*, union cards must be signed within six months of the application for certification. Bill 6 will reduce this time period, or "shelf-life" for union cards, to 90 days prior to the application.

As shown in Appendix III, this new time limit for signing up members during organizing drives will fall short of Manitoba's six month period, and far short of Ontario and Quebec's 12-month period.

Union organizing is typically a time-consuming process. Without access to an employee list, an organizing drive can take several months to carry out. The reduction of the time period allotted to sign up union members will, like the other proposed amendments, have the effect of lowering union certifications.

Employer "Free Speech" Provisions

While it will remain an unfair labour practice for employers or their representatives to interfere, restrain, intimidate, threaten or coerce employees who seek to join unions, Bill 6 will amend the *Trade Union Act* so that "nothing in this Act precludes an employer from communicating facts and its opinions to its employees." This change will substantially weaken the restrictions against employers that prohibit interference in union drives and union affairs more generally.

As shown in Appendix IV, the majority of provincial labour codes include so-called "employer free speech" provisions that allow employers to communicate with employees during union organizing drives, but there is considerable variation in the scope of these provisions.

In addition to prohibiting intimidation, threats and coercion, Alberta, Ontario, New Brunswick, Nova Scotia, P.E.I. and the Canada Labour Code prohibit employers from using "undue influence" in their communications with employees. Alberta, Ontario and the Canada

[16] See, for example, Jason Clemens, Niels Veldhuis and Amela Karabegovic, "Explaining Canada's High Unionization Rates," *Fraser Alert*, The Fraser Institute, August 2005.

Labour Code also include "promises" under the list of prohibited employer actions.

Like the proposed amendments to Saskatchewan's Trade Union Act, Manitoba's Labour Relations Act allows employers to communicate to an employee "a statement of fact or an opinion", but this is qualified to some extent to facts and opinions "reasonably held with respect to the employer's business."

With the possible exception of B.C., Saskatchewan's proposed legislation promises to place the fewest restrictions on employer's abilities to "communicate" with employees about union affairs.

It's unclear where the LRB will draw the line between intimidation and coercion on the one hand and the communication of facts and opinions on the other. For instance, will an employer communication that states their business will have to close if the employees join a union be considered an opinion or a threat? The recent experience in B.C. with this provision does not bode well for working people in Saskatchewan. The Labour Relations Board there has taken "a very hands off approach to the content of anti-union communications by employers, as well as continuing to allow employers to engage in political-style anti-union campaigns."[17]

Saskatchewan has had its own experience with the "employer free speech" clause, first under the Ross Thatcher Liberal government in the latter half of the 1960s and again under Grant Devine's Conservative government of the 1980s. During the latter period, the enhanced ability for the employer to interfere with union organizing drives, combined with other pro-business amendments to the Trade Union Act and decisions by a Conservative-appointed LRB contributed to a substantial drop in applications for union certifications from 183 in 1982-83 to 78 in 1987-88. The unionization rate of Saskatchewan's non-agricultural workforce also fell from 32.9 percent to 29.2 percent during this period.[18]

Time limits for LRB decisions

Bill 6 would require the Labour Relation Board to render a decision within six months following a hearing. If the decision is not issued in that time period, either party can apply to the Court of Queen's Bench for an order requiring the LRB to issue its decision. Another amendment would require the LRB to include in its annual report details of the cases heard, including the board members at the hearing, the time periods between the filing of the application, the hearing, and the issuing of the decision, and the average length of time between the hearing and rendering of a decision.

Given the length of time it has taken the LRB to make its rulings on a number of files in recent years, this amendment could very well benefit all parties by encouraging timelier decisions, as well as promoting greater transparency.

However, it is unlikely that the LRB, with a staff complement of only nine employees, would have the resources necessary to comply with the new time requirements, in addition to overseeing mandatory secret ballot votes and

[17] Patrick Dickie, "The Crisis in Union Organizing Under the BC Liberals", unpublished paper, November 21, 2005, p. 14.
[18] Ian McCuaig, Bob Sass, and Mark Stobbe, "Labour Pains: The Birth of a New Industrial Relations Order in Saskatchewan," in Lesley Biggs and Mark Stobbe, Eds, *Devine Rule in Saskatchewan: A Decade of Hope and Hardship*. Saskatoon: Fifth House Publishers, 1991, p. 155.

adjudicating potentially hundreds of essential services agreements between public employers and unions if Bill 5 is passed.

No limits on the length of collective agreements

Currently, the *Trade Union Act* limits collective agreements to a length of no more than three years. Bill 6 would repeal 33 (3) from the act, which would remove the above restriction on the length of collective agreements.

There are good reasons for both employers and unions to favour a limited length for collective agreements. It is very difficult to predict how economic conditions, such as inflation, economic growth and employment, will change beyond three years time. Workers may see longer range wage increases eaten up by higher than anticipated inflation.

The current provision limiting the length of collective agreements to three years provides both employers and unions with an appropriate amount of flexibility.

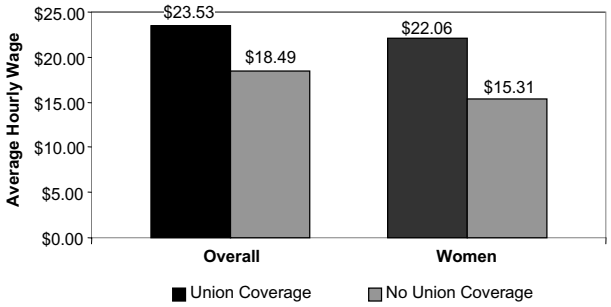
Impact on working people

The overriding intent of the proposed amendments to the *Trade Union Act* is to discourage workers from joining unions, which will ultimately lower the living standards of working people in Saskatchewan.

As Chart 4 shows, the facts clearly show that union members enjoy significantly higher wages than their non-union counterparts. In Saskatchewan, the latest figures from Statistics Canada's Labour Force Survey show that permanent, unionized workers 15 years of age and older made an average hourly wage of $23.53 — $5.14 more than their non-unionized counterparts. Women benefit even more from unionization. Unionized female workers in Saskatchewan received an average hourly wage that was $6.75 more than non-unionized female workers.

The union wage premium is even more pronounced for part-time workers. In 2005, the average unionized part-time worker in Canada made $19.10 an hour, compared to $11.62 for their non-unionized counterpart, a difference of $7.48 an hour.[19]

Chart 4 – The union advantage: Average hourly wage in Saskatchewan, December 2007



Source: Statistics Canada, Table 282-0073 – Labour force survey estimates (LFS)

The facts also show that union members are nearly twice as likely to be covered by extended medical, dental and life/disability plans as non-union members: about 80 percent for union members compared to 40 percent for non-union members for each plan. The gap between unionized and non-unionized workers is even wider when coverage by employer-sponsored pension plans is compared. According to Statistics Canada, 80 percent of unionized workers were covered by an employer-sponsored

[19] "Unionization," *Perspectives on Labour and Income*, Statistics Canada, August 2006, p. 39.

pension plan, compared with only 27% of non-unionized workers.[20]

Unionized workers are also protected from unjust dismissal and workplace hazards. In short, unions provide working people with some say about their wages and working conditions.

For employers like Wal-Mart, which have vigorously resisted unionization drives, the above statistics may serve to validate their actions. However, more progressive employers may realize that broader societal benefits derive from unionization and the higher wages that union members enjoy are spent on the goods and services they offer.

[20] Ernest B. Akyeampong, "Unionization and fringe benefits," *Perspectives on Labour and Income*, Statistics Canada, August 2002, p. 5-6.

Labour Legislation Reviews

The hasty manner in which Bill 5 and Bill 6 were introduced, less than one month after the swearing in of the new government, gives us pause for concern. Who was consulted about the drafting of both pieces of legislation? Were business and employer groups involved? Was the legislation in fact drafted prior to the November 7th provincial election, with no input from experienced public servants?

As mentioned above, Saskatchewan Party officials clearly stated prior to the provincial election that essential services legislation was not necessary, since voluntary agreements between public employers and unions could be negotiated. After the election, the Saskatchewan Party suddenly changed its position. At what point was it determined that legislation was required?

Finally, has the Saskatchewan Party government conducted any background studies or analysis which makes the case for essential services legislation or the amendments to the *Trade Union Act*?

The only background information from the Ministry of Advanced Education, Employment and Labour that has been released during this so-called "consultation" process has been a one-page backgrounder for each bill, which briefly explains the proposed changes. No rationale for the changes is provided. No information is provided on other jurisdictions' experience with similar proposals, or, for that matter, Saskatchewan's own experience with changes to its certification rules, employer "free speech," and other provisions.

By contrast, in June 2007 Nova Scotia's Conservative government released a 35-page discussion paper entitled "Dispute Resolution in Healthcare and Community Services Collective Bargaining" as part of a public consultation process that considered taking away the right to strike from health care workers. The discussion paper included a jurisdictional review, information on work stoppages in the province's health and community services sector dating back to the 1970s, and an examination of the pros and cons of enacting essential services legislation and binding arbitration.[21] Feedback to the discussion paper from stakeholders and citizens was encouraged.[22]

Even majority governments have undertaken extensive consultations when changing labour laws. After the 1991 provincial election, the New Democratic Party government led by Roy Romanow struck the Trade Union Act Review Committee that was comprised of equal numbers of employer and labour representatives and an independent chair, lawyer Dan Ish. The committee held public consultations throughout the province over a period of several months with the goal of recommending changes that

[21] See the Government of Nova Scotia, Environment and Labour, *Dispute Resolution in Healthcare and Community Services Collective Bargaining, Discussion Paper*, June 2007.

[22] The Conservative minority government eventually introduced legislation that would replace the right to strike for health care workers with binding arbitration. The legislation is unlikely to pass, since both opposition parties have publicly opposed to the bill.

would be fair and balanced to both employers and unions. When the committee failed to come to a complete consensus, a second smaller committee made up of an employer representative, a labour representative and an independent chair, lawyer Ted Priel, was appointed and was able to achieve consensus on some issues.

Even with an overwhelming majority government, Alberta's Progressive Conservative government opted to hold extensive public consultations in 1983 concerning the right to strike for health care workers. Premier Peter Lougheed even opened up the legislative assembly for a week for delegations and individuals to make presentations on this issue to his entire caucus.[23]

The above examples represent just a few instances where more thorough consultations have been undertaken as part of labour legislation reviews.

[23] Haiven and Haiven, "A Tale of Two Provinces," p. 3.

Conclusion and Recommendations

The Saskatchewan Party government claims that *The Public Service Essential Services Act* is needed to ensure public safety in the event of a strike or lockout. But, as we have shown above, the overwhelming majority (96%) of public sector contract settlements in Saskatchewan are reached without a work stoppage. Moreover, public sector unions have always provided emergency services when health care strikes have occurred and in other disputes where public safety is a genuine concern. Given this reality, it is hard not to conclude that the real motive of the essential services legislation is to strip most public sector workers of their right to strike, which would in turn greatly weaken their collective bargaining power.

The provincial government claims that the amendments to the *Trade Union Act* contained in Bill 6 are needed to ensure a "fair and balanced" labour environment. But instead, these amendments would drastically tip the scales in favour of business by allowing employers to interfere with the formation of unions through the communication of "facts and its opinions" and during the period leading up to a new mandatory vote requirement. The experience elsewhere clearly shows that such provisions contribute to declining union certification applications and lower unionization rates.

In addition, the government asserts that its *Trade Union Act* amendments would help ensure democratic workplaces. In reality, they would do exactly the opposite by permitting employers to interfere with employees who choose to exercise their democratic rights to form a union or to take part in union affairs. Trade unions introduce an element of democracy in the workplace by giving employees a say about their working conditions. The approval of bargaining proposals, ratification of a collective agreement and the decision to go on strike all require majority support at union membership meetings. In contrast, there is nothing democratic about a non-unionized workplace.

According to Rob Norris, Minister of Advanced Education, Employment and Labour, "Both pieces of legislation … will help to provide a secure and prosperous future for the people of our province."[24] But there is no explanation as to how these two bills will accomplish this, or which people will become prosperous as a result of this legislation. Indeed, the two bills will put downward pressure on the wages and working conditions of both public and private sector employees. While some businesses may profit as a result of not having to pay their workers union wages and benefits, many employers will be negatively impacted by the exacerbation of labour shortages, recruitment

[24] Government of Saskatchewan news release, "New labour legislation creates a fair and balanced environment for workers, unions and employers," December 19, 2007.

and retention programs that will result from stagnant wages.

Taken together, Bill 5 and Bill 6 represent an unprecedented attack on the rights of working people in this province. While the Saskatchewan Party government has the majority in the legislature to pass these bills, sweeping legislation that will fundamentally alter the labour relations order requires that affected stakeholders and the public are properly consulted. In particular, the Saskatchewan Party government has absolutely no mandate to enact essential services legislation, which high-ranking party MLAs said would not be necessary prior to the election.

With this in mind, CUPE Saskatchewan makes the following recommendations:

Recommendation #1

CUPE Saskatchewan strongly recommends that the Government of Saskatchewan not proceed with Bill 5 (*Public Service Essential Services Act*) and Bill 6 (*Act to Amend the Trade Union Act*) until an independent committee comprised of equal numbers of employer and labour representatives, and chaired by a neutral chair, can fully review the merits and drawbacks of the above legislation, solicit feedback from employers, unions, academics, other interested parties and individuals through public hearings held throughout the province, and report its findings back to the government and the citizens of the province.

If the genuine objective is to establish "fair and balanced" labour laws, then it would be incumbent upon the Saskatchewan Party government to appoint a committee of equal numbers of business and labour representatives, with a neutral chair, to wrestle with the question of how best to balance the interests and needs of both working people and business.

Recommendation #2

In the meantime, CUPE Saskatchewan recommends that the Government of Saskatchewan publicly release any background studies it may have conducted that would explain the rationale for the two pieces of legislation.

Appendix I – Overview of Essential Services Legislation in Canada

Jurisdiction	Essential Services Legislation	Name of Legislation	Definition of Essential Services
British Columbia	Yes	Labour Relations Code	The minister (a) after receiving a report of the Labour Relations Board chair respecting a dispute, or (b) on the minister's own initiative may direct the board to designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia or poses a threat to the provision of educational programs to students and eligible children under the *School Act*.
Alberta	No, interest arbitration for those without right to strike	Labour Relations Code	Prohibits strikes by and lockouts of firefighters, hospitals and employees of regional health authorities. In addition, the legislation allows government to declare a strike a public emergency when (a) damage to health or property is being caused or is likely to be caused because (i) a sewage system, plant or equipment or a water, heating, electric or gas system, plant or equipment has ceased to operate or is likely to cease to operate, or (ii) health services have been reduced, have ceased or are likely to be reduced or to cease, or (b) unreasonable hardship is being caused or is likely to be caused to persons who are not parties to the dispute, the Lieutenant Governor in Council may, by order, declare that on and after a date fixed in the order all further action and procedures in the dispute are to be replaced by the procedures under this section.
Saskatchewan	No existing legislation, but Bill 5 introduced December 2007.	*Public Service Essential Services Act (proposed)*	The proposed legislation defines "essential services" as services necessary to enable a public employer to prevent: (i) danger to life, health or safety; (ii) the destruction or serious deterioration of machinery, equipment or premises; (iii) serious environmental damage; or (iii) serious environmental damage; or (iv) disruption of any of the courts of Saskatchewan. Applies to every public employer, which is defined to include: the Government of Saskatchewan, Crown corporations, regional health authorities, Saskatchewan Cancer Agency, universities, SIAST, municipalities, police boards and any other person, agency or body prescribed by the Government of Saskatchewan.

Jurisdiction	Essential Services Legislation	Name of Legislation	Definition of Essential Services
Manitoba	Yes	*Essential Services Act*	Defined as services that are necessary to enable employer to prevent: danger to life, health and safety; the destruction of machinery, equipment, or premises; serious environmental damage; or the disruption of the administration of the courts or of legislative drafting. Applies to the Government of Manitoba (list of services attached to Schedule A), hospitals, regional health authorities, personal care homes, child and family services agency, St. Amant Centre and Pelican Lake Centre.
Ontario	Interest arbitration for health care workers who do not have right to strike.	Labour Relations Act	Binding arbitration is compulsory for hospitals and homes for the aged.
		Hospital Labour Disputes Arbitration Act	Exemption for employers funded under the *Developmental Services Act*.
	Essential services legislation covers ambulance workers.	*Ambulance Services Collective Bargaining Act* (June 29, 2001)	Essential services agreement must be negotiated and ambulance employees cannot strike without one.
Quebec	Yes	*An Act to ensure that essential services are maintained in the health and social services sector*	The Act applies to a detailed list of services, including health and social services institutions and ambulance operators.
		Labour Code	Defined as public services that are necessary to prevent endangering public health or public safety. Applies to municipal services, including police, firefighters, transportation, waterworks, sewer system, waste removal, telephone service, gas and electricity transmission, health and social services agencies.
New Brunswick	*Yes*	*Public Service Labour Relations Act*	Services affecting health, safety or security of the public are essential, including public hospitals, nursing homes and ambulance operators.

Jurisdiction	Essential Services Legislation	Name of Legislation	Definition of Essential Services
Nova Scotia	No	*Trade Union Act*	N/A
Prince Edward Island	No, interest arbitration for those without right to strike	Labour Act	Act prohibits strikes by police officers, full-time fire department employees, hospital employees, nursing home employees, community care facilities employees and non-instructional school personnel.
Newfoundland & Labrador	Yes	*Public Service Collective Bargaining Act*	Both acts define "essential employee" as one whose duties consist in whole or in part of duties the performance of which at a particular time or during a specified period of time is or may be necessary for the health, safety or security of the public.
		Interns and Residents Collective Bargaining Act	*The Public Service Collective Bargaining Act* excludes bargaining units comprised of employees in the establishment of the Lieutenant-Governor, instructors in vocational schools, the Cabot Institute, the Western Community College and adult and continuing education centres; employees of the Provincial Public Libraries Board; employees of the Newfoundland and Labrador Liquor Corporation; members of the faculty of the Marine Institute; employees, other than members of the faculty, of the Marine Institute; employees of the Workers' Compensation Commission; employees, other than instructors, of the Cabot Institute; and plant employees of Newfoundland and Labrador Farm Products Corporation.
Federal	Yes	Canada Labour Code	Those who supply goods, operate facilities or produce goods which affect the safety and health of the public.
		Public Service Labour Relations Act, March 2003 The Public Service Modernization Act – March 2003	Applies to those working in the federal health services; choice of resolution of a dispute and if not arbitration, there is essential services requirement. Employer has right to establish level at which an essential service must be provided and an essential service agreement is negotiated.
		Government Services Act, 1999 c.13 (one-time back-to-work emergency legislation)	This Act prohibits a strike by those Public Services employees who were bound by a group specific agreement including but not limited to firefighters, and those who provide utilities, hospital services and correctional services.

NOTE: The above review does not include all legislation that may ban strikes/lockouts by specific classifications, like teachers, police officers, and highway workers.

Appendix II – Saskatchewan Settlements and Work Stoppages – 1987 to 2007

Year	Total Settlements	Private Sector Settlements	Public Sector Settlements	Private Sector Work Stoppages	Public Sector Work Stoppages	% of Private Sector Settlements Reached Without Work Stoppage	% of Public Sector Settlements Reached Without Work Stoppage
1987	65	32	33	3	2	91%	94%
1988	130	69	61	11	3	84%	95%
1989	132	47	85	5	0	89%	100%
1990	123	65	58	10	4	85%	93%
1991	142	66	76	8	2	88%	97%
1992	114	65	49	6	1	91%	98%
1993	121	52	69	6	4	88%	94%
1994	101	43	58	3	8	93%	86%
1995	110	63	47	0	0	100%	100%
1996	87	35	52	1	1	97%	98%
1997	71	32	39	3	0	91%	100%
1998	41	24	17	2	1	92%	94%
1999	61	17	44	2	4	88%	91%
2000	60	22	38	2	1	91%	97%
2001	78	27	51	9	1	67%	98%
2002	75	21	54	3	4	86%	93%
2003	58	22	36	3	1	86%	97%
2004	62	19	43	4	3	79%	93%
2005	97	31	66	5	3	84%	95%
2006	69	24	45	4	1	83%	98%
2007	71	24	54	2	4	92%	93%
TOTAL	1868	800	1075	92	48	89%	96%

Source: Compiled from statistics provided by Saskatchewan Labour, Policy and Planning Branch

NOTES:

1 – # of settlements in each year are based on reports voluntarily submitted to Saskatchewan Labour

2 – Saskatchewan Labour's data on total settlements and total public sector settlements has been supplemented with the addition of 130 unreported CUPE settlements from 2000 to 2007.

3 – Concurrent strikes by different union bargaining units, such as the Common Front Strike of 1994, are counted separately.

4 – Work stoppages that extend over two years are only counted in the year when settlement is reached. Likewise, work stoppages that didn't result in a settlement (only two in the public sector during the above period) are not included in the above calculations.

5 – Non-profit CBO settlements are counted as private sector settlements as per the designation by Saskatchewan Labour

Appendix III – Jurisdictional Comparison of Union Certification Rules

Jurisdiction	Legislation	Min. % of Signed Cards Required to Hold Vote	Automatic Certification	Sign up Period	Certification if Unfair Labour Practice Committed by Employer
Federal	Canada Labour Code	35%	50% + 1	No defined period	The Board may certify a trade union despite a lack of evidence of majority support if (a) the employer has failed to comply with section 94; and (b) the Board is of the opinion that, but for the unfair labour practice, the trade union could reasonably have been expected to have had the support of a majority of the employees in the unit.
British Columbia	Labour Relations Code	45%	No	90 days	LRB may certify if it believes that it is likely the union would otherwise have obtained the required support.
Alberta	Labour Relations Code	40%	No	90 days	No
Saskatchewan (current)	Trade Union Act	25%	50% + 1	Six months	No automatic certification, LRB must order a vote if it considers that majority support would otherwise have been obtained.
Saskatchewan (proposed)	An Act to Amend the Trade Union Act	45%	No	90 days	No automatic certification, LRB must order a vote if it considers that 45% would otherwise have been obtained.
Manitoba	Labour Relations Act	40%	65% + 1	Six months	Labour Board may certify if it believes that the employees' true wishes are not likely to be ascertained and the union has adequate membership support.

Jurisdiction	Legislation	Min. % of Signed Cards Required to Hold Vote	Automatic Certification	Sign up Period	Certification if Unfair Labour Practice Committed by Employer
Quebec	Labour Code	35%	50% + 1	12 months with payment of at least $2.00 in union dues	No
New Brunswick	Industrial Relations Act	40%	60% + 1	1st day of the 3rd month preceding the calendar month in which the application is made, with payment of at least one month's dues	The Labour and Employment Board may certify if it believes that the employees' true wishes are not likely to be ascertained and the union has adequate membership support.
Nova Scotia	Trade Union Act	40%	No	1st day of the 3rd month preceding the calendar month in which the application is made with payment of at least $2.00 in union dues	LRB may certify the union if employer contravenes Act or regulations in so significant a way that the representation vote does not reflect the true wishes of the employees in the bargaining unit, and union represents at least 40% of those in the unit.
Prince Edward Island	Labour Act	Not Specified	50% + 1	3 months	No
Newfoundland	Labour Relations Act	40%	50% + 1, if union and employer agree not to proceed with vote)	90 days	Board not bound by vote when intimidation occurs.

Appendix IV – Jurisdictional Comparison of Employer "Free Speech" Provisions

Jurisdiction	Legislation	Ability for Employer to Communicate Views re: Trade Unions Without Unfair Labour Practice
Federal	Canada Labour Code	**94** (1) No employer or person acting on behalf of an employer shall (a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; 2) An employer is deemed not to contravene subsection (1) by reason only that they: (c) express a personal point of view, so long as the employer does not use coercion, intimidation, threats, promises or undue influence.
British Columbia	Labour Relations Code	(8) Subject to the regulations, a person has the freedom to express his or her views on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union, provided that the person does not use intimidation or coercion.
Alberta	Labour Relations Code	**148 (2)** An employer does not contravene subsection (1) by reason only that the employer (c) expresses the employer's views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.
Saskatchewan	Trade Union Act	No
Saskatchewan (proposed)	An Act to Amend the Trade Union Act	11 (1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer: "a) to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Act, but nothing in this Act precludes an employer from communicating facts and its opinions to its employees**."**
Manitoba	Labour Relations Act	6(3) An employer, employers' organization or a person acting on behalf of an employer does not commit an unfair labour practice under subsection (1) by reason only that the employer, employers' organization or person (f) communicates to an employee a statement of fact or an opinion reasonably held with respect to the employer's business.

Jurisdiction	Legislation	Ability for Employer to Communicate Views re: Trade Unions Without Unfair Labour Practice
Ontario	Labour Relations Act	70 No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.
Quebec	Labour Code	No
New Brunswick	Industrial Relations Act	3(5)Nothing in this Act shall be deemed to deprive an employer or an employers' organization, or a person acting on behalf of an employer or employers' organization, of freedom to express his or its views so long as he or it does not exercise that freedom in a manner that is coercive, intimidating, threatening or intended to unduly influence any person.
Nova Scotia	Trade Union Act	58 (1) No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union or an employers' organization. (2) Nothing in this Act shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats or undue influence.
Prince Edward Island	Labour Act	8) Nothing in this Part shall be deemed to deprive an employer or his freedom (a) to express his views on collective bargaining, or the terms and conditions of employment, so long as he does not use coercion, intimidation, threats, or undue influence.
Newfoundland	Labour Relations Act	No

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