



Submission to the Manitoba Legislative Standing Committee on Bill 7

The Labour Relations Amendment Act

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The following brief is submitted by the Canadian Union of Public Employees – Manitoba to outline our reasons for our strong opposition to the Government’s proposed amendments to Manitoba’s *Labour Relations Act* (Bill 7 – *The Labour Relations Amendment Act*).

The Canadian Union of Public Employees (CUPE) is Canada’s largest union. With approximately 639,000 members across Canada, and over 25,000 members in Manitoba, CUPE represents workers in health care, long-term care, education, municipalities, libraries, post-secondary education, social services and public utilities. CUPE members play a vital role in our communities, delivering the core services on which all Manitobans depend.

CUPE Manitoba is fundamentally opposed to Bill 7. We believe that this is an unjustified and unnecessary legislative attack on the rights of Manitoba workers, and on the labour unions that represent them. This legislation should be immediately withdrawn and abandoned.

Why We Need Unions

1. Workplace Democracy

Workers join unions for a wide variety of reasons – compensation, job security, health and safety, unequal treatment, harassment in the workplace, and many more. In virtually all cases, it is because workers recognize that they have more success in creating positive change in their workplace when they work collectively than they do acting as individuals. Indeed, the inherent power imbalance between employer and employee is recognized in our nation’s labour relations legal framework – starting with our constitutionally protected freedom of association. In the simplest of terms, labour unions make the employee-employer relations a little fairer, a little more democratic.

2. Health & Safety

One of the major historical reasons that workers formed unions was to achieve higher health and safety standards. To this day, workers continue to work through their unions to improve health and safety – whether by improving safe work processes at their own workplaces, or by working with government to improve safety standards through legislation, regulation and enforcement. For workers it has long been clear that unions make work safer.

However, recent research conducted in Ontario by the Institute for Work & Health (IWH)¹ has begun to shed light on just how significantly unionization can improve

¹ IWH describes itself as “An independent, not-for-profit research organization that aims to protect and improve the health of working people. Recognized as one of the top five occupational health and safety research centres in the world, the Institute provides practical and relevant findings on the prevention of work injury and disability to policy-makers, workers, employers, clinicians, and health, safety and disability management professionals.”

health and safety. When reviewing Workplace Safety and Insurance Board data claims, the 2015 study found that unionized construction firms, when adjusted for firm size, had 14% lower rates of claims that involved missed days of work, and 8% lower rates of musculoskeletal injuries. Workers in unionized firms are less likely to have serious injuries which require time off work. However, unionized workers are also much more likely to report accidents when they do happen. The study found that unionized firms had 13% higher total injury claims (allowed and not allowed) and 28% higher rates of allowed no-lost-time injury claims.

In short, the research found that unionized construction firms had a better history of having workplace injuries recorded, but lower rates of serious injuries. While the researchers recognize that further study would need to be done to reach final conclusions, the data suggests that unionized firms are safer, provide better education (through apprenticeship programs), and have better health and safety programs and practices. Further, being in a unionized environment may provide workers with a greater ability to improve the safety of their workplaces, and increased ability to report injury and near misses.ⁱ

3. Wages & Benefits

Because collective bargaining requires employers to negotiate with employees collectively, rather than individually, workers in unionized environments earn more than those in non-unionized workplaces. The Canadian Labour Congress estimates that in Manitoba unionized workers earn, on average, \$5.79/hour more than non-unionized workers. The pay gap is even wider for unionized women and Aboriginal workers, who respectively earn \$7.42/hour and \$6.60/hour more than their non-union counterparts.ⁱⁱ Additionally, unionized workers are three times more likely to be a member of an employer sponsored pension plan, and twice as likely to have health and dental benefits.ⁱⁱⁱ

However, it is important to note that unions not only raise the wages of union members, but non-union members as well. A recent study by the *Economic Policy Institute*, a think tank based in the United States, found that loss of union density in the US private sector has contributed to substantial wage losses among non-union workers. This study found that non-union private sector men would have earned on average 5% more in 2013 if union density remained at 1979 levels – an annual wage loss of \$2,704. The wage loss was even greater for non-union non-college graduate men (8% loss, \$3,016/year) and men with a high school diploma or less (9%, \$3,172/year). Indeed, the loss of union density is a significant reason for growing income inequality in the United States.

4. Inequality

Since the stock market crash of 2008, and the subsequent Great Recession, the public has grown ever more cognizant of a growing economic rift. This growing

concern with income inequality has gone past the usual suspects, and now includes organizations such as the International Monetary Fund (IMF) – an organization which has, until quite recently, been a steadfast supporter of neo-liberal economic and social policy. However, today even the IMF is reporting that, since the 1980s, advanced industrial nations have been experiencing rising income inequality. A 2015 IMF study determined that this growing inequality is largely a result of lower union density, which has resulted in growing income of top earners at the expense of average wage earners.^{iv} Additionally, loss of union density has limited the ability of workers to demand wealth redistribution through state actions (i.e. taxing high income earners to provide services to the poor).

While there are a whole host of ethical reasons for why the government of Manitoba should want to adopt public policy positions, including labour relations frameworks which encourage union density, there is also growing consensus that inequality is negatively impacting economic growth. Recent research by the Organization for Economic Co-operation and Development (OECD) has indicated that over the past 30 years income inequality has grown significantly in advanced economic countries, and that “income inequality has a negative and statistically significant impact on subsequent growth.”^v

Why Card-Check Matters

Under current legislation, the Labour Board is empowered to recognize a bargaining agent if, at the time of application, 65% of employees in the bargaining unit were in support of the bargaining agent. Additionally, if the Board determined that greater than 40%, but fewer than 65% of workers in the unit had indicated support for the bargaining agent, a Board run certification vote would take place to determine the employees’ preference. Support for a bargaining agent is indicated by employees signing a “union card”. The process of verifying support for unions via signed union cards has a long history in Manitoba. Indeed, with the exception of a short period of time between 1997 and 2000, “card check” certification has consistently been in place.

Given that card-check has always been part of our labour relations legal framework, there is no dire public policy reason for this legislation. Rather, this seems to be an ideological attack on workers, imported from other jurisdictions. Ironically, while Manitoba looks to eliminate card-check, the Federal government is taking actions to re-establish card-check in areas of federal jurisdiction, though with a more accessible threshold. The federal change would require a simple majority of 50% +1, as opposed to the 65% super-majority requirement that currently exists in Manitoba.

Card-check is the preferable method for union certification because it protects workers from intimidation, threats and bullying from anti-union employers and their agents, helping ensure that the true wishes of employees are recognized. Mandatory Labour Board votes – in essence a second-vote to reconfirm support for the union – provides the employer with a week, or longer, to discourage employees from joining a union. During organizing drives,

workers commonly hear from employers and their agents that unionizing may lead to reductions in pay or benefits, that the business could close, or that there will be layoffs. While these activities may have contravened labour relations laws, in CUPE's experience, they are common practice.

We at CUPE Manitoba have seen firsthand some of the intimidation tactics that employers use to try and dissuade workers from invoking their constitutional right to join a labour union. Some recent CUPE examples include:

CASE 1

CUPE applied to represent workers with an employer in Manitoba. While a majority of employees signed cards, we were short of the 65% super majority required for automatic certification. The same day we applied for certification, we learned that a supervisor had removed from the wall official information posted by the Manitoba Labour Board regarding the application for certification.

The following day, the employer had begun calling workers into closed-door meetings, individually and in pairs, to discuss the union organizing drive. Management also called a mandatory meeting of all staff to discuss the union organizing drive. At this meeting, management asked workers if anyone had approached them about the union. Management also suggested that, when signing cards, the union may not have provided information that it was legally required to do so. When a worker at the meeting objected to the nature of the meeting and told the employer that it wasn't right for management to be interfering, talking about the union, and pressuring employees, management at the meeting accused the worker of signing a union card.

Later that day, a second mandatory meeting was called – this time with the company's CEO who had flown in from out of province for the meeting. At this meeting, the CEO suggested to employees that the union may threaten to fire people if they don't support the union. The CEO told employees that if they support a union, they are giving away their right to talk to the employer, that workers could not go speak to their boss when they have issues.

The CEO suggested that employees signed without knowing their rights and obligations, particularly with regard to union dues. The CEO told workers that before they can work in a union shop they would need to pay an initiation fee to the union which could be a few hundred dollars or more. It should be noted, CUPE's initiation fees are between \$1 and \$10, and in most cases initiation dues are paid for out of the local's own budget. The CEO then explained to workers how to go about writing to the Labour Board to have their support for the union rescinded.

The CEO, throughout the meeting, compared joining a union to getting married and told workers that they could "call off the engagement". Management also took the

opportunity to scold the workers for not properly swiping in and out – telling them they've created all kinds of work for management, and threatening not to pay them if they failed to sign in and out.

At this same meeting, the CEO asked those present if they've ever been members of a union.

That same evening the employer began calling people at their homes, advising them of how they could go about filing an objection with the Manitoba Labour Board. As a result of these phone calls some employees believed that because of the union drive they would be fired or laid off.

The next day, two days after the Application for Certification was filed, a third mandatory meeting of employees was called. At this meeting all employees were provided with a piece of paper which highlighted for them how they could file an objection or file their opposition to the Application for Certification with the Labour Board. Employees in attendance felt pressured by the employer to file an objection with the Manitoba Labour Board.

CASE 2

CUPE was in the midst of an organizing drive when the employer began a process of intimidating employees. During the organizing drive, management met with affected employees and informed them that if they did not agree to become private contractors they would be replaced with contractors from out of province. When employees told the company they would prefer to be employees, the company told them their options were unemployment, or to become an independent contractor.

After CUPE filed an application for certification, the employer continued to meet with employees individually, asking them to resign their employment and become independent contractors.

The employer held two mandatory meetings with workers after the application for certification had been filed. On both occasions, the out of province CEO of the company was present and acted as the chief spokesperson. At these meetings, the CEO targeted visible minorities, and suggested that as new immigrants they didn't know what their rights were, and that if they joined a union they would be signing away their rights. The CEO also told workers that the union would be demanding an initiation fee of \$1,000. For reference, CUPE initiation fees are between \$1 and \$10, and in most cases locals cover initiation fees out of their own budget. The CEO told employees that the union was trying to brainwash them, and compared unions to communism and dictatorships. Workers were told it was better to keep the union out so that the company could remain as a family. In one meeting the CEO said the company should fire nine employees for missing work earlier that week. In another

meeting the CEO told staff that with a union in place there would be a “three strike” policy – three times late and you would be fired.

While it is true that the law currently allows for automatic certification in cases where employer intimidation is deemed so significant that the true feelings of employees cannot be ascertained, the reality is that often employees are too intimidated to bring formal allegations forward. Further, employers essentially have nothing to lose by intimidation if they are confident that the union drive is going to be successful. Get caught and the result is union certification – something they were expecting to happen anyway.

In contrast, the existing legislation provides significant incentives for unions to avoid intimidation and coercion. It should be noted that section 40(1) specifically outlines that the Labour Board shall only recognize automatic certification or a representation vote where it is “satisfied that the employees were not subject to intimidation, fraud, coercion or threat and that their wishes for union representation were expressed freely.” Additionally, under section 45(3.1), a union is required to inform potential members about any initiation fees or union dues, or the manner in which union dues are determined if they are not yet determined. If the union or their representatives fail to disclose these costs, the Board will not accept their membership in the union as valid. Further, according to subsection 45(4), if the union or someone working on behalf of the union engages in any sort of intimidation, coercion, threat or fraud to induce an employee to join the union, the Labour Board may dismiss the application outright or order a vote to determine the true wishes of the employees. Additionally, 47(2) of the *Labour Relations Act* (LRA) grants all employees the right to file an objection to the certification application on grounds that there has been intimidation, fraud, coercion or threats during the membership drive.

Combined, these various sections of the LRA create a very strong incentive for union organizers to treat potential members with the utmost of respect, and to ensure that their decision to apply for membership in the union is both informed and voluntary. Given the massive amounts of resources which are put into union drives, and the very real threat of loss of an otherwise successful union drive, intimidation and coercion are simply not part of the plan for unions. The risk is too high, and the rewards are too small. Intimidating and bullying potential members into signing union cards is not only illegal and unethical, it also harms our own interests in being able to successfully represent members, improve their remuneration and working conditions, and work towards a more just society for all workers.

We are certain that your government will hear from those supporting the bill that this legislation is necessary in order to protect democracy; however, we believe support is more interest-based. Multiple studies have confirmed that union drives with card-check certification are far more successful than those that require a reconfirmation of union support through a Labour Board representation vote. Susan Johnson’s 2002 study, which looked across nine Canadian provinces and took into consideration a large number of variables, concluded that mandatory representation votes reduced the chances of a successful union certification by 9%, as compared to card-check automatic certification.^{vi} Chris Riddell’s study of union certification in British Columbia between 1978-1998 found the

gulf in success rates even more staggering than Johnson's study, finding that when taking into account other mitigating factors, union drives requiring mandatory representation votes were 18.6% less likely to succeed than drives which took place under card-check automatic certification.^{vii} Given that during this period BC operated under both certification processes for a significant number of years, it provides strong evidence that mandatory representation votes are an effective way to combat union certification.

To be clear, mandatory Labour Board votes are problematic because it allows for employer interference – when joining a union, it should be between you and your union. The requirement for a mandatory Labour Board vote, in all circumstances, encourages employer interference in a decision that should be made by workers alone.

Amendments

CUPE does not accept that there is any public policy need for the legislative changes proposed in Bill 7. However, it is clear to us that the government is dedicated to seeing passage of this bill. Given that, we would ask that the government seriously consider adopting the following amendments in order to assist in mitigating against the bullying and harassment workers often suffer from at the hands of employers.

- 1. Quicker Votes:** Under current legislation, Labour Board votes are required to be held within seven days of a notice of certification in cases where the union has not met the 65% threshold required for automatic certification. However, seven days is simply too long. As our cases above demonstrate, a day or two can be an eternity in the case of a vulnerable worker who is facing bullying and intimidation from an employer. CUPE recommends that the requirement be shortened to five days in order to help mitigate the negative impact of this legislation.
- 2. Offsite Voting:** At present Labour Board votes are held exclusively on the employer's worksite. We have concerns that holding votes on the worksite can create added pressure on workers to vote against the union, and that in some cases off-site voting may help relieve workers of feelings of coercion and intimidation. We suggest that the voting location should be mutually agreed upon by the union and the employer, whether on or off site, and where no agreement can be reached, an off-site location selected. However, it is important to ensure that in all cases the vote location remain easily accessible to employees.
- 3. Stronger Penalties:** Employers have little incentive not to intimidate and coerce employees (i.e. an unfair labour practice). If caught by the Labour Board, the penalty is recognition of the union – the same outcome that results when workers freely join a union. If the government insists on creating a framework that enables further employer intimidation – by eliminating card-check in all cases – then steps need to be taken to ensure employers are deterred from these behaviors. At present the only penalties applied to employers are reinstatement or compensation in cases where employees were unfairly terminated, automatic certification in cases of employer intimidation, and a maximum fine of \$2,000 per unfairly treated employee. Much

stronger disincentives need to be created to dissuade employers from using unfair labour practices.

Finally, we urge the government to increase resources to the Manitoba Labour Board. Under the current legislation Labour Board votes are required to be held within seven days of a notice of certification in cases where the union has not met the 65% threshold required for automatic certification. However, we know that over the last three years the Labour Board was unable to meet this requirement in 32% of cases. This is already an unacceptably high level. Requiring Labour Board votes in all cases will require an even greater capacity, as applications which currently result in automatic certification will now require the additional resources required for a vote. The government must properly resource the Labour Board to ensure that votes are held quickly, in a manner consistent with the law.

ⁱ Amick, Benjamin, et al. "Protecting Construction Worker Health and Safety in Ontario, Canada: Identifying a Union Safety Effect", *Journal of Occupational and Environmental Medicine* 7, 12 (December 2015).

ⁱⁱ Canadian Labour Congress. <http://canadianlabour.ca/why-unions/provincial-and-territorial-breakdown/manitoba> accessed October 24, 2016.

ⁱⁱⁱ Jackson, Andrew. "Rowing Against the Tide: The Struggle to Raise Union Density in a Hostile Environment," in *Paths to Union Renewal: Canadian Experiences*, eds. Kumar, Pradeep and Christopher Schenk. Toronto: University of Toronto Press, 2009, p. 63.

^{iv} Jaumotte, Florence and Carolina Osorio Buitron, *Inequality and Labour Market Institutions*, International Monetary Fund (July 2015).

^v Cingano, Frederico. "Trends in Income Inequality and its Impact on Economic Growth," in *OECD Social, Employment and Migration Working Papers*. No. 163. (December 2014).

^{vi} Johnson, Susan. "Card Check or Mandatory Representation Vote? How the Type of Union Recognition Procedure Affects Union Certification Success" *The Economic Journal*, Vol. 112, No. 479 (April 2002), p. 358.

^{vii} Riddell, Chris. "Union Certification Success under Voting versus Card-Check Procedures: Evidence from British Columbia, 1978-1998" *Industrial and Labour Relations Review*, Vol. 57, No. 4 (July 2004), p. 507.

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