



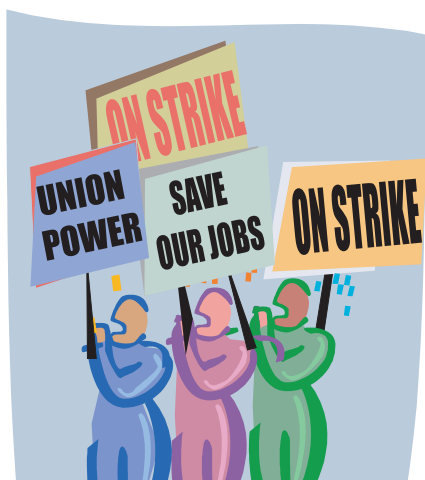
The perverse effects of anti-scab measures

In 1977, the Quebec legislature amended the Labour Code to introduce measures prohibiting employers at establishments affected by legal strikes or lockouts from replacing the striking or locked-out workers. According to the government then in power, these measures were introduced with the twin goals of preventing violence and making labour conflicts shorter. These arguments are still raised today, even though studies show that strikes have generally not been shortened. Moreover, these anti-scab measures have had effects that are far from positive, whether for the workers they were intended to protect or for the economy as a whole.

Measures in the law

Quebec and (since 1993) British Columbia are the only Canadian provinces with measures of this sort. Legislation in the other provinces is either silent in this regard or guarantees strikers merely that they can return to their jobs once a conflict is settled though with no prohibition of temporary replacements during the strike. The Canada Labour Code also contains provisions guaranteeing that strikers can get their jobs back once a conflict is settled. In 1992, Ontario introduced legislation similar to the Quebec and British Columbia laws, but it was abrogated three years later, leaving only a prohibition against the use of professional strikebreakers, in other words people who are not part of the regular workforce and whose main occupation consists of performing the work of strikers as a way of "breaking" strikes.

Articles 109.1 to 109.3 of the Quebec Labour Code lay out the prohibitions imposed on employers who are hit by strikes. In essence, and with minor exceptions, employers can replace striking workers only with management personnel working in strikebound establishments who were hired before the start of negotiations. More specifically, employers cannot arrange for work normally done by striking workers to be performed by:



1) *Any person hired after the start of negotiations.* The goal is to prevent employers from augmenting management personnel. The prohibition applies even to managers hired after the start of negotiations to replace others who had worked there before negotiations began.

2) *Striking workers.* This prohibition aims to prevent employers from using the services of unionized strikers who oppose the strike and who would agree to work under the conditions offered by the employer.

3) *Non-striking employees.* These clauses aim to prevent employers from having strikers' work performed by workers who are employed at strikebound establishments but who are not on strike because they either are not members of a striking union or are workers or managers employed at a unit run by the same employers though not hit by a strike.

4) *People working for another employer.* This clause aims to prevent employers from contracting with another employer for the latter's workers to perform strikers' work at a strikebound unit. On the other hand, it does not prevent employers from arranging to have work normally done by strikers performed outside the strikebound unit.



The law provides for certain exceptions to these prohibitions. In particular, employers can take necessary means to prevent the destruction or serious deterioration of material assets. Other exceptions apply in the public sector, especially to ensure essential services.

Economic effects

Anti-scab provisions are an attack on the property rights of business owners, notably on the right to operate a business freely by contracting with workers who agree to work under the conditions offered. It also modifies the balance of power in relations between employers and unionized workers.

In effect, rules governing labour relations recognize the use of economic sanctions by each party to force the signing of a collective agreement. Unions have often used strikes to put pressure on employers and require them to accept certain demands. Employers make less frequent use of an economic sanction equivalent to the strike, namely the lockout. The balance of power that develops in a strike depends on the employer's ability to withstand the economic pressure resulting from the strike called by the union. Anti-scab measures limit employers' abilities to resist by almost fully restraining the means at their disposal for maintaining production, at least in cases where there is only one unit or where all units are strikebound.

The effects of anti-scab measures vary according to whether the company involved is large or small.

The effects of anti-scab measures vary according to whether the company involved is large or small. A multinational company hit by a strike can, for example, transfer production temporarily to another plant located in Quebec, elsewhere in Canada or even abroad. If the conflict persists, it may even decide to close its Quebec plant. These alternatives give it some counterweight to the economic pressure it faces because of the strike,

although large companies may still be less likely to set up shop in a place where anti-scab laws are in force, so as to avoid these labour relations problems.

The investment rate in provinces with anti-scab measures is 25% lower than in provinces without them.

The situation is more critical for smaller companies. They generally operate from only a single production facility, making it much more difficult for them to resist the economic pressure they face because of a strike. The result is that a smaller company will give in more easily to demands so as to avoid a strike it knows it cannot withstand. If a smaller company is nonetheless hit by a strike, it will be at a disadvantage in its ability to resist and will tend to seek a quick settlement rather than a settlement that would enable it to stay competitive and survive, and to maintain the jobs it has created. By giving in, it will reduce its competitiveness, which over the longer term can endanger its survival and jeopardize employment maintenance.

Up against these unfavourable conditions, the logical reaction of a small business owner will be to manage his company in a way that reduces dependence on unionized staff as much as possible. For example, a company could rely more on subcontracts, could hire fewer permanent workers or could increase its production capacity by opening a new plant, often outside Quebec, rather than expand the existing plant.

In each case, there results a reduction in employment and investment. A recent study shows that restrictions on the use of replacement workers are linked to lower employment rates.¹ In the most comprehensive scenario, with the author taking account of many variables affecting employment levels, the reduction in the employment rate linked exclusively to anti-scab measures is 0.47%. For Quebec, with a working-age population of 6.2 million, this reduction is equivalent to about 30,000 jobs.

¹ John W. Budd. "The Effect of Strike Replacement Legislation on Employment." *Labour Economics* 7(2), March 2000: 225-247. The employment rate refers to the proportion of people 15 and over who have jobs. The author used a sample of 3,480 observations on the economies of Canadian provinces between 1966 and 1994 and controlled for other variables affecting employment such as economic growth, profit growth, unionization rates, etc.



Table 1

Estimates of the effects of anti-scab measures on the frequency and length of strikes

Study	Sample	Duration (average number of strike days)		Frequency (probability of talks ending in a strike)	
		With anti-scab laws	Without anti-scab laws	With anti-scab laws	Without anti-scab laws
Cramton, Gunderson, Tracy, 1999	4,340 contracts negotiated at Canadian private-sector firms with 500 workers or more (January 1967 to March 1993)	86**	54	27%**	15%
Budd, 1996	2,042 collective agreements in Canada's manufacturing sector (1966 to 1985)	78**	51	24%	19%
Gunderson, Melino, 1990	7,546 strikes in the private sector (1967 to 1985)	42**	35	24%*	

* Statistically significant at a 90% confidence level.

** Statistically significant at a 95% confidence level.

Note: The earliest study (Gunderson, Melino, 1990) evaluates only the increase in the probability of a strike in the presence of anti-scab legislation and not its probability with or without such legislation. Thus, in the presence of anti-scab legislation, the probability of a strike increases by 24%.

Another study shows that anti-scab measures also have negative effects on investment levels.² Using data from the Canadian provinces for 1967 to 1999, it shows that the investment rate in provinces with such measures is 25% lower than in provinces without them.

The Sims Commission, set up by the federal government to study reforms to the Canada Labour Code, understood the perverse effects of anti-scab measures. In its 1996 report, it took a position on the use of replacement workers, stating that it was important for employers to “maintain that option, unrestrained by any blanket prohibition. If this option is removed, employers will begin to structure themselves to reduce their reliance on their permanent workforces for fear of vulnerability, to the detriment of both workers and employers alike.”³

Over all, anti-scab measures are thus accompanied by negative effects on the economy. But have the original, more specific goals motivating the introduction of the legislation been attained?

The effects on violence and the duration of strikes

A lower risk of violence during strikes has always been one of the main arguments justifying anti-scab laws. Having an employer continue operations with replacement staff certainly has the potential to create tensions that can degenerate into outbreaks of violence on picket lines. Lower levels of violence during strikes are thus normal if there are no replacement workers. The pertinence of this argument is not obvious, however. The government could very well have sanctioned violent behaviour more severely rather than put one party at a disadvantage by prohibiting employers from using replacement staff.

The government could very well have sanctioned violent behaviour more severely rather than put one party at a disadvantage.

² John W. Budd and Yijiang Wang. “Labor Policy and Investment: Evidence from Canada.” *Industrial and Labor Relations* 57(3), April 2004: 386-401. The investment rate corresponds to the ratio of investment (net of capital depreciation) to the capital stock.

³ Andrew C.L. Sims (chair). *Seeking A Balance: Canada Labour Code Part 1 Review*. Hull: Public Works and Government Services Canada, 1996, chapter 9.



The other frequently raised argument concerns the shorter duration of labour conflicts. Existing studies on the topic contradict this claim, at least for large companies for which data on collective agreements are readily available and which make up the major part of the samples.⁴ For smaller firms, as we saw above, the argument may be valid, but few data are available to prove it.

The most recent of these studies (Cramton *et al.*, 1999) examined 4,340 contracts negotiated at large private-sector companies in Canada from January 1967 to March 1993. The results, heavily influenced by Quebec's experience, reveal that the average duration of a strike is 86 days if the hiring of replacement workers is forbidden and 54 days in the absence of such measures. Anti-scab laws are thus associated with a 32-day average increase in the duration of strikes. Moreover, the prohibition of replacement workers was the most important variable considered in relation to strikes. At least two previous studies came up with similar results (see Table 1).

Anti-scab measures have generally had the effect of increasing the probability of a strike occurring, which again contradicts commonly held beliefs.

Another variable examined in the studies was the frequency of strikes. Anti-scab measures have generally had the effect of increasing the probability of a strike occurring — from 15% to 27%, according to the same study (Cramton *et al.*, 1999). Again, this contradicts commonly held beliefs. A second study (Gunderson, Melino, 1990) confirms this trend, while a third (Budd, 1996) finds no significant effect on strikes incidence in general.

These findings on duration and frequency can be explained, at least in part, by effects on wages. Real wages negotiated and obtained where anti-scab legislation is in force are generally higher than those obtained in the absence of such laws. The Cramton *et al.* study (1999) evaluates this additional increase at an average of 2% per year over the length of a contract. This may be one of the factors explaining why strikes last longer and occur more often in the presence of anti-scab laws. Unions, whose power is strengthened by such laws, are prepared to endure longer disputes in the hope of being compensated by higher wages.

Higher wage gains for unionized employees may seem advantageous on the face of it. However, if they are not accompanied by equivalent increases in productivity, the company's profitability may come under threat. In addition, with labour becoming relatively costly, companies will tend to hire fewer workers.

In the end, none of these consequences works to the long-term advantage of labour as a whole, whether unionized or not. From a strictly economic standpoint, Quebec and British Columbia may find an interest in adapting their labour codes to follow the rest of North America.

⁴ See Morley Gunderson and Angelo Melino. "The Effects of Public Policy on Strike Duration." *Journal of Labor Economics* 8(3), July 1990: 295-316; John W. Budd. "Canadian Strike Replacement Legislation and Collective Bargaining: Lessons for the United States." *Industrial Relations* 35(2), April 1996: 245-260; and Peter Cramton, Morley Gunderson and Joseph Tracy. "Impacts of Strike Replacement Bans in Canada." *Labor Law Journal* 50(3), September 1999: 173-180.



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