



PROHIBITING REPLACEMENT WORKERS IN FEDERALLY REGULATED INDUSTRIES

BC Building Trades Submission to the Labour Program Consultation

January 2023



BC BUILDING TRADES

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Replacement Workers

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AUTHORITY

This submission is respectfully submitted on behalf of the 25 local craft construction unions that represent more than 40,000 highly skilled unionized construction workers in B.C.



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The BC Building Trades provides coordination and support to affiliated construction unions.

By working together, organized construction workers achieve a powerful voice in government, in bargaining, and in their communities.

Introduction

The BC Building Trades is the umbrella organization for the 25 local unions that work in British Columbia's building, construction and maintenance sectors. Collectively, our affiliates represent more than 40,000 highly skilled unionized construction workers across B.C.

The Labour Code outlines the rights working people have to organize in their workplaces. It's critical that the code is in keeping with modern workplaces, provides stable labour relations and supports meaningful access to collective bargaining.

The Canada Labour Code falls short in these areas and requires a fulsome review. The BC Building Trades Council welcomes the opportunity to provide feedback to Employment and Social Development Canada on changes to the Canada Labour Code pertaining to the use of replacement workers.

Recommendations

The BC Building Trades supports the recommendations made by the Canadian Labour Congress (CLC) in its submission. We would like to amplify its recommendations in the following areas.

1. Code changes should take place as soon as possible
2. New changes should be robust and meaningfully prohibit replacement workers
3. The definition of "replacement worker" should be broadened
4. The definition of "struck work" should be broadened to include remote working and telework
5. There should be a right of workers to refuse struck work
6. We need strong enforcement provisions

In this submission we'll explore how the BC Labour Relations Code reflects some of these recommendations and provide a case study from the International Brotherhood of Electrical Workers 213 (IBEW) on how workers were harmed by the current limitations in the Canada Labour Code.

Setting the Context for Banning Replacement Workers Federally

We believe the CLC provided important arguments for banning the use of replacement workers.

Especially noteworthy is evidence of the increased use of replacement workers in strikes and lockouts falling under federal jurisdiction. Employer use of replacement workers has now become a common feature in labour disputes. This has prolonged disputes and pit workers against one-another. More acutely – it significantly disbalances the shared risk between workers and employers during labour disputes.

It is clear to us that the language in the Canada Labour Code needs to change because employers are consistently using the current ambiguity to justify the use of replacement workers.

Per the Canadian Labour Congress Submission:

“The formal distinction between the use of permanent replacement workers (strikebreakers) and temporary replacement workers is often unclear in practice. The Canada Labour Code’s existing prohibition on employers’ use of replacement workers “for the demonstrated purpose of undermining a trade union’s representational capacity” is difficult to prove (a point we elaborate on below). But in practice, the use of temporary scabs is commonly accompanied by an escalation of tensions and the realization that the stakes in the conflict have risen significantly.”

The Code must be changed to restore the balance between employers and employees and make the language much clearer to prevent replacement workers from undermining the collective bargaining process.

BC Building Trades’ Perspective

The BC Building Trades would like to offer our unique perspective to this consultation process using our experience in a province that has anti-scab legislation.

Our unions work closely with contractors to bid on projects, complete them on time and on budget and leave the communities in which we work in a better position than when we found them.

We do this in a construction market where wages and working conditions must remain competitive with industry. These relationships have resulted in sustainable, long-term mutual success.

This success is anchored by our shared fortunes. We share risk and reward. That balance has been key to relative labour harmony in our province for decades. The prohibition of replacement workers provincially in the B.C. Labour Code plays an integral role in that shared risk and that harmony.

British Columbia’s Labour Code Language on Replacement Workers

The Canadian Labour Congress submission summarizes the existing legislation across Canada identifying that prohibitions on replacement workers have existed in Quebec since 1977 and in British Columbia and Ontario since 1993.

In British Columbia the Labour Relations Code states the following on replacement workers:

Part 5. 68

(1) During a lockout or strike authorized by this Code an employer must not use the services of a person, whether paid or not,

(a) who is hired or engaged after the earlier of the date on which the notice to commence collective bargaining is given and the date on which bargaining begins,

(b) who ordinarily works at another of the employer's places of operations,

(c)who is transferred to a place of operations in respect of which the strike or lockout is taking place, if he or she was transferred after the earlier of the date on which the notice to commence bargaining is given and the date on which bargaining begins, or
(d)who is employed, engaged or supplied to the employer by another person, to perform
(e)the work of an employee in the bargaining unit that is on strike or locked out, or
(f)the work ordinarily done by a person who is performing the work of an employee in the bargaining unit that is on strike or locked out.

(2) An employer must not require any person who works at a place of operations in respect of which the strike or lockout is taking place to perform any work of an employee in the bargaining unit that is on strike or is locked out without the consent of the person.

(3) An employer must not

(a)refuse to employ or continue to employ a person,
(b)threaten to dismiss a person or otherwise threaten a person,
(c)discriminate against a person in regard to employment or a term or condition of employment,
or
(d)intimidate or coerce or impose a pecuniary or other penalty on a person,

because of the person's refusal to perform any or all of the work of an employee in the bargaining unit that is on strike or locked out.

This language is distinctly different from Canada's Labour Code in several ways:

- i.) it is broad enough to cover the prohibition of temporary replacement workers
- ii.) it prevents the hiring or engaging of a replacement worker after the date on which the notice to commence collective bargaining is given to perform bargaining unit work that is on strike or locked out.
- iii.) It provides workers with the right to refuse struck work

Case Study: Ledcor LTS

In August 2017, IBEW 213 certified 238 technicians at Ledcor (LTS Solutions Ltd.). The workers were motivated to join a union because of the low-piece-rate wages, extended working hours and lack of job security.

After certification, IBEW 213 sought to secure a first contract with Ledcor to address the workers' issues. The employer refused to meet for bargaining with the union. After two years of little progress toward a first collective agreement, the members voted to go on strike. Shortly after the strike began, the employer began using replacement workers to perform the struck work. Those replacement workers were dispatched remotely to a variety of locations, undermining the effectiveness of the picket line.

Those IBEW workers have now been on strike for more than three years. The Canadian Industrial Relations Board (CIRB) recently ruled that the employer demonstrated a lack of good faith in bargaining. The use of replacement workers played a significant role in prolonging this dispute.

Human Impact: Ledcor LTS

We include with this submission an article from our magazine, TradeTalk, from Spring 2020 where we interviewed workers who had been on strike for one year at that time. We invite you to read about them so that you and your government might better understand the harm caused to folks personally affected by the current limitations of the Canada Labour Code. If the shortcomings of the Code are left in place, similar situations will continue to hurt workers across this country.

Mik Alfaro – worked with Ledcor for 10 years as an installation and repair technician. He has three children who were between four months and six years old at the time. His income had been tight since his wife went on maternity leave to look after their children. He joined the union seeking better job security and improved working conditions.

Kode Thurairaja – worked for Ledcor for six years installing television, internet and telephone services. He also has three children ages two, four and eight at the time. His monthly mortgage payment was \$4,500. Kode joined to stop the arbitrary firing of workers in his workplace and sought the protections provided by a collective agreement.

Thomas Veneracion - worked for Ledcor in the installation and repair division for two years. He and his wife had recently purchased a new townhouse and were worried about how they would make mortgage payments. He joined the union because he was concerned about the employer's unrealistic demands.

Stories like these from Mik, Kode and Thomas speak to the modest and reasonable expectations of workers in the collective bargaining process. Yet, because all of the risk in the labour dispute was on the workers, their employer was able to operate the business, pretty much as usual, through the employment of replacement workers.

Conclusions

The BC Building Trades welcomes this opportunity to strengthen the Canada Labour Code by prohibiting replacement workers in federally regulated industries. We support the Canadian Labour Congress recommendations in this regard.

We hope the experiences of IBEW 213 members in the Ledcor (LTS Solutions) case study serve as an important example of how a federal provision banning replacement workers would have improved the situation and restored balance in the dispute by equally motivating both parties to go back to the bargaining table.

The Ledcor LTS example is also an important case study in the changing nature of work and the need to modernize the code to broaden the definition of 'struck work', so as to include remote working and telework.

We look forward to learning more about your plans to improve the Code and sincerely hope to see a meaningful ban on replacement workers.

tradetalk

THE MAGAZINE OF THE BC BUILDING TRADES

WE BUILD BC™

SPRING
2020
VOL. 23
No. 1

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IBEW fighting for fairness

MEMBERS OF LOCAL 213 ON STRIKE AGAINST LEDCOR

By David Hogben



ON THE COVER: Mik Alfaro says it's not easy being on strike, but it's worth it to secure decent pay and benefits to support his family.

TOP: IBEW 213 business manager Jim Lofty (left), Eric Lavergne, Joel Schwab and retired assistant business manager Mirko Varga on the line showing support.

FIGHTING FOR A FIRST CONTRACT in a non-union-dominated industry takes determination — especially when federal labour law stacks the deck in favour of anti-union employers.

Striking members of the International Brotherhood of Electrical Workers Local 213 seeking a first contract with Leducor (LTS Solutions Ltd.) walking the line in freezing temperatures at the company's Port Coquitlam office, however, showed no signs of giving up the battle, despite a difficult federal labour code. Construction workers will be familiar with Leducor.

"It's all worth it," declared Mik Alfaro, walking the line with his co-workers. Alfaro and other picketers, who carried signs and huddled around a 45-gallon burning barrel for warmth, spoke about their commitment to getting that critical first contract with Leducor, which is one of the largest construction companies in

the country. (Leducor Technical Services is the company's communications arm.)

All the short-term obstacles facing them did not lower Alfaro's enthusiasm, nor that of other strikers looking for the long-term benefits of a contract.

"If we can change something here, we can change the industry," Alfaro said.

Local 213 officers know establishing a foothold, first contract for Local 213 members in the telecommunications industry is no easy job, but it is necessary for workers to obtain job security, decent working conditions, decent pay, and a little respect.

"We were told before the drive: 'Good luck organizing Leducor, it's not going to happen,'" said assistant business manager Robin Nedila. But Local 213's biggest strength is the commitment and determination of the striking members. "These workers want to be part of a real union," Nedila said.

Workers have endured an uncommonly wet, windy and snowy autumn and winter outside the Leducor offices since their strike began on Sept. 30. Their battle for a contract began more than two full years earlier on Aug. 31, 2017, when their bargaining unit of 238 technicians was certified. Already low piece-rate wages were cut, workers were fired, and working hours were extended.

Alfaro, 10 years an installation and repair technician, acknowledged the strike is not easy, but said it is worth fighting for a good job, with decent pay and benefits.

"I have three kids, and the youngest is four months old, the oldest is six years old," Alfaro said as one of many passing motorists honked support for the strikers. "I have a mortgage. I have a house in Cloverdale. It's not easy at all."

Alfaro's financial situation is not made any easier by the need for his wife to take a temporary maternity leave to look after their children.

"It's nice to fight for change even though many people say unions are not appropriate anymore. In our situation, it makes more sense to fight for the union," Alfaro said, adding that despite the personal sacrifices the picketers are making, they're worse off without a union.

"I have been here for 10 years. I have seen friends, I have seen mentors and trainees and they have disappeared en masse," Alfaro said. "I feel very strong that this is the only hope for the industry."

Kode Thurairaja has been installing television, Internet and telephone services for Ledcor for six years. He has never before been a union member. Now, he says, it is the only option, the only choice.

Thurairaja has a \$4,500-a-month mortgage, three children aged, two, four and eight years, and a wife who has taken time off to raise their family.

Thurairaja says he needs job security, and he needs to support workers who have been improperly fired, because of the fight for a first contract, he said, referring to 31 workers terminated on Sept. 25, shortly after the union achieved a strike mandate.

"People were laid off for no reason," he said. "I want a union so that when problems come up, the union can support us. We need to have those jobs back."

Thurairaja worries about his own job as well. He says getting a first contract would give workers the security that

comes with seniority and fair layoff rules.

"If the union was in there, then I would not get laid off," he said.

Thomas Veneracion has worked in Ledcor's installation and repair division for two years. He and his wife have a new townhouse, and they must start making mortgage payments on it within two years.

Veneracion is fighting for job security.

"I am supporting my brothers and sisters who were terminated unjustly. We had 31 technicians who were fired."

Veneracion said he was disappointed with Ledcor's attitude toward its employees during their two-year battle for the benefits of negotiating a union contract.

"I am hoping that Ledcor would finally reach a collective bargaining agreement and not just play around with us, give us hope and prolong the process," he said. "They are not treating us fairly. They should cut the scare tactics."

Veneracion said the job security was worsened by Ledcor's unrealistic demands on workers.

"Some jobs are undoable with the time, the tools and the support they give us. They tell us just to complete it."

Unrealistic working conditions had led to even more job insecurity.

"There is the threat of termination if we do not do a good job or perform to their standards of work," Veneracion said.

Abdul El-Najjar has been through lots of "ups and downs" as a technician in the installation and repair division for the past four years.

"You can have mass recruitment, mass layoffs, and mass turnovers of staff," El-Najjar recalled. "That affects the company as a whole, it affects the technicians, and it affects the jobs that we do."

The rapid staff turnover erodes job security. "You can be disciplined or you can be terminated for ad hoc reasons that the company can come up with."

In addition to employment insecurity, workers have to deal individually with a company that changes the piece rate pay system and work schedules arbitrarily. "They disguise it under the 'increase your earning potential.'"

El-Najjar says it is too much to expect every union member to individually deal with arbitrary changes to pay and hours worked. "When you have a union on your side, they will fight for what is legal, they will fight for your rights, they will fight for what is owed," El-Najjar said.

"We are not just fighting for me or the guy next to me. We are fighting for the technician in five years from today and the technician 15 years from today."

IBEW 213 is calling on the federal labour minister to order the Canadian Industrial Relations Board to impose a first contract.

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“Under the Canada Labour Code, there is no threat of binding arbitration like there is in provincial,” said IBEW Local 213 business representative Dustin Brecht. “Unless the minister steps in, they can just go on and on.”

Brecht said ministerial intervention is essential, because Ledcor is not negotiating in good faith. He said that Ledcor has unfairly fired workers in the installation and repair division recognized by the Canada Labour Board as a bargaining unit, and it has hired replacement workers in other divisions to do their work. “They only hired into the (multi-dwelling units) division with inflated wages. They have massive numbers of subcontractors right now.”

Nedila said Ledcor’s firing of workers and bargaining tactics were to be challenged in a Canada Labour Board hearing expected in February, after Tradetalk’s deadline. “The original certification was for 238 members, now it’s down to 115.”

In addition to terminating staff in the installation and repair division, the IBEW says Ledcor is contracting out bargaining unit work, and has laid off another division entirely.

The drive to unionize the Ledcor workers dramatically demonstrates the weakness of the federal labour code, compared with the B.C. provincial code.

“We feel it would make a huge difference, because for one they cannot use replacement workers (under provincial law),” Nedila said.

“And, there is the threat of binding arbitration so the company knows if it does not bargain in good faith, there is an agreement that is going to be forced on them. They have the authority under Section 80 of the Labour Code to impose a two-year agreement,” Nedila said.



Father-of-three Kode Thurairaja is looking for job security in a first contract with Ledcor.

Local 213 sent a letter to federal Labour Minister Filomena Tassi “to consider our urgent request” and impose a collective agreement.

Canadian labour law recognizes how difficult first contracts can be, and that intervention is sometimes necessary, especially when hearings about unfair labour practices take so long to be heard, the letter states.

“Some of these new union members believe that (unfair labour practices complaints) will never be heard at the Board, and there won’t ever be a collective agreement. This is Canada; we can do better than this,” says the letter.

“Two years is too long to wait for a first collective agreement.”

The installation and repair division bargaining unit workers have seen their piece rate pay system gutted. Their pay is based on a quota system that has seen wages fall drastically. And unreliable customer satisfaction surveys are being used to determine pay. “Their metrics are unobtainable,” Brecht said.

How customers respond to an automated customer survey can determine their pay. But Brecht said the automated survey does not take into account that the person answering the phone and taking the survey might be a child that answers the home phone.

But changes to customer needs and arbitrary changes by the company can damage employee pay.

“I am not earning as much money as before,” Alfaro said. “Before in a week you would have four good days and one bad day. And you would be fine. Now, most of us have four bad days and one good day so it doesn’t work for us anymore.”



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TELUS CUSTOMERS CAN FIGHT UNION BUSTING

IBEW 213 members employed by Ledcor LTS are on a legal strike, but that hasn't stopped Ledcor from using scabs to do their work.

The picketers say that many of the non-union replacement workers have not received the same level of training as their picketing counterparts, and their working conditions do not allow them the time to do their work properly.

These conditions have led to reports of damages to Telus customers' property when poor installations damage hydro, gas or water lines.

So customers asking for Telus to install residential or business telephones, Internet, television, or alarms can insist that the services be provided by unionized Telus employees (United Steelworkers Local 1944). Customers might have to wait a bit longer for their service, but they will have less risk of damage to their homes or businesses, and support striking IBEW Local 213 workers at the same time.

Local 213 is using flying pickets to pressure Ledcor to bargain fairly, so supporters are also asked to text IBEW Local 213 at 604-786-0304 if they see scab workers doing union work.

For more information, read "Shame on Ledcor": ibew213.org/shame-ledcor

SOLIDARITY FOREVER WITH IBEW 213

There is nothing like support from fellow trade unions in a difficult labour dispute.

Local 213's two-year battle for a first contract with Ledcor has been bolstered by support from other unions.

Help comes in many forms: Cash, Christmas gift cards, wood, propane, inflatable rats and sometimes simply joining the picketers on the line on a cold, rainy day.

"We have gotten help from the United Association Local 170. They gave us \$7,000. They are our biggest contributors monetarily," said IBEW Local 213 business manager Jim Lofty.

Other financial contributions have come from the Canadian Union of Public

Employees, BC Teachers' Federation and others. The United Food and Commercial Workers and Community Savings Credit Union sent gift cards at Christmas time.

The International Union of Operating Engineers Local 115 even stopped by with their huge inflatable rat, named Scabby, to draw attention to Ledcor's use of scab workers.

The United Steelworkers Local 1944 have also been big supporters, Lofty said. Local 1944 published an article on its union website advising its members how they can support strikers: "Ledcor Strike: Do you know who you are allowing into your home or business?"

Some of the biggest morale boosters have been the supporters who came by with food, wood, or propane to fuel, feed and warm picketers on a cold days.

In August 2019, IBEW members from across Canada joined the Local 213 picketers in a show of support.

"The people that do come by, that do show solidarity, that gives them to spirit to keep fighting," Lofty said. "When somebody shows up they are like: 'We are not alone.'" 🦋



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