

# Bans on Strike Replacement Workers: Pouring oil on the fire

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### **Introduction**

The banning of strike replacement workers has attracted public scrutiny, especially when picket-line violence accompanies the use of replacement workers. It also goes to the core of dispute resolution in collective bargaining, since it speaks to the key issue of whether each side should have the right to use the legitimate arsenal of “weapons” at its disposal to impose costs on the other side in the event of a strike. Since banning the use of replacement workers, of course, would reduce the employers’ arsenal, the issue is often a lightning rod in attempts by both unions and employers to influence policy in this area.

Unions tend to be on the defensive, given the decline in unionization that has occurred in most industrialized countries. Since unions regard the right to strike as fundamental, they view the banning of replacement workers as essential to safeguard the strike as their main weapon. The heated nature of the issue for organized labour is evident in the use of “scabs” to describe replacement workers and “anti-scab legislation” to describe bans on their employment.

Employers are equally adamant that they have the fundamental right to carry on their business. For those that engage in continuous integrated production and

### *What’s Inside*

If the objective of banning temporary replacement workers is to reduce the frequency and duration of strikes, then the policy is a failure.

Legislative bans on using temporary replacement workers:

- Virtually double the likelihood that a strike will occur
- Increase by some 50% the probable length of any strike
- More than double the eventual wage settlement that companies must absorb to end a strike

just-in-time delivery in an environment of global competition and trade liberalization, as is increasingly the case, disruptions of production caused by strikes can be particularly costly, leading to a permanent loss of production if customers shift to competitors and to the deterring of business investment if the strikes are seen as a sign of poor labour relations.

Legislative bans on replacement workers, however, are subject to a substantial degree of policy control and can vary considerably in how they pertain to permanent versus temporary replacements (see Budd 1996; Singh and Jain 1997) and in their effect on a range of important outcomes, such as wages and the incidence and duration of strikes.

In Canada, where labour matters are largely under provincial jurisdiction, legislative bans on *permanent* replacement workers exist in most jurisdictions (except New Brunswick, Nova Scotia, and Prince Edward Island). Such legislation simply prohibits permanent replacements or mandates that striking workers have the right to their job once the strike is over. Three provinces (Quebec since 1978, British Columbia since 1993, and Ontario between 1993 and 1995) have had a more stringent ban prohibiting the use of *temporary* replacement workers.

In the United States, in contrast, there are no legislative bans on the use of either temporary or permanent replacement workers. A ban on the less restrictive use of permanent replacement workers has come before Congress four times since 1988, but no action has been taken; the only initiative in this area was an executive order in 1995 banning the federal government from doing business with firms that use permanent replacements (Cramton and Tracy 1998).

### **The Expected Effects of Banning Replacement Workers**

The theoretical effects of a legislative ban on the use of replacement workers are quite complex. By putting more bargaining power in the hands of unions, since their striking workers cannot be replaced, a legislative ban should increase wages — that is, employers should be more likely to give in since they cannot use replacement workers. This could also lead to the impression that a ban should make strikes less likely and of shorter duration. But the same outcome could apply if employers can use replacement workers, in which case unions would be more likely to submit in the face of the threat of having their striking workers replaced.

Kennan and Wilson (1989) argue that, since strikes are often used to resolve uncertainty and elicit information, a legislative ban on replacement workers

increases strike incidence and duration because it increases unions' uncertainty about firms' willingness to pay to end strikes, since that willingness is no longer constrained by the option to use replacement workers. In contrast, if replacement workers are legal, unions know this places an upper bound on firms' willingness to pay to end strikes. In a similar vein, Cramton and Tracy (1992) argue that a ban on replacement workers makes the strike a more attractive weapon for unions than other mechanisms for resolving disputes, such as continuing to work without a contract.

### **Evidence of the Effects of Banning Replacement Workers**

Advocates of legislative bans on replacement workers sometimes argue to the effect that “bans on replacements will reduce strike activity because when replacement workers are used strikes tend to be longer.” Such a statement confuses cause and effect, however. It is natural that, if employers anticipate a long strike, they will be more likely to use replacement workers. In such situations, long strikes cause the use of replacement workers; replacement workers do not cause long strikes.

A number of studies have attempted to estimate the effects of legislative bans on replacement workers in Canada.<sup>1</sup> Cramton, Gunderson, and Tracy (1999a) suggest that bans have had a large and statistically significant effect on strike incidence, strike duration, and wages. The study finds that, over the 1967–93 period, bans increased the probability of a strike by 0.122 — a large effect since the average probability that a strike would occur was 0.165 at that time.<sup>2</sup> In other words, the expected probability that a strike would occur over the 1967–93 period was 0.269 with a ban in place and 0.147 without a ban. Bans also increased the duration of strikes by 31.6 days — again, a large effect

<sup>1</sup> Econometric studies of the effects of bans on replacement workers include Gunderson, Kervin, and Reid (1986, 1989); Gunderson and Melino (1990); Budd (1996, 2000); and Cramton, Gunderson, and Tracy (1999a, 1999b).

<sup>2</sup> While this is a large effect, the authors emphasize that it is measured with some imprecision, being significant only at the 0.107 level, and thus subject to considerable uncertainty. Lacroix and Lespérance (1988) also find that bans on replacement workers and laws permitting secondary picketing led to increased strike activity in Quebec, Ontario, and British Columbia.

relative to the average length of a strike at that time, which was 59 days. In other words, the expected duration of a strike over the period was 86 days with a ban in place and 54 days without a ban. Finally, the authors find that, over the 1967–93 period, bans led to real wage increases of 4.4 percent over the life of a contract, or almost 2 percent per year. These effects of legislative bans on replacement workers were the largest of any of the other policy variables, including requirements for conciliation, cooling-off periods, mandatory strike votes, employer-initiated votes, dues check-offs, negotiated reopeners, and automatic reopeners.

Cramton, Gunderson, and Tracy (1999a) also simulate the gains and losses of both union members and employers associated with higher wages and strike costs in a typical contract renegotiation in a large bargaining unit with a ban on replacement workers in place. They find that the union stood to gain almost \$3 million and the firm to lose almost \$5 million over the life of the contract. In such circumstances, it is not surprising that both employers and unions hotly contest the issue. Budd (2000) also finds that bans on replacement workers have a negative effect on employment.

Although legislative bans increase wages and the incidence and duration of strikes, as well as reduce employment, other, potentially more positive effects must be traded off against these consequences. Cramton and Tracy (1998) find that, in the United States, strike violence is substantially higher when replacements are used. Whether this reflects cause and effect, however, is an open question, since management might be more likely to use replacements when they feel that the labour relations climate has deteriorated, and the use of violence is simply a manifestation of that deterioration. As well, it might be more appropriate to deal with the illegal activity of picket-line violence than to ban the activity that causes one party to react with violence.

There is also empirical evidence from New York in the 1970s that workplace injuries occurred more frequently when replacement workers were used (Allen 1994), perhaps reflecting their lack of familiarity with the job. Injuries can also occur if there is a “speed up” after a

strike to replace lost output. Krueger and Mas (2004) also found that the use of replacement workers in the Bridgestone/Firestone strike in the United States led to significantly higher rates of tire defects. Whether these are matters that the companies themselves consider appropriately in their decision to use replacement workers is an open question.

Clearly, legislative bans on the use of replacement workers have a wide range of effects that must be considered in any discussion to impose such regulation. What is clear is that bans do not reduce strike activity; in fact, the opposite is the case. They increase both the incidence and duration of strikes. Bans also reduce employment. And, while bans bring substantial benefits to union members by increasing their wages by a greater amount than the cost of any strike, for employers the losses, in the form of both higher wages and strike costs, are substantial. The effect of this on investment decisions and any associated job creation is an open question.

Those who argue that there are severe negative *social* consequences (not internalized by the private parties themselves) in allowing unions and employers to use whatever weapons are available to them in the case of a labour dispute — including the use of replacement workers — have yet to make their case. Unions can use the strike and picketing; employers can use the lockout and non-union managers, as well as build inventories in advance of a strike and perhaps shift production to other facilities in the face of one. What is it about the use of replacement workers to carry on production that it should be singled out for a legislative ban? If replacement workers are to be banned, should not the use of non-union managers to carry on production also be banned?

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Market mechanisms should be considered innocent until proven guilty — perhaps more so in labour markets than in other markets. All too often, however, the response to a negative labour market outcome is to try to “fix” the problem by imposing a law or regulation on the *symptom*: if wages are low, legislate a minimum; if older workers are required by company policy to retire, ban mandatory retirement; if striking workers are replaced by other workers, ban strike replacements. Although labour laws and regulations can be politically expedient in the short run by giving the appearance that action is being taken, in the long run they can be a recipe for disaster by shifting the focus to the symptom and away from the underlying *cause*. Worse, they can have unintended consequences, perhaps even harming the very people they were intended to help or protecting already-advantaged and well-organized interest groups.

Labour markets have characteristics that make them not only distinct from other markets, but also a target for regulation and institutional protection. There are grounds for this, but there are also dangers. Many of the differences between labour markets and other markets are ones of degree, not quantum differences in kind. Moreover, the regulations and institutions that are designed to mitigate market mechanisms also have their imperfections. Thus, when a negative labour market outcome presents itself, governments should take a certain sequence of decision-making steps (see Gunderson 2002):

- Determine if artificial barriers are inhibiting labour market forces themselves from dealing with the negative outcome; if that is the case, determine if the barriers are the unintended by-products of other government policies or regulations that can be altered to remove them.
- Determine if *well-defined* market failures are inhibiting market forces themselves from dealing with the negative outcome.
- Even if there are such failures, consider which is better: an imperfect market-based solution or an imperfect government-regulated solution, and bearing in mind that public intervention might well displace private activity in the area.
- If there is a role for public policy, determine how best to implement it, recognizing that public *financing* need not mean public *provision*, and that governments will face many of the same problems as market participants if markets fail.

In this AIMS Commentary Series, Morley Gunderson examines four public policy issues relating to labour markets; Mandatory Retirement, Minimum Wage, Payroll Taxes, and Replacement Workers.

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