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Chair

Mr. Dean Allison

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● (1535)

[*English*]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): Pursuant to the order of reference of Wednesday, October 25, 2006, concerning Bill C-257, an act to amend the Canada Labour Code on replacement workers, the committee will now resume its study of the bill.

I would just like to take this time to welcome all of our witnesses here today. I've got you in order here and I'll let you know when you're going to go. There will be seven minutes each. I will give you a sign when you have one minute left if you're not watching your own clocks, and then we'll start with a couple of rounds of questioning, starting with the opposition and moving through over to the government. It will be seven minutes for the first round and then the second round will be five minutes.

I believe that via teleconference we've got the NWT and Nunavut Chamber of Mines. I want to welcome you. I will let you know when you're going to speak.

If we could start with our first witness, we're going to ask the Canadian Employers Council to proceed. I believe we have Steve Bedard.

Steve, you have seven minutes, sir.

Mr. Steve Bedard (Chair, Canadian Employers Council): Thank you.

The Canadian Employers Council is the voice of Canadian business on international labour issues and at the International Labour Organization, the ILO. The CEC has been actively representing the interests of Canadian business on international labour issues for over 80 years, since 1919, and the membership of the CEC represents a broad cross-section of Canadian employers, many of which are federally regulated.

The CEC speaks on behalf of Canadian business at the International Labour Organization, which is the United Nations agency that promulgates international labour standards; at the International Organization of Employers, the IOE, which is the international body representing employers' interests before the ILO; and within the Summit of Americas process.

Our equivalent at the ILO is the CLC, the Canadian Labour Congress. The CEC and its members are opposed to Bill C-257 and believe that it should be rejected in its entirety. On substantive issues arising from Bill C-257, the CEC endorses the submissions of FETCO, Federally Regulated Employers—Transportation and Communications. We understand that Don Brazier, FETCO's executive director, provided a written brief and appeared before the standing committee on December 5, 2006.

The CEC's submissions before the standing committee are limited to relevant international labour principles that shouldn't form any review of Bill C-257.

I refer the standing committee to the CEC's written brief, which was provided in both French and English. In our oral comments today, we'd like to focus on two areas. The first is that Bill C-257 represents an unwarranted politicization of federal labour law reform. This issue was touched on briefly by Michael McDermott, the former senior deputy minister for the labour program, during his appearance before the standing committee on December 7.

It is the CEC's position that the politicization of labour law reform runs counter to the tripartite tradition that flows from international labour principles and has long been embraced at the federal level.

Secondly, it is the CEC's position that the principles of international labour law do not support a prohibition on the use of temporary replacement workers.

The ILO has never made an adverse finding against Canada respecting the use of temporary replacement workers, and it has not adopted any instrument that expressly prohibits the use of temporary replacement workers.

Regarding concerns respecting the politicization of labour law reform, unlike labour law reform in many of the provinces, federal labour law reform has avoided politicization. Instead, tripartite reform processes have been embraced within the federal system to ensure the active and meaningful contributions of employers, trade unions, and governments. Tripartism is focused on the process leading to substantive labour law reform. Tripartism promotes stability and balance in a labour relations system.

A commitment to tripartism is at the core of the ILO and is reflected in three important international labour standards, which are discussed in detail in the CEC's written brief. These standards promote effective consultations and cooperation among public authorities, employers, and workers organizations. These international principles help to illuminate why the politicized process underlying Bill C-257 represents a disturbing departure from the tripartite tradition that has existed at the federal level.

A strong legacy of commitment to tripartism in labour law reform at the federal level is reflected in the 1968 Woods task force process and report, as well as in the 1995 Sims task force report entitled "Seeking a Balance", which has already been discussed at great length before the standing committee.

The CEC's primary concern regarding the process leading to the introduction of Bill C-257 is that it constitutes a politically motivated attempt to reform the code for the purpose of shifting the balance of power between employers and trade unions.

Regarding the lack of expert tripartite process leading to the drafting of Bill C-257, to the contrary, an expert tripartite process was conducted by the Sims task force report, which heard exhaustive argument in favour of and against the ban on temporary replacement workers. In the end, this expert tripartite process concluded that a ban should be rejected.

The CEC believes that Bill C-257 will in itself create instability in the federal labour law sector. If the bill succeeds, it will open the door for further changes coming not from a tripartite expert process, but as a result of a political process, similar to what was experienced in Ontario in the 1990s—an experience that I believe neither employers nor unions would want to see again.

● (1540)

In terms of international labour principles respecting temporary replacement workers, there are absolutely no guidelines, policies, standards, or laws at the international level that ban the use of temporary replacement workers. There are, however, ILO principles supporting the right to engage in free collective bargaining and also the right to freedom of association.

Although the Canadian Labour Congress has brought a number of complaints to the ILO regarding labour relations issues in Canada and in the provinces, it has never complained with respect to the issue of replacement workers. In fact, the majority of the complaints are largely brought in respect of back-to-work legislation and provincial laws that limit collective bargaining and strikes.

Prior to the implementation of the Sims report a number of complaints were taken to the ILO regarding back-to-work legislation in the federal sector. Since Sims, there has not been one instance of back-to-work legislation—

The Chair: You have one minute left.

Mr. Steve Bedard: —and we think that very much demonstrates the balance that Sims struck between the various competing issues in terms of labour law reform.

We understand that section 87.4 has been discussed quite a bit at these hearings and has been mistakenly characterized as ensuring essential services. We sought and have a legal opinion on this, and it clearly demonstrates that section 87.4 was never intended to cover essential services, and that it does not do so.

The banning of replacement workers, thereby upsetting the balance achieved by Sims, would cause a return to the time in the federal sector when emergency back-to-work legislation was a fairly regular occurrence. With that, we expect further complaints by the Canadian labour movement to the ILO regarding interference with the process of free collective bargaining.

Finally, we'd like to add that by banning temporary replacement workers, we must be mindful of the fact that it does more than ban outside workers, it bans bargaining unit employees from crossing the picket line. It would effectively force dissenting members of the striking bargaining unit—including employees who are not members of the trade union—to associate with the trade union and those bargaining unit members who support the strike. This is a form of legislative coercion that raises serious freedom of association concerns.

Freedom of association is a cornerstone of the ILO's international labour standards. In fact, it is referenced in the preamble of the Canada Labour Code. Freedom of association is also protected by paragraph 2(d) of the Charter of Rights and Freedoms.

Thank you.

The Chair: Thank you, Mr. Bedard.

I'm going to move to the United Steelworkers. I believe we have Cathy Braker with us, as well as Daniel Roy. You have seven minutes.

[*Translation*]

Mr. Daniel Roy (Assistant Director, District 5, United Steelworkers): The United Steelworkers is an international trade union with over 280,000 members in Canada. Approximately 15,000 of these members work in Canada's federal jurisdiction.

Steelworkers are men and women of every social, cultural and ethnic background in every industry and job. In the federal jurisdiction, our members work in trucking, railways, courier delivery, banking, airlines, airport security, shipping, ferry service, and communications.

We are pleased to have this opportunity to make these submissions as part of the process of improving the Canada Labour Code to prohibit the use of replacement workers during labour disputes in the federal jurisdiction. This advances the Steelworkers struggle for dignity, respect and equality for its members, and improves the working lives for all working people in Canada.

The Canada Labour Code. Canadian labour law has long recognized and given effect to a right to strike. A union's right to bring economic pressure to bear on employers by a collective withdrawal of the labour of its members in order to support its contract demands is a fundamental right in our democratic society. Under the Canada Labour Code, the right to strike is a fundamental part of a comprehensive code of rights and obligations which governs labour relations in the federal jurisdiction.

The Canada Labour Code grants unions the right to collectively bargain and then administer and enforce collective agreements on behalf of their memberships. The union's right to collectively bargain is carefully balanced with a duty to represent its members fairly. The trade off for being exclusive bargaining agent is that unions are legally bound to provide fair representation to all of the employees in the bargaining unit they represent. The Code permits bargaining unit employees, in certain circumstances, to decertify their union or eliminate its bargaining agency status. This serves as an additional check and balance against the union's authority. The Code contains additional and comprehensive prohibitions on employer and union unfair labour practices, before certification, during organizing campaigns, for the duration of collective agreements, and in connection with strikes and lockouts.

The right to strike. The economic "balance of power" between employers and unions at the outset of a strike is affected by factors both parties are entitled to consider as the union determines whether to engage in a strike and the employer determines whether to maintain positions which may result in a strike. The union typically gauges its support and predicts its ability to succeed in a strike situation by conducting a strike vote among its members. This is a fundamental and democratic measure of the union's support and it demonstrates the willingness and ability of the bargaining unit to sustain economic pressure. The employer engages in a similar exercise to measure its ability to withstand a strike. Again, as with other aspects of the union's role as bargaining agent, the union's right to strike is carefully circumscribed by the provisions of the Code. A balance between the rights and obligations of the parties to the bargaining relationship is achieved.

Why replacement workers must be banned.

Replacement workers are strangers to the bargaining relationship. They are not part of the union's bargaining unit. They do not participate in collective bargaining. They do not vote in the strike vote. As such, the mere introduction of replacement workers in and of itself upsets the balance of power that the parties establish and measure at the outset of a strike. But in addition to that, the introduction of replacement workers has been linked by researchers to a variety of negative outcomes. These outcomes include greater picket line violence and longer strikes. Furthermore, a Princeton University study at a Bridgestone/Firestone plant in Decatur in the mid 1990s considered whether a long contentious strike and the hiring of replacement workers was linked to the production of defective tires. That study concluded that labour strife in the plant closely coincided with lower product quality.

The research described above accurately reflects our Union's experience with replacement workers. When replacement workers are introduced into a strike, they come into direct contact with the picketers and other union members who continue to support the strike. In our experience, this contact is provocative and disruptive. It is often relied upon by employers to demoralize the union's membership.

● (1545)

In these circumstances, it is hardly surprising that the presence of replacement workers escalates the number of picket line incidents and results in greater violence on the line. The escalation of picket line incidents and violence undermines the rule of law.

The use of replacement workers unfairly distorts the economic power balance in a strike situation, and it weighs heavily against any union which chooses to exercise its right to strike. There is no legitimate basis for permitting the employer to use replacement workers in the context of a system of labour relations which recognizes that the relationship must be determined by the parties to the agreement and not threatened, undermined or even destroyed by strangers.

The use of replacement workers upsets the balance which is otherwise sought to be achieved by the extensive and detailed code of conduct that is regulated through our labour laws.

In conclusion, our Union welcomes any amendment to the Code which establishes the basis for a fairer system of dispute resolution. We believe that the Code is long overdue for changes which make it clear that the right of employers to use replacement workers during a strike is effectively limited.

We welcome the changes in Bill C-257, which are clearly directed at eliminating the unfairness inherent in a system that permits an employer to continue to operate during a strike. The Steelworkers supports the Bill and applauds the work of its political allies in Parliament.

Thank you.

● (1550)

[*English*]

The Chair: Thank you, Mr. Roy; I appreciate your time on that.

We're going to move now to video conference, and we have Mr. Vaydik, from the Northwest Territories and Nunavut Chamber of Mines, for seven minutes.

Mr. Mike Vaydik (General Manager, NWT and Nunavut Chamber of Mines): Thank you, Mr. Chair.

Our organization represents a variety of companies and individuals involved in exploration and mining in the Northwest Territories and Nunavut. We have over 800 members, from prospectors, junior exploration companies, companies with operating mines, service companies of all kinds, and, increasingly, aboriginal corporations that are participating in the mining industry as never before. Our service company members comprise those engaged in aviation, drilling, trucking, construction, expediting, and catering, as well as many others. Many northerners make their living directly or indirectly from the mining industry.

On behalf of the northern mining industry, I will be speaking against passage of this bill.

The Northwest Territories and Nunavut cover fully one-third of Canada's land mass. The combination of size, rugged geography, high costs, and harsh climate are formidable barriers to development. As a result, we have the most poorly developed infrastructure in Canada. These barriers often limit our options for substantial economic development.

Today mining is the north's largest industry. When combined with exploration investment, our industry is a $2 billion concern. With new mining development, we foresee mining's value reaching $3 billion annually in the not too distant future. It's the number one employer outside of government, with over 2,500 directly employed at the Northwest Territory's mines alone. Mining represents half of the Northwest Territory's economy, with half of its GDP coming from mining. It is a growing industry in Nunavut, with one producing mine and two more recently getting regulatory approval and soon to be entering the construction stage.

As an important generator of significant jobs and business opportunities, we support the increase of northern and aboriginal benefits. Mining also has the potential to stimulate the development of new infrastructure like roads, ports, and hydro-electric operations which will also benefit the communities of our region. However, an effective labour code will be integral to the mining industry's being able to provide those long-term benefits to northern residents. We are not convinced that the proposed legislation will help us.

We know there are some who would raise the Northwest Territories giant mine strike as a prime justification for anti-replacement-worker legislation. To do so would be to overly simplify the complicated conditions surrounding that strike. No official inquiry has been held to determine what initiated the strike and the resulting actions taken by both the employer and the union. This is unfortunate, as from our perspective a secret ballot vote may have reversed the outcome, as would have earlier forced mediation. Our position on restricting the use of replacement workers has nothing to do with that unfortunate piece of history.

The reality of northern mining today is that new mines are located in very remote parts of our country, accessible only with difficulty. New mines are stand-alone camps with workers commuting by air for variable work schedules. The mines generate their own electricity, operate all their own municipal-type services, and are serviced by difficult seasonal transportation links. Our new diamond mines are serviced by an eight- to twelve-week ice road. This ice road is built annually and operated for that very short period. It crosses over 700 kilometres of frozen lakes and tundra. In comparison, Calgary to Regina is 763 kilometres; Toronto to Quebec City is 792 kilometres. This road is built and maintained at the mine's expense.

The stand-alone remote nature of the northern mines means they must transport over this very short period and long distance an entire year's supply of such items as fuel, both for operations and power generation; explosives; steel; cement; truck tires; and other essential supplies, which then must be stored on-site. This year the operating mines alone plan to ship over 10,500 truckloads of materials and supplies north during this short season.

Previously our mines in the high Arctic were serviced by ice-breaking cargo ships with about a five-month shipping window. New mines planned for Nunavut will need sea-lift or barge resupply during the short shipping window. These mines are and will be particularly vulnerable to work stoppages during the short seasonal shipping windows.

● (1555)

A union could use this shipping vulnerability to leverage its demands. By going on strike during this period, a union would essentially hold the mining company to ransom. In the worst-case scenario, the mine would be forced to close. Even if only part of the essential freight missed the transportation window, the mine’s viability could be undermined. Should the mine be forced to make costly concessions to strikers, mining costs would be driven up, and the life of the operation could be shortened.

Modern mines are complex operations, operating in a very complex regulatory regime within strict environmental legislation, and are subject to a number of agreements that are conditions of their licences. They are required to provide benefits to northerners, and particularly aboriginal northerners, in the form of employment, training, and business opportunities. In addition, they make direct payments to aboriginal communities under the terms of impact benefit agreements. To add the uncertainty of labour action interfering with the already tenuous and time-sensitive logistic links would add an unnecessary burden to the operations and possibly make them uneconomic.

The Chair: One minute remaining.

Mr. Mike Vaydik: Thank you.

As the bill now stands, we believe it would shift the balance inordinately in favour of labour, to the detriment of our industry, which is so important to us.

Up until now, the labour code upheld the right of a union to withhold its labour, but also the right of an employer to operate. We believe this balance is needed to maintain a fair and productive labour relationship. We believe the labour code will serve northerners best if it allows industry to maintain the workplace so workers have a job to come back to when a dispute ends.

From our perspective, the bill is seriously flawed, in that it overwhelmingly shifts the balance toward labour. We believe this would weaken the viability of our northern mining industry and therefore the northern economy. This would harm the interests of the residents of the north and would severely limit their future opportunities.

Thank you.

The Chair: Thank you, Mr. Vaydik, for your presentation.

We're now going to move to Mr. Pennings. Seven minutes, please, sir.

Mr. Ray Pennings (As an Individual): Thank you, Mr. Chair.

My thanks to the committee for extending the invitation for me to be here today, and also to the clerk of the committee and the staff for assisting in the translation.

The 1996 task force report on which the last major rewrite of our federal labour code was based was appropriately enough entitled *Seeking a Balance.* It's ironic that the only issue on which that expert panel was unable to reach a consensus was the issue that's before this committee, the issue of replacement workers.

In that report—and I have the complete reference in my written remarks—they noted at the end that, despite the differences, there were some aspects on which they could agree, and also, they suggested several other ways of balancing rights during work stoppages.

In preparing for this presentation today, I reviewed most of the testimony that you have heard to date, and without a doubt, "balance" is the word that most frequently appears. Regardless of which side the presenters appear on, everyone recognizes that balance is a standard that needs to be appealed to. However, it appears that balance, like beauty, is in the eye of the beholder. As people have come before this committee, they've had some quite different perceptions in terms of what balance is.

So instead of piling on and parsing some of the data and the statistics that you have before you and have heard interpreted different ways, I thought I'd take the limited time available, first of all, just to put my bias on the table, because if balance, like beauty, is subjective, then it's only fair that we put our subjectivities on the table; and then I'll make three comments that I hope will be helpful for you as you consider this.

I grew up in an immigrant small-town Ontario background. My perception on unions as I was growing up was a negative one. My mother's workplace was unionized while she was there, and it was not a positive experience for her. In growing up, I heard concerns about the implementation of certain conditions that negatively affected her and in which she was a minority point of view. We also lived on a family farm, and the frequent postal disruptions that were the norm for the day in which I grew up caused significant economic challenges for our family.

Needless to say, when in my twenties I accepted a job as a union staff representative, I didn't make either my family or very many of my friends very happy. For 11 years I was involved in the front-line of labour negotiations. I represented agreements that sometimes involved dozens and sometimes involved thousands of workers. I represented my union at Ontario social contract talks. I was the union nominee on a $30-million Ontario health sector training and adjustment program. I have been on boards of arbitration under both the Hospital Labour Disputes Arbitration Act in Ontario and under the grievance provisions of numerous collective agreements.

I have publicly made what I call a conservative case for collective bargaining, arguing, one, that the character of work in a modern economy creates a natural demand for worker representative institutions; two, that most of the arguments that are traditionally used to portray unions as a negative impact on the economy are in fact fallacious; and three, that unions can make a significant contribution to workplace democracy and justice.

I raise these points only to illustrate that my bias coming in is one that favours collective bargaining. I believe collective bargaining is a good thing, and I have no doubt that the restriction on replacement workers proposed in this legislation will strengthen the hand of unions in labour disputes. Having worked with union members in the pain of a strike situation, I can appreciate the appeal that there is in seeing the rules of war changed in a way that gives one side an advantage. However, let me make three comments that I think should give pause to those who think this necessarily will achieve the good results they hope for.

First of all, I have a comment about what balance in labour relations is. Sitting at a negotiating table with collective agreements, one learns very quickly that the process is as important as the substance. Often you can have the identical substance come out of an agreement, and depending on how the process is perceived, when you go back to the members for ratification it may be either rejected or accepted because of the perception about the process and not necessarily what the actual agreement says.

I think there is a similar imperative in the process of labour law reform. The Sims report provided a package of reforms that represented significant degrees of consensus.

● (1600)

The resulting legislation was generally accepted across the spectrum as balanced legislation, not just because of the content it held, but also because of the process.

I would respectfully submit to you that whatever the merits or demerits regarding the arguments on replacement workers might be, the very process of putting forward a piece of legislation with a single amendment of the labour code on a controversial issue—the only issue the three Sims commissioners could not reach consensus on—is by its very nature an unbalanced and unwise approach to labour relations.

I've gone to many contract ratification meetings and have often had union members ask me, "Can we vote on this one clause separately?" Inevitably, that clause was a controversial clause on which there had been some give and take in the process of negotiation. If you were to take that one clause out, you would really destroy the entire balance that's in the document.

Others have mentioned, and the Sims report warns against, the politicization of the process. I was working in labour relations in Ontario throughout the nineties and saw what the pendulum swings on both sides of the spectrum resulted in.

Secondly, it's not just about labour-management balance; it's also about majority-minority balance. Collective bargaining, by its very nature, is majoritarian: a union needs to speak with one voice. But we need to that recognize there are minority voices. In some labour disruption situations—some that I've been familiar with—the issue is not always as much between the employer and employee as it is involving sometimes very fierce divisions within the union, which force the politics of the process to go forward in a particular way. There's a lot that can be said, and I refer to it in the brief.

The third point I would say is I that regret—and I think it's a significant public policy problem—the decline in our representation, numbers that have been going steadily down for a number of years. Legislation like this, I'm afraid, brings us back to defining the rules of war and the negatives of labour relations.

I refer to various Gallup data that we've commissioned, which basically say that if you ask Canadians whether they support unions, the result is positive, at an all-time high, but if you ask them about the specifics of various union activities—strikes, and some of the others—they're remarkably negative. In other words, Canadians support unions, but not necessarily the way some collective bargaining has gone in the past.

I recognize my time's almost over, so I'll leave the written comments to stand. I think there are a number of far more pressing issues that we need to face if we're going to see a vital labour movement representing workers in the future.

Thank you.

● (1605)

The Chair: Thank you, Mr. Pennings, for that.

We're now going to move to Mr. Vines and Ms. Nicholas.

I want to indicate that they're from the Canadian Industrial Relations Board, a government organization. I would ask the members not to ask them for their opinion on the bill. They are here today to clarify and to maybe shed any light and any clarifications on how this legislation may affect the existing labour code.

Mr. Vines, you have seven minutes.

Mr. John Vines (Regional Director and Registrar, Atlantic Region, Client Services, Canadian Industrial Relations Board): Thank you, Mr. Chair.

HonoFurable members, good afternoon, and thank you for inviting me to address the committee.

I am the regional director and registrar of the Atlantic region for the Canada Industrial Relations Board. As the regional director, I am responsible for the board's operations in the Atlantic provinces. I am here representing the board at the invitation of the committee.

Let me begin by briefly explaining the board's role and mandate. The CIRB is an independent, representational, quasi-judicial, administrative tribunal. It is responsible for the interpretation and application of the Canada Labour Code, part I, industrial relations, and certain provisions of part II. The code governs the labour relations of businesses and undertakings falling under federal jurisdiction. The board's mandate is to contribute to and promote harmonious industrial relations and the constructive settlement of disputes. It accomplishes this by interpreting and applying the provisions of the code in a manner that best fulfills the purposes and objectives as determined by Parliament and as set out in the code. It aims to determine matters and provide decisions on applications and complaints that come before it in a fair, expeditious, and economical manner, and in a way that best serves the labour relations goals and objectives set out in the code. It accomplishes this through various dispute resolution mechanisms. The board has both a mediation and an adjudicative role to play in resolving applications and disputes that come before it.

It is equally important to understand that the board is a neutral and impartial tribunal. It has no role to play in formulating policy or the legislative provisions that the board is then called upon to interpret and apply. It is really not the board's role, therefore, to appear before this committee to express an opinion or take a position on any proposed changes to the code. I propose, then, to first speak about subsection 94(2.1) of the code, the current provision dealing with replacement workers. I will briefly touch on section 87.4, the maintenance of activities provisions, and finally I will address what the board sees as the potential impact of any changes to the code on the board's resources and capabilities.

Since the introduction of the current replacement worker provision in 1999, the board has received approximately 20 complaints under this section. Sixteen of these have been withdrawn, three were dismissed, and one is pending. The replacement worker issue is generally seen as an important, sensitive, and controversial issue between labour and management. Further, applications under the replacement worker provision of the code are usually presented at a time when the labour relations between the parties are particularly tense and strained. Accordingly, the board gives these matters priority and treats them in an expedited fashion. However, this can be difficult procedurally, because it has been our experience that such applications are usually accompanied by other unfair labour practice complaints and allegations of bad faith bargaining. In an attempt to achieve an overall effective labour relations resolution, different complaints are often heard together or consolidated. This will often then require the presentation of more evidence and a longer hearing process to ensure that all matters are fairly heard and determined and that natural justice for all parties is respected along the way.

Section 87.4 of the code deals with maintenance of activities during a strike or lockout. It is another of the various strike-related provisions introduced into the code in 1999, following the legislative review. This provision speaks directly to the issue of the parties' obligations to ensure that certain activities and services are continued during the course of a strike or lockout to a sufficient level so as to prevent any immediate and serious danger to the safety and health of the public. This provision constitutes a joint obligation on the parties to ensure the safety or health of the public during a strike or lockout, and, as such, addresses very different concerns and circumstances from those addressed by the replacement worker provision. The present replacement worker provision makes it an unfair labour practice to use replacement workers to undermine a trade union's representational capacity, rather than for the pursuit of legitimate bargaining objectives.

● (1610)

With respect to the potential impact of the changes to the existing legislation, the board, based on its past experience, can offer the committee the following comments and considerations.

Because the replacement worker issue is highly sensitive and generally controversial for trade unions and employers, any change to this particular provision in the existing code will likely cause an increase in the board's caseload.

Our experience with the most recent legislative changes was that with any new provision comes an increase in the number of applications or complaints filed as parties test the new provision and the board's interpretation and application of it. This includes an increase in the number of applications for reconsideration as the parties test the provision, not only in the first instance, but also on reconsideration and in the courts. As well, the jurisprudence on a particular issue or provision is never established on the basis of just one case or one decision, but evolves over time and in the specific context of each case, as presented to the board.

With an increase in the number of applications comes an even greater demand on all aspects of the board's resources at the administrative, operational, and adjudicative levels. This added pressure on the resources is particularly relevant in light of the priority treatment I believe the board would have to give to any complaints filed under the new provisions. To avoid any escalation of tension between the parties, I anticipate that the board will have to respond quickly to resolve any disputes involving replacement workers.

In conclusion, I would like to restate that the board is neutral and impartial, and the board's role is to interpret and apply the provisions of the code and to assist the parties in constructively resolving their industrial relations disputes. In light of the board's neutral role, it is inappropriate for the board to voice an opinion on any question concerning policy development and the impact of any proposed changes to the legislation on the parties and their balance of bargaining power.

Thank you.

The Chair: Thank you, Mr. Vines, for being here.

On a point of order, Ms. Davies.

Ms. Libby Davies (Vancouver East, NDP): I'm just curious to know this, because Mr. Vines has said that he was invited to appear before the committee, but he has made it very clear that actually they don't see it as their role to be here. So I'm just wondering how that came about. Did we invite people? Why would they be invited? I mean, I'm very interested in your comments.

The Chair: People were looking for clarification on the effect this may have. So once again, he's not here to talk about policy, but, in the event, on how this may affect or not affect the legislation.

Ms. Libby Davies: So who invited him, then?

The Chair: We invited him. The committee invited him.

Ms. Libby Davies: Who's we? I'm just curious. I mean, we have technical witnesses coming. In fact, I think this organization might be there on that day. I can't remember. But we do have people coming from Labour Canada who are going to deal with the bill, when we can talk about the impacts of the actual legislation, and so on. I'm just surprised that we have a witness who's actually saying that, really, he shouldn't be here.

● (1615)

The Chair: What the witness is saying is that he can't comment on policy. So if you don't want to ask him a question, you probably don't have to ask him a question.

Ms. Libby Davies: No, I was just curious when he said he was invited to come.

The Chair: We're going to move to our first round of seven minutes. We'll go to Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): Thank you very much, Mr. Chair.

I want to thank the deputants. I must say, I really enjoyed their presentations. They were excellent presentations. I also want to thank them for the good work they put in on these particular issues and in bringing some issues to the attention of this committee.

Mr. Bedard, you mentioned the fact that you had a legal opinion on essential services. Can you provide us with a copy of that legal opinion?

Mr. Steve Bedard: Yes.

Mr. Mario Silva: So you can table it today, if it's possible.

Mr. Steve Bedard: We brought it with us.

Mr. Mario Silva: Great. I would love to have a copy of that.

Was it you who mentioned the issue of who can cross the picket line?

Mr. Steve Bedard: Yes.

Mr. Mario Silva: I'm also curious about that, because I haven't read that. I don't know if you have a legal opinion on that, as well.

Mr. Steve Bedard: It's in the proposed legislation under the definition of replacement worker. In terms of the legislation, it's people from outside the company hired specifically to replace workers on strike. It covers people in the bargaining unit who choose not to strike.

Mr. Mario Silva: It sounds as if you are telling us that management can go into the company. That's what I interpret from you. Is that the case you're trying to get at?

Mr. Steve Bedard: No, it's bargaining unit employees who choose to cross the picket line.

Mr. Mario Silva: Oh, okay. That's fine. I just wanted to clarify, because I misinterpreted what you were saying, so thank you very much for that.

I must say, Mr. Pennings, I really enjoyed your presentation, and in particular the part about the importance of the process. I realize process is extremely important when you're dealing with any amendment to labour laws.

But I'm not government. We're not in government; we're here in the opposition. We're also dealing with a private member's bill, and there are many people who support it and many people who don't support it. At the end of the day, if the government wished to change the process and introduce their own legislation, they could have done so, and then maybe we could have dealt with issues of process. But right now the bill we're dealing with before this committee is a private member's bill, just so you can be aware of that.

In an ideal world, I agree with you, there should have been a different process in place to bring this legislation forward, no matter whether one feels in favour or against the legislation. So I thank you for bringing that point. I think that was a very valid point.

I don't have any further questions, but my colleague, Ruby Dhalla, does.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): Thank you very much to everyone for their presentations. As my colleague said, they were helpful and provided us with a unique perspective.

I had a question for perhaps anyone on the panel who wants to answer it. Within the proposed bill that's being put forward there is a clause that states that companies would be fined up to $1,000 per day if they were in violation of the rules. What type of impact do you think that would have, and do you think it would have an impact at all on the businesses that have to pay the $1,000 a day?

The Chair: Mr. Bedard.

Mr. Steve Bedard: I was just going to say that $1,000, depending upon the size of the firm, I suspect would be an issue. Canadian employers, by and large, do not like to break the law, so most firms, I'm sure, would not put themselves in the position of being fined $1,000 a day, regardless of what the cost would be.

I think that in fact the issue at hand is more whether or not replacement workers should be banned. That would have a fundamental impact on every firm in the federal sector, and through that, most employers and most citizens of Canada.

Ms. Ruby Dhalla: Does any one else at all have a comment?

Mr. Ray Pennings: I would agree. I think the likely impact of this legislation is not going to be on the strikes once they happen per se. I think the more significant impact of the passage of this legislation would be, I suspect, for a period of time, an increase in labour disruptions. You could argue that it would affect the leverage both parties have at the table. You may see a changing of the balance of leverage that's there, and both parties need to sort through what that actually means.

Whenever you change the rules, as was mentioned in terms of complaints and legislation, but also in terms of what happens at the bargaining table, there is a testing process, and I would suspect you will see new legislation tested from both sides. Before that you know the set of rules that are there, and you know how far you can go and where the lines are and what the likely outcomes are. That probably will have more impact than the $1,000, depending on the company. For a company like Telus, in their strike last year, I don't suspect $1,000 a day was as significant as it would be for some of the smaller companies.

I would agree. I think most parties don't want to put themselves in a situation where they're breaking the law, and that's the bigger issue.

● (1620)

Ms. Ruby Dhalla: Do you think there should be a maximum that should be implemented at all?

Mr. Ray Pennings: I was on the labour side of things, not on the management. I'm not sure where that threshold is in terms of the range of companies that are covered by this legislation, so I really wouldn't want to guess.

Ms. Ruby Dhalla: I have just one last question, for the Canadian Employers Council. Could you please share with us the number of members that you have and, of those, the number who are subject to part 1 of the Canada Labour Code and the number who are unionized?

Mr. Steve Bedard: I'm not sure I have all that broken down. We have about 40 to 50 dues-paying members. We're a voluntary organization, so we don't have any full-time staff. We engage any employer, whether or not they're a member. If there's something going on at the ILO, we'll go to the right employer in Canada.

Members are, for example, Canada Post, the Canadian Chamber of Commerce, which, of course, many federal employers are engaged in, NavCanada, CN, and telecommunications companies. Many of the large federal employers are also members of the CEC directly or through their associations.

Ms. Ruby Dhalla: Thank you.

The Chair: Thank you.

Mr. Savage, we'll get to you in the next round. We're going to move now to our next questioner.

We have Madame Lavallée, for seven minutes, please.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much, Mr. Chair.

I quite agree with Ms. Davies that Mr. Vines, from the Canadian Industrial Relations Board, should have been invited next Tuesday rather than today. We're not concerned with exactly the same type of topic. I'm nevertheless going to ask him my questions. This is nice because you're listening to me.

Mr. Vines, I'm quite pleased that you've accepted the Chair's invitation. However, at a meeting that will be held next Tuesday, we'll be addressing more technical questions. You would in a way have been more at home at that meeting. Having said that, I'm nevertheless pleased to meet you and to ask you some questions.

As you yourself pointed out, subsection 87.4(1) of the current Canada Labour Code states: 87.4 (1) During a strike or lockout not prohibited by this Part, the employer, the trade union and the employees in the bargaining unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public.

The subject of this section, which appears in the left-hand margin, is described by the words "Maintenance of activities". In your opinion, should it have stated maintenance of essential services?

[*English*]

Mr. John Vines: The term "maintenance of activities" is used in the Canada Labour Code, but many people speak about the "maintenance of activities" in the Canada Labour Code as meaning essential services. There may be some dispute among parties as to whether there's actually any difference between maintenance of activities and essential services.

Maintenance of activities, as expressed in the Canada Labour Code, goes to the safety and health of the public. A book on labour terms in Canada put out by Sack and called *Labour Law Terms* defines essential services just in relation to ensuring the safety and health of the public.

There are other people who have a different definition of essential services, which they sometimes define as involving both the safety and health of the public as well as having an economic impact. Of course, the term "essential services" is not used in the Canada Labour Code. If you look in the margin, the only term that appears is "maintenance of activities".

● (1625)

[*Translation*]

Mrs. Carole Lavallée: Do you think the term "activities" corresponds to essential services? You're familiar with the Quebec Labour Code perhaps? Does that correspond to the description of essential services in the Quebec Labour Code?

[*English*]

Mr. John Vines: I'm not familiar with the Quebec labour code and the jurisprudence in Quebec.

I can tell you that the interpretation the board has applied to section 87.4 in regard to Marine Atlantic and various other employers involves just the protection of the safety and health of the public; it does not have an economic component.

[*Translation*]

Mrs. Carole Lavallée: To my knowledge, the maintenance of economic services is not considered as the maintenance of essential services under any of the labour codes.

Again, the Canada Labour Code states: (2) An employer or a trade union may, no later than 15 days after notice to bargain collectively has been given, give notice to the other parties specifying the supply of services, operation of facilities or production of goods that, in its opinion, must be continued in the event of a strike or a lockout in order to comply with subsection (1) and the approximate number of employees in the bargaining unit that, in its opinion, would be required for that purpose.

It then talks about how to notify the other party in order to determine essential services. It also addresses the agreement between the parties, its wording and its filing with the CIRB.

Lastly, here's what it says about cases in which there is no agreement: [...] the Board shall, on application made by either party no later than 15 days after notice of dispute has been given, determine any question with respect to the application of subsection (1).

Is that in fact what you do?

[*English*]

Mr. John Vines: I will try to explain the procedure as best I can.

First of all, section 87.4 is constructed so there's an obligation on the part not only of the union and the employer but also of the employees to ensure that during any strike or lockout anything required to be done to ensure the safety and health of the public is continued. So the construction of section 87.4 is such that there is an opportunity for the employer and the union to negotiate. If they reach an agreement, then under subsection 87.4(3), they can file that agreement with the board, and then it becomes an order of the board.

If they fail to reach an agreement, then pursuant to section 87.4, any time prior to 15 days after a notice of dispute, either party can come to the board. Once they do that, the board will inquire into the matter and will make a decision as to what is required to ensure the safety and health of the public. The parties are not permitted to engage in a legal strike or lockout until the board issues its decision.

When the legislation was very new and people were not very familiar with it, there was another provision there—subsection 87.4 (5)—which allowed the Minister of Labour to refer the issue to the board. When the provision was new, the parties would of course sometimes arrive at a notice of dispute and not have fulfilled the requirements of the initial parts of section 87.4. Once the Minister of Labour refers it to the board, the same thing is true: the parties do not have the legal right to strike or lock out until the board issues the decision.

That's basically how it's supposed to work.

● (1630)

The Chair: Thank you, Mr. Vines.

That's all the time we have for this round. We were just slightly over time.

We're going to move to Ms. Davies, for seven minutes, please.

Ms. Libby Davies: Thank you very much.

And thank you to the witnesses for coming today, and to our videoconference guest.

I have actually three questions to various witnesses, so I'll put them all out there, if you could respond to them.

First of all, Mr. Pennings, I know you're here listed as an individual, and I was certainly interested in your remarks. I just want to see if I'm correct that you actually head up an organization called the Work Research Foundation, that you've previously done work for the Canadian Alliance, and that you're a leading proponent on the right-to-work issue. I'd just be interested if you could illuminate us in terms of your background.

Secondly, to Mr. Bedard—and to the steelworkers who are here today—you raised the issue of the ILO and its importance and you raised Convention 87 concerning freedom of association, to which you felt this bill would be in opposition. I'm not sure if you're aware, but there's a lot of international jurisprudence on this issue and ILO legal experts have stated that the hiring of replacement workers to break a strike is a serious violation of freedom of association. I'm not sure if you're aware of that opinion. Maybe you could comment on that—and the steelworkers could comment as well.

In fact, while we're talking about the ILO, there's another convention, Convention 98, the right to organize and to bargain collectively. Canada has not yet signed on to it. I wonder, Mr. Bedard, if the Canadian Employers Council would actually support the Canadian government signing on to it, because I think you said you did support that.

My third question is to Mr. Vaydik, from the Northwest Territories. You've talked about the northern experience, but it seems to me there's an even stronger argument to ban the use of replacement workers when there's a labour dispute and strike in a remote location. In those situations, as I think we've already seen by experience, it's very hard to set up a picket line; you're talking about flying people in thousands of miles, which was certainly the case at the Ekati Diamond Mine. It's much easier for the employer to then bring in replacement workers. So I actually think that experience has shown us in those situations that not allowing replacement workers is a very important measure to ensure there isn't violence and a prolonged dispute as a result of replacement workers being brought in, because it's easier for the employer to do that there.

Those are my three questions, if the witnesses could respond.

Mr. Ray Pennings: Thank you.

I am the vice-president of research of the Work Research Foundation. On the form, it was business, labour, or individual, and I don't represent a labour organization or a business organization, which is why, I guess, I checked the individual box. I'm not here representing either side per se, at this time.

The Work Research Foundation is an independent think tank. We do some work in the area of labour relations. We've conducted a number of polls with Environics and Angus Reid, and we've publicized various things.

Our basic position has been that while we are very pro on collective bargaining, we think there are some fundamental changes that need to be made in the labour relations system. We've been consistently advocating for that.

From a philosophical perspective, it's where I'm at. Yes, I have been politically active at various times in my career.

In terms of your comments about the right to work, I actually have never supported the right to work. I have significantly opposed the right to work. I believe collective bargaining is a good thing. In the same way that employers hire lawyers, workers can hire unions to represent their interests.

In fact, democracy has to work. You need to have a collective voice. I have actually always been opposed to legislation on the right to work.

Ms. Libby Davies: Thank you.

Mr. Steve Bedard: In terms of the first question, the ILO has taken a position, of course, on the permanent replacement of strikers through temp agencies, etc. Under Canadian law and jurisprudence, of course, that's covered off as well. You cannot bring in people who were brought in after the strike commenced and fail to recall other people. It's not an issue under our current legislative environment in Canada federally.

As I said in my submission and in the brief we provided, the ILO convention talks about the permanent replacement, as opposed to the temporary replacement of workers, which is what we're talking about.

● (1635)

Ms. Libby Davies: I was actually quoting from an ILO legal opinion, where they talk about the hiring of replacement workers to break a strike. It's clear that it is a temporary thing. It's what their legal experts are saying.

Mr. Steve Bedard: Okay. I think it is somewhat covered in our brief.

Ms. Libby Davies: Okay.

Mr. Steve Bedard: In terms of Convention 98 and the right to collectively bargain, you're right that Canada has not ratified it. It's important to put it into context again.

In Canada, the right to engage in collective bargaining and the right to strike and walk out are subject to public policy considerations. Therefore, the right is not an absolute right, whereas the ILO will support it as being an absolute right.

The Canadian government has always taken the position that public policy considerations need to be taken into consideration. At times, they will deny the right or circumscribe the right of employers and unions to engage in collective bargaining that could possibly result in the right to strike or a walkout.

In fact, many of the complaints brought by the Canadian labour movement to the ILO are over back-to-work legislation.

Ms. Libby Davies: Does the CEC support Convention 98?

Mr. Steve Bedard: No, we don't.

Ms. Libby Davies: You don't support it.

Mr. Steve Bedard: No.

The Chair: Ms. Davies, you have about 30 seconds left.

Ms. Libby Davies: Could United Steelworkers respond?

Ms. Cathy Braker (Counsel, United Steelworkers): I actually wanted to respond to two of the questions.

The first one relates to Convention 87 and Convention 98. Part of the process of the Canada Labour Code and part of the purpose of the Canada Labour Code is to ensure that those broad freedoms, including the freedom of association, the right to organize, and the right to bargain collectively, are enshrined, balanced, and fair. Clearly, part of that freedom of association is the right to strike and to strike effectively.

It's always been our view, and it continues to be our view, that the only way we can strike effectively is with a ban on replacement workers. To bring a third party into the process upsets the balance and the purpose behind the code, which is to have the two parties resolve their bargaining differences, one on one, without the intervention of strangers or outsiders to the collective agreement and to the bargaining process.

The Chair: Thank you very much, Ms. Davies.

We're going to move now to the last questioner of this round. Mr. Lake, you have seven minutes, please.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

That was interesting, actually; Ms. Braker's comments at the end lead nicely into the questions I have for Mr. Bedard specifically.

I'm looking for some clarification. People talking about replacement workers oftentimes imply that it simply means folks off the street; they've never been associated with the company. That's why some have said that a booming economy means companies can't find replacement workers, so it doesn't matter, at least at the provincial level.

But this bill also prevents workers from exercising their right to work at their own company, I believe. It would, frankly, force workers to stay off the job—and managers as well—even if they've chosen to work in their own job at a site that they may have worked at for decades. Can you comment on that, please?

Mr. Steve Bedard: Yes. I think that's absolutely problematic with this legislation.

The federal sector is not like any other labour jurisdiction in Canada. It houses the federal backbone: transportation, communications, banking—

The board favours national bargaining units, so the organizations that are unionized tend to be national in scope. So from coast to coast, you're covering their entire operations. So it's not simply a single plant in a single town that's under a bargaining unit, which would be typical under a provincial certification, where they have plant-by-plant certification. We tend to have large companies operating across the nation, operating very critical services across transportation, communications, or ports and those things.

The proposed bill, as I understand it, talks really about replacement workers being people brought in—"strangers", I guess, is the term that's being used. But it goes beyond that. It covers employees already employed by the company in that bargaining unit who choose not to go on strike, which is a significant issue for us in terms of freedom of association. That's the issue that I had raised. It's a fundamental issue, which we have to come to grips with.

It also deals with contractors working in the establishment. The language of the proposed bill talks about the "establishment". The establishment, under the code, is a defined term. An establishment is a geography of the employer's organization. It really limits the use of managers across establishments, which are defined in geographical terms. But in the national scope of a bargaining unit where the employees on strike could be across that bargaining unit, that sort of thinking severely compromises an employer's ability even to use its own managers. Of course, contractors are also prohibited, even though they seem to be contractors who were previously engaged, prior to the work stoppage, in that establishment.

So it's much broader than some of the discussion today that seems to suggest that it's just people coming in from the outside temporarily to work during the strike. I think it's much broader than that.

● (1640)

Mr. Mike Lake: Okay, thank you for that.

I have another question for you. We've heard a lot about agreements to maintain services. The position of some witnesses has been that it's quite an easy thing to simply have unions and employers agree to maintain services in the case of a stoppage—we heard that yesterday, for example—even for critical federal infrastructure.

I guess it concerns me that, once again, we're creating a problem as we search for a solution to a problem that doesn't exist. In fact, it's arguable that we can protect essential services if we pass this bill at all. It also seems highly inappropriate to me that at the federal level we simply rely on the goodwill of either unions or employers to protect, for example, 9-1-1 services. Does this ad hoc process of protection seem wise to you?

Mr. Steve Bedard: No, it doesn't at all, and I have some experience with negotiations regarding maintenance-of-activities agreements.

I believe a witness last week from the TWU tabled a maintenance of activities agreement signed between that union and Telus. It's an interesting case. That agreement was signed two years after they started negotiating.

The union refused to meet with the employer to talk about the maintenance of activities requirement. The employer was eventually required to make application to the Canada board, which issued a decision ordering the union to engage in the discussions with the employer to reach a maintenance of activities agreement.

They did so, extremely reluctantly, and if you look at it—they submitted it to the TWU, and it was attached to the TWU submission—even in that letter of agreement, in paragraph 9, it says that the agreement is made without prejudice; that the TWU takes the position that a maintenance of activities agreement is not required in the telecommunications sector.

This is all around that issue. Section 87.4 talks very specifically about health and safety, whereas we would very strongly argue that in the federal sector, from an essential services perspective it's much broader than simply health and safety. It's provision of telecommunications to average householders; the entire banking industry depends heavily on telecommunications, as do many others. It would be a stretch to say there's a direct link between health and safety, but it may be, of course, the economic lifeblood of Canada.

● (1645)

Mr. Mike Lake: I have a final question in my short time.

We have also heard a lot of talk about the Sims task force in this committee. In a nutshell, the task force, as I understand it, basically came together to specifically address the fact that stoppages in the federal sector were requiring federal intervention, arbitration, or legislation over and over again, while continuing to cause economic and social disruptions, and that the task force's job was to balance the rights of the worker with the requirement of the Canadian economy to keep critical federal infrastructure running.

There's a reason that the federal code allows federal companies to keep a minimum level of services to the public running; isn't that right? For example, a strike of garbage workers or at the mine is very different from one that affects your phone lines, or your ability to get money or to receive direct deposit cheques from the government, to have your grain shipped, or to get food transported to remote communities.

Could we have your comments on that?

Mr. Steve Bedard: Concerning the Sims task force you are absolutely correct. They were balancing the competing interests, trying to give as much opportunity as possible to both parties to freely collective bargain, but at the same time to deal with public issues and concerns. They balanced that through section 87.4, through the replacement worker clauses in the code, and I think they achieved the balance quite well.

I'd be very surprised if anybody, looking back over bargaining that has taken place across the federal public sector since the Sims report recommendations were passed by Parliament in 1999, were not convinced that there has been vigorous and free collective bargaining in the federal public sector, leading to outcomes that are good for both workers and employers.

The Chair: Thank you.

Thank you, Mr. Lake. That's all the time we have.

We're going to move now to the second round. Mr. Savage, you have five minutes, sir.

Mr. Michael Savage (Dartmouth—Cole Harbour, Lib.): Thank you, Chair, and thank you all.

My first question is for Mr. Vines.

In your submission you indicate that any change to this particular provision in the existing code would likely cause an increase in the board's caseload. Do you anticipate that this is going to cost you money? Are you going to have to bring in more resources to handle this change?

Mr. John Vines: The most important thing for the Canadian Industrial Relations Board is the appointment process. When you look at the current structure of the board, our chairman's term expires at the end of 2007. We have another vice-chair whose term expires at the same time. Two of our vice-chairs' terms expire this summer, and one expires in 2008.

Just this January, we had three full-time members for the employer side and three full-time members for the union side. This is an issue you would want to use a representational panel on. For the year or so prior to this January when we got our two members, we were operating with just one full-time and one part-time. It is very difficult to put together representational panels.

We have some part-time members, but those part-time members have other careers, and it's very difficult to schedule them. So the board's being able to deal with these issues in a very quick manner, should this legislation come into effect, depends upon our having the proper people in place at the time this proposed law comes into effect.

Mr. Michael Savage: So is it your expectation it might require more resources than you would normally have?

Mr. John Vines: What I'm saying is that right now we have four vice-chairs and—

Mr. Michael Savage: But in terms of administrative load, you wouldn't be able to handle this perhaps now?

Mr. John Vines: If we had the proper complement that's in the code now, I'm sure we would be able to handle it, but at any given point in time we're often short. Given the very nature of these things, they're going to require the board to react very quickly, and you need to have the bodies in place to be able to do that.

Mr. Michael Savage: Okay. Thank you.

We heard a lot from Mr. Bedard, and he had some good testimony. I wonder if Mr. Roy or Ms. Braker had any thoughts on the comments that Mr. Bedard has made so far in his submission. If you don't, that's fine.

Ms. Cathy Braker: I would say a few things in response to what Mr. Bedard has said, and perhaps this is broader than just the comments he has made.

One of the things the committee seems to be concerned about is this issue of essential services. I noticed earlier that there was some discussion about the fact that the language of the Canada Labour Code doesn't actually reference the term “essential services”, but refers to “maintenance of activities”. There was some reference earlier to the language that talks about “immediate and serious danger to the safety and health of the public”.

Obviously, the United Steelworkers represents employees across Canada, and we obviously work in all of the jurisdictions across Canada. I can tell you that the language that is reflected in section 87.4 is language that is reflected in almost all of the statutes dealing with essential services across Canada. So the B.C. statute itself talks about having intervention where a dispute poses a threat to the health, safety, or welfare of the residents of B.C., and the process under the B.C. code is much the same as the process under the Canada Labour Code.

In addition to that, I would note that I know of more than one board decision in which the board itself has referred to this provision as an essential services provision. So I think the board would be surprised to find that this wasn't considered to be an essential services provision. In addition to that, I can tell you that having practised and having actually dealt with these kinds of applications, it has always been the case when I have appeared on these kinds of applications that they have been dealt with as essential services applications. Certainly there is nothing in this to distinguish them from the other kinds of essential services applications that you would find in B.C. or in Quebec or in Ontario. So I did want to comment on that.

● (1650)

The Chair: Mr. Savage has one more quick question.

Mr. Michael Savage: Thank you, Mr. Chair. You're a very obliging chair, as far as chairs go.

I just wanted to make one comment. We are coming to the end of these hearings, and I don't know if this bill is amendable or not. Some people say it is, some say it isn't. But I would encourage anybody who has some suggested amendments to get them in to us very quickly. Give some thought to that, or else this is going to be a no-go and somebody is going to be disappointed. That may be the case anyway, and that may be for the best. But if you have any thoughts on amendments, let us know.

Thank you for taking the time today.

The Chair: Thank you.

We're going to move now to Mr. Lessard, for five minutes, please.

[*Translation*]

Mr. Yves Lessard (Chambly—Borduas, BQ): Thank you, Mr. Chair.

I'd also like to thank our guests for coming and giving us their opinions on Bill C-257.

I'll start by commenting on a certain number of statements by Mr. Bédard. I believe that everyone here understands that we have the delicate and important responsibility of making recommendations to the House of Commons concerning this bill. We're trying as hard as possible to grasp the essential aspects of your remarks. You represent a very influential organization, and I've tried to understand the grounds for your objection to Bill C-257. At the outset, you discussed the unwarranted politicization of labour relations. You said that opening the door to other changes would result in numerous complaints. Throughout the discussions, I didn't hear any actual examples of that. I looked elsewhere, and I believe that Mr. Vaydik gave us the best example of what we could apprehend, because he came up with something concrete.

I grew up in northern Quebec, in a region like the one Mr. Vaydik now represents and where Aboriginal communities also live. I was familiar with ice bridges which were used to transport timber and other materials. You cited that example and talked about a strike in the transportation field, trucking, for example. You said that approximately 110,500 shipments were transported over the ice bridges in a few weeks because the ice subsequently melted. When you explained that, I thought that you would surely talk about human beings at some point. But no, you told us that it was important to bring in equipment, tires and machinery to operate the mine. I thought you were surely talking about a salt mine, that there must be something. No, you were talking about diamond mines. I wondered what was so essential that we might apprehend the temporary stoppage of the mine's operations. Is lacking diamonds to decorate the jewellery of the earth's rich people something essential? I don't mean to offend you by saying that. On the contrary, I thank you because that clearly illustrates what's being sought through this bill.

If by chance there was some danger of a diamond shortage, essential goods or goods for the health of the Aboriginal communities, we could say that there shouldn't be any replacement workers, that we should see with the union—because these are sensible people—and agree on essential services. I'm thinking of the communities of Nunavut, Kuujuak, Juujjuarapik and Purvinituq. You're probably familiar with those communities, which are very isolated and, at the same time, organized, very self-sufficient, but that need essential services. I'm making these remarks to note the distinction that must be drawn between what is essential to a community and what is not.

● (1655)

[*English*]

The Chair: You have one minute.

[*Translation*]

Mr. Yves Lessard: When someone tells us that that could close down the mine, I say that you don't close down the mine, you negotiate. You don't negotiate at the mine because you're dependent on the trucking.

I apologize for not having a question, but I want to tell you that, if you have any other remarks to make to us, perhaps they'll convince us of the merits of not passing this bill. However, your remarks have convinced us—they've convinced me in any case—that we should ensure that this distinction is included in the bill without altering its scope. I'm telling you that.

[*English*]

The Chair: Thank you, Mr. Lessard.

We're now going to move to Ms. Davies for five minutes, please.

Ms. Libby Davies: Maybe I can pick up where Monsieur Lessard left off, because my earlier question to Mr. Vaydik was concerning the north.

You mentioned the diamond mine and the history there. But in the case of the recent labour dispute at the Ekati diamond mine, we're talking about a multinational corporation that has raked in huge profits, and there were issues there about replacement workers.

I just want to put this to you again. Monsieur Lessard has raised the issue of essential services, and there is a provision in this bill linked to the labour code about how they are defined. But I believe there are some very strong arguments that, in places that are very remote, where it's very hard to set up a picket line and it's easy for the employer to fly people in as replacement workers, this kind of legislation becomes very important as a preventative measure.

We've heard a lot of testimony here from witnesses who point out that most employers won't need this legislation. Hopefully, you won't have that many applications before your board. But there are instances where disputes take place and replacement workers are brought in and where that becomes the focus of the dispute, rather than settling the strike. That's one of the strong arguments for this bill.

I'd like to ask Mr. Vaydik to respond as to why this isn't actually a preventative tool, particularly given remote locations.

Mr. Mike Vaydik: Thank you.

Remoteness works both ways. Management is challenged by our remote locations, and unions are challenged by our remote locations, but ore bodies are where we find them. We found ones that are very valuable, as you point out, but they are also remote.

In the recent example of the Ekati strike, I know that picket lines were set up at the pickup points for transportation to those remote sites, and in several other communities than Yellowknife. Obviously there would be no point in picketing at the mine site, but the transportation links were picketed.

In fairness, the company and the union did reach an agreement over a fairly short period of time, and there were no serious incidents of picket line inappropriate behaviour.

You say there were problems. I think there are also problems from the management side. I wish I'd brought a slide of that winter road that snakes across the tundra. Literally there is nothing on either side of it for hundreds of kilometres. It's one very tenuous link that could be very easily blocked by picketers.

That's the fear, I think: that this new bill would tip the balance in favour of the union.

In looking at the essential service nature of the issue, if you don't consider provision of a job essential service—People pay us to mine those diamonds. Those jobs are heartily sought in the North's fragile economy.

There are approximately 2,500 jobs in the diamond mining business right now. Our economy is showing for the first time that the Northwest Territories may become a “have” rather than a “have not” place. It's an amazing time to be in the Northwest Territories, and it's caused by the discovery and mining of diamonds.

● (1700)

Ms. Libby Davies: Let me quickly respond.

I know that in the Ekati dispute the use of replacement workers did prolong the length of the dispute. If that hadn't been allowed, I think you would have seen a much quicker settlement. And yes, there were picket lines set up.

Often we've heard testimony that confuses the issues of a strike with the issue of replacement workers. Yes, there are issues surrounding a strike that people don't like, on both sides. But we're not talking about a strike here; we're talking about banning the use of replacement workers, as a preventative measure to ensure that we can actually focus on the issues of the strike and get it resolved more quickly.

I really feel that this point is being confused; a lot of the employer groups just keep on coming back to the issue of the impact of a strike. Well, yes, we know there impacts from a strike, but there's a legal right to strike, and that's not what we're debating here.

The Chair: Thank you, Ms. Davies.

We're now going to move to the last questioner of round two. Ms. Yelich, for five minutes please.

Mrs. Lynne Yelich (Blackstrap, CPC): Thank you.

My question is to Mr. Vaydik.

I can't convince anybody of how important this legislation would be for our farmers, because we are landlocked but have to ship our grain to the coast. How about putting it into perspective of how important it is for mining?

As you know, we have some very important mining happening in Saskatchewan. You just said it: the north is finally going to have jurisdiction, and that's what's happening in Saskatchewan. I would like you to put what's happening into perspective. We are leaders in uranium, potash, and diamonds—and I realize that's not essential in some people's minds. Can you put it into perspective?

I want to represent my province as well. There seems to be the mindset that it's only corporations and labour that are going to hurt, but our province, our jurisdiction, is going to hurt big time. I would like you to put that into perspective in mining, because it is the main sector or industry now and has taken over from farming in Saskatchewan.

Mr. Mike Vaydik: Unfortunately, in the north our climate doesn't lead to farming. We have mining and an increasingly promising oil and gas sector, and that's about it. We're not commercial fishermen in any great numbers, we're not foresters in any great numbers, our climate—

Mrs. Lynne Yelich: My question is, are you familiar with the mining that's happening in Saskatchewan? Or what would happen if this kind of legislation passed? What kind of impact would it have?

For example, we have a thriving uranium sector that's employing aboriginals in very good jobs. We're covering all the bases with good companies, such as Cogema and Cameco, which have very good relationships with labour. I think this kind of legislation would hurt them. It's important to express that to this committee. I'm heartened to see that one of my colleagues is here from Saskatchewan, and I want him to know how important this would be for our province to make sure that this legislation doesn't become law.

● (1705)

Mr. Mike Vaydik: We're certainly aware of the good efforts that have been made in employing aboriginal people in the mines in northern Saskatchewan. In fact when we set up our early mine training committee in the Northwest Territories, we looked to Saskatchewan as a model. As recently as a few weeks ago, northern aboriginal communities were invited to go and examine the mines in northern Saskatchewan.

Unfortunately, I can't make a direct comparison, because I'm not aware of the infrastructure that allows those mines to operate. I understand there are all-weather roads. The time constraints of a winter ice road might not be exactly the same, but we certainly recognize the importance in those remote northern communities of having a job and an economy to participate in. Those communities really didn't have much happening for them until the mining industry started.

The Chair: Mr. Lake.

Mr. Mike Lake: Mr. Pennings, I wanted to quickly get your comments on some testimony we heard with respect to this bill and its impact on the hard-earned balance that currently exists in labour negotiations.

Ms. Braker made a comment today that sounded very familiar. Back in one of the earlier meetings we had Paul Forder as a witness from the CAW. When he was asked about the fact that even managers wouldn't be allowed to work to keep their own businesses afloat under this proposed legislation, his answer was:

> If the operation can't function with replacement workers, that's fine with us. We'll be able to get a settlement earlier. That's something all members should be interested in pursuing. That's the whole purpose of the legislation.

Today Ms. Braker commented in regard to the importance of this to the union. I believe she said that this will allow us to “strike effectively”. It sounds very similar.

Is it fair to suggest that if this bill is passed, it would tip the balance in favour of the union, so as to create an imbalance that would offer little choice to the employer, but to give in or shut down?

Mr. Ray Pennings: There are two things, in terms of balance. Obviously, the use of replacement workers affects the strike. I've been in a strike situation along the way, and it's ugly. It's difficult from all sides; emotions are raw. Obviously, once you're in a strike, both sides do whatever they can to win. Both try to respect the law, yet we all know that sometimes the boundaries are tested rather severely in strike situations. I don't think the fault lies on either side of the labour relations equation. There are examples on both sides that could be pointed to.

I would point to the effect of this legislation—not its effect when it's actually used, but the effect it will have on the bargaining process, which I think is more significant. There are two sides to that as well. On the one hand, there may be situations in which it is preventative, and it may prevent or shorten a lockout. On the other hand, I can also anticipate situations in which it will lead to more stoppages. We could both lay out scenarios, and obviously none of us has a crystal ball to lay out the future exactly.

I was involved in one dispute where the essential problem was within the union, along the way. It was a 51-49 sort of division within the union, and at the end of the day there was nothing it could ratify. It ended up going to a labour stoppage.

Those were internal issues that had to be sorted out, and it took the discipline of not having some paycheques to cause some degree of consensus to come within the bargaining units. I guess that's the bottom line.

Labour law needs to be broad and comprehensive and to address all sorts of given situations. We can pull data on either side of the equation, but every circumstance is unique. I suspect that the introduction of this will actually change the balance leading up, and in ways that I'm not sure anyone can totally and accurately predict, which is why you have all the competing numbers in front of you that you need to parse through.

The Chair: Thank you very much.

I want to welcome Gary Merasty, who will be replacing Mr. Dryden on the committee. Gary, welcome. You now have five minutes.

Mr. Gary Merasty (Desnethé—Missinippi—Churchill River, Lib.): Thanks, Mr. Chair.

I'm new to this committee, as was pointed out, but also I've been a member of the steelworkers union for a number of years, working in a mine in Flin Flon.

I've been involved in the private sector as well, in different capacities in corporations, and have been on the board of an airport authority. I get both sides of this issue. I hear a lot of discussion and get a lot of correspondence directed my way.

Of course, key—and I don't expect an answer on this one—is the definition of “essential services” and where we're going to go with it, and what happens with airports and others.

The second issue is of course the impact on economically marginalized areas of the country. There are pros and cons to this.

But even if I have both pro-union and corporate experience, the question is, human nature being what it is, that in using replacement workers, it's implied that the employers use them as a hammer against the striking workers. Mr. Lake asked whether you swing the pendulum the other way by now taking that away and giving the hammer, human nature being what it is, to the unions to use against the employers.

This is a question I get from both sides. In a Saskatchewan context —it's a big union province—you get both sides.

Maybe Mr. Roy could speak to that. I know he's been trying to cut in a few times to interject on some answers. And maybe you could give me your perspective on the answer given earlier.

● (1710)

[*Translation*]

Mr. Daniel Roy: I'm pleased to have the opportunity to answer a question.

I'm a plant worker. I've worked in plants in Sept-Îles, on the North Shore, in Quebec, for 15 years. For as long as I've worked, the Quebec Labour Code has prohibited replacement workers. I've taken part in strikes, and the employer opposite us was an equally strong negotiator. When we went on strike, there were no replacement workers. That disciplined the parties, and forced them to sit down and negotiate in good faith.

I'll cite another example. On the North Shore, in Sept-Îles, the Iron Ore Company of Canada and the Quebec Northshore and Labrador Railway, a federally-regulated iron ore company, imposed a lockout in February 1994 to force workers to accept the company's conditions. The business hired replacement workers during the lockout. Helicopters flew over the workers during the night to bring in replacement workers. Bodyguards monitored the workers on the picket line. The result of all that was violence, dismissals and all kinds of violent measures. We focused all our energies on resolving all those situations rather than settling the collective agreement. For all cases under provincial regulation, replacement workers are prohibited because we don't want those kinds of situations. The parties are generally disciplined, and they know how to enter into collective agreements.

You have proof of that in Quebec. There is no revolution. I'm not telling you that business owners were happy when that happened. However, they learned to live with it, and there was no economic disaster or overthrow or revolution. On the contrary, that disciplined both parties and forced them to sit down around a table and to properly enter into a collective agreement.

In Quebec, we sign collective agreements without disputes between 95% and 97% of the time. We must have done something right. Before we had the law in Quebec, there were replacement workers in the 1970s. The people from Murdochville lived through the time replacement workers came and took the workers' place in the plants. That divided communities for years. That's what breaks up relationships between human beings. That's what breaks down the economic life of a region.

When a collective agreement is signed where there is a relationship of power in which the parties are equal, this ensures that the parties are disciplined. It isn't a miracle. Come to Quebec and you'll see that this has been successful.

[*English*]

The Chair: Thank you very much.

We're now going to move to Mr. Brown, who has the last five minutes for today. Mr. Brown.

Mr. Patrick Brown (Barrie, CPC): Thank you, Mr. Allison.

I have three questions, if I could hear from Mr. Bedard and Mr. Pennings on them.

The first question relates to my experiences in Ontario. As an Ontario MP, we've had some unfortunate experiences with a ban on replacement workers. I remember vividly 1993 to 1995 and the economic recession that occurred at the same time. It is very interesting to note that Premier Harris reversed that economic mistake. Even more recently the Liberal Premier of Ontario, Dalton McGuinty, chose the same approach as Premier Harris and decided that it wasn't an appropriate route to follow by banning replacement workers. So I want to get your comments on that, first of all, why you think Ontario has picked that approach.

Secondly, I have a major auto sector very close to my riding. One of the concerns I know they have is not just the potential economic recession you may have, but it's the investment that may not arrive. I want to get your perspective on how this affects potential investment. Do you believe that employers make a decision when they're looking at areas in which to invest and actually look at that criteria and look at regions that ban replacement workers? Is that something that would be involved in their decision-making process?

Thirdly, when you look at the broader balance of collective bargaining, what are your concerns about how this may skew the delicate balance we have? Right now, we have been moderately successful in seeing labour peace in Canada, if you look at it today compared to 25 years ago. One concern I have is, if we see this legislation become the law of the land in Canada, are we going to see more use of back-to-work legislation? Are you concerned that we're going to return to a day where that's a more active recourse, by skewing the balance?

● (1715)

Mr. Steve Bedard: If I have the questions correctly, in terms of the auto plant, definitely.

We're talking about the federal sector, and I've heard the comments made. I'll reiterate what I said earlier, which was that the federal sector is not like any other sector in Canada in terms of labour jurisdiction. It's the backbone of Canada, across all provinces. So the auto plant...and that's part of the issue here: we're talking about the federal sector. If something grinds down the federal sector with respect to the key services provided by federal sector employers, the auto plant stops having trucks coming to its door, the railroad can't deliver, so it grinds that plant down. And it's not a party to the dispute. In fact, it's in a different jurisdiction, in terms of labour relations. There's definitely an impact on virtually every business in Canada from labour disputes.

I'd like to also make a comment that the examples we're using, some of the examples that are being brought up, are not applicable to the federal sector. The comments have been made that we've had relative labour peace. Every employer and union goes through cycles, there's no question about that. But the federal sector labour relations are seen by most jurisdictions in Canada and internationally as extremely positive. That's the federal sector.

So in terms of investment decisions, labour issues do factor in. That would be part of the consideration, no question. I'm sure it is a consideration. It was talked about in terms of the submission, I believe, from B.C., so I assume it is. I'm not privy to that.

In terms of the balance that's achieved—

The Chair: You have one minute left, Mr. Bedard.

Mr. Steve Bedard: —there's no question you will see—Because essential services are not covered off under section 87.4, the unions rarely sign them without threats, and most collective agreement negotiations in Canada do not have a letter of agreement on maintenance of activities. That's the reality. They're not reached.

So you will have a balance.

Mr. Patrick Brown: Do you have a quick comment?

Mr. Ray Pennings: Sure, let me just make a quick point on each.

In terms of linking economic data—there's economic prosperity data and there's labour stoppage data—to the present, you can run regression analysis and ask, is this connected or not? There are complex mixes of things, so I'd hesitate to jump to say the presence or absence of one piece of legislation either made things great or made things terrible. There's a whole mix of things—and that goes into the investment, as well.

Jumping to the third thing, what we really need—and I reference that in my presentation as well—are vibrant worker-representative organizations that deal with some of the skill challenges, some of the benefit challenges. In a world of increasing labour portability—people don't work under one union contract or for one employer like they used to—we need to rethink some of our labour organizations and how they fit into the new modern economy. I am quite sure that whatever the answer is, it's not going to be helped necessarily by the passage of this legislation

● (1720)

Mr. Patrick Brown: Thank you.

The Chair: Okay, and thank you very much.

I'd just like to take the time to thank all the witnesses for being here today.

We're going to suspend for a couple of minutes just to clear out the witnesses, and then we're going to have a couple of motions that we need to deal with to deal with some of the legislation coming up.

I would like to thank the witnesses once again. Have a great afternoon.

● _____ (Pause) _____ ●

● (1725)

The Chair: I just want to let you know that the legal opinion that Mr. Bedard talked about will be distributed. He did have it in both official languages.

What we need to do now is move three motions that will help in terms of letting people know, and certainly the clerk in terms of trying to get amendments in.

The first motion we have before us is that the members of the committee submit to the clerk all of their proposed amendments to Bill C-257 no later than February 14, at noon. Mr. Silva will move that.

The reason is that we have the council in on the 13th. What will happen is that if we get hundreds of amendments, we may have to go all day Thursday. But it is still on, right now, that we're going to start on Wednesday afternoon, on the 14th. So that's the case. I don't anticipate a ton of amendments, but stranger things have happened. But we do need to set a timeline. Those amendments can be tabled now.

If there's no discussion on that, I will just call the vote.

[*Translation*]

Mrs. Carole Lavallée: I'm sorry, but I didn't hear what you said.

[*English*]

The Chair: Mr. Silva moved that we hear amendments only until the 14th.

[*Translation*]

Mrs. Carole Lavallée: If I understood correctly, you want to postpone the tabling of amendments until February 14. Did I hear correctly?

[*English*]

The Chair: No. We just want to receive amendments no later than the 14th. We have to have a cut-off time so that the clerk can organize that. They can be tabled any time.

[*Translation*]

Mrs. Carole Lavallée: Would that be the thirteenth?

[*English*]

The Chair: It needs to be the 14th, because people are going to be listening on the 13th to the council. It will be Tuesday afternoon, so we need to leave it until at least noon the next day. We can't leave it forever. I believe that will be enough time for the clerk to get those amendments organized.

[*Translation*]

Mrs. Carole Lavallée: I'm very sorry, Mr. Chair. Normally I understand quickly, but I don't understand exactly what you want.

The schedule still provides that we'll begin the clause-by-clause consideration of the bill next Wednesday at 3:30 p.m. That's good. So the amendments must be tabled before the fourteenth or else time will be too short. We'll only have a few hours to react. Ideally, then, amendments should be tabled on the thirteenth, on Tuesday.

[*English*]

The Chair: The only challenge is that we have a technical briefing on the 13th from the officials, from 3:30 to 5:30. I don't anticipate a lot of amendments. We have made provision, though, that if there are too many amendments, we will sit all day Thursday. The date to get this done is this Thursday. We will be done by 5:30 on Thursday. That was the motion as read before.

Ms. Davies.

Ms. Libby Davies: Just to clarify, my understanding is that because we're hearing witnesses on the Tuesday who may affect what we want to say for amendments, we probably need to hear them. You may have some amendments ready to go before that—

The Chair: Exactly.

Ms. Libby Davies: —in which case you can get them in, but just on the chance that something comes up at the end, we'll have a deadline that allows us to hear all the witnesses and still gives you the following morning to get them in.

You could get them in earlier, but it just gives you that little bit extra in case something comes up at the end when we hear the last technical witness of the day before.

The Chair: Thank you, Ms. Davies. That was very well put.

Mr. Lessard.

[*Translation*]

Mr. Yves Lessard: Yes, that's a wise suggestion, provided we agree amongst ourselves that the parties that know their amendments in advance will send them to us for February 13. As for the others, we'll take them at the last minute. We'll support that suggestion to facilitate matters.

Mrs. Carole Lavallée: Mr. Chair, I'd like to add a comment. By tabling the amendments as soon as possible, we'll be able to discuss them with the technical resource persons who will be here. Otherwise, the next day, we'll be stricken by existential angst on technical matters.

● (1730)

Mr. Yves Lessard: We find it very hard to live with angst.

[*English*]

The Chair: We have not received any amendments as of yet, and I don't anticipate there will be a whole lot of them. We have the 14th. That gives us a chance to hear the technical briefing.

(Motion agreed to)

The Chair: The second motion we have is that the members of the committee submit to the clerk all of their proposed amendments to Bill C-36 no later than February 21, at noon.

An hon. member: So moved.

[*Translation*]

Mr. Yves Lessard: Mr. Chair, I think it would be appropriate to adopt the same approach and to send in our amendments in advance, particularly since we have more time for Bill C-36, while at the same time abiding by the schedule here.

[*English*]

The Chair: Anyone can get their amendments in early. That is definitely the case. We are planning to go to clause-by-clause on February 22. So once again, this will be February 21.

(Motion agreed to)

The Chair: The last one I have before us is that the members of the committee submit to the clerk all of their proposed amendments to Bill C-269 and C-278 no later than February 28, at noon.

Once again, we are planning to go clause by clause on March 1.

Mr. Gary Merasty: I so move.

(Motion agreed to)

The Chair: Thank you very much.

The meeting is adjourned.

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