

No “General Prohibition” on Replacement Workers in the Federal Sector **~ Canada Industrial Relations Board**

July 2026

In *Montreal Gateway Terminals Partnership*,¹ the Canada Industrial Relations Board (“CIRB”) released its first reported decision interpreting the new Bill C-58 restrictions on the use of replacement workers in the federal sector. The CIRB dismissed the union’s complaint, finding the employer did not violate the *Canada Labour Code* (“CLC”).

This decision confirms our earlier interpretation of Bill C-58, that **an employer is permitted to use non-bargaining unit employees or managers to perform bargaining unit work, if they were employed at the workplace prior to the date on which notice to bargain was given.**

Note: Bill C-58 significantly amended the CLC rules regarding replacement workers. Many categories of “replacement workers” can no longer perform bargaining unit work during a legal work stoppage. Further, an employer is no longer permitted to allow any member of the bargaining unit to cross the picket line to work, regardless of that employee’s personal choice (with limited exceptions).²

What happened?

The employer, Montreal Gateway Terminals Partnership (“MGTP”), operates sections of the Port of Montreal. Canadian Union of Public Employees, Local 4317 (“CUPE”) represents bargaining unit employees at MGTP.

On September 3, 2024, MGTP provided CUPE with notice to bargain in regard to the collective agreement between the parties expiring on December 31, 2024. The parties then engaged in bargaining, which was ultimately unsuccessful. On September 22, 2025, CUPE went on strike.

During the strike, MGTP used five of its non-unionized workers to perform the following work, which CUPE alleged was bargaining unit work:

- Four employees did the work of trucking agents
- One dependent contractor conducted analysis of operational data.

All five workers were hired before the notice to bargain was given on September 3, 2024, and all worked at the same address as the striking bargaining unit employees.

¹ [2026 CIRB 1225](#).

² For more information regarding Bill C-58 and the federal sector restrictions on the use of replacement workers, see our previous briefing note: [Bill C-58 to Amend Canada Labour Code – Will limit use of replacement workers and expedite process for maintenance of activities agreements](#).

CUPE's Argument

In essence, CUPE argued the CLC amendments created a blanket ban on the use of replacement workers. Specifically, CUPE alleged:

- All five workers performed bargaining unit work during the strike and this violated the new CLC restriction on the use of replacement workers
- The circumstances did not fall within any of the CLC exceptions, which allow an employer to use replacement workers to deal with certain imminent or serious threats.
- MGTP's use of replacement workers was solely for the purposes of continuing its operations, which interfered with CUPE's right to strike and was not permitted by the CLC.

The CIRB disagreed.

CIRB Decision

The CIRB determined, without requiring an oral hearing, that MGTP did not violate the replacement worker restriction set out in section 94(4) of the CLC.

CLC Restriction on Replacement Workers

As of June 20, 2025, section 94(4) of the CLC prohibits the use of the following replacement workers during a legal work stoppage unless an exception applies:

- a) Any employee, manager or person employed in a confidential capacity in matters related to industrial relations, hired after notice to bargain was given.
- b) Any contractor (other than a dependent contractor) or any employee of another employer (*i.e.*, a traditional replacement worker).
- c) Any employee whose normal workplace is one other than where the work stoppage is taking place, who was transferred to the location the work stoppage is taking place after the notice to bargain was given.
- d) Any volunteer, student, or member of the public.

Significantly, the CIRB confirmed that section 94(4) does not contain a general prohibition on the use of replacement workers. Instead, Parliament chose to prohibit only the use of these categories of persons to perform the work of striking or locked-out employees. The CIRB held: "the clear meaning of the provisions does not allow the CIRB to find that Parliament intended to completely prohibit the use of replacement workers in every case or to prohibit the employer from continuing its operations in all circumstances."

Note: Section 94(6) prohibits an employer from using an employee **in the bargaining unit** during a lawful work stoppage, unless it is under a "maintenance of activities" agreement or to deal with a situation that could reasonably be expected to present certain threats. In this case, the five replacement workers were non-unionized and therefore not in the bargaining unit.

Trucking Agent Work

The CIRB held the four workers that performed trucking agent work were all hired by MGTP before the date on which notice to bargain was given, as proven by their employment contracts. Because these individuals were hired at the workplace before the notice to bargain was given, these employees were permitted to do bargaining unit work during the strike:

an employer that uses the services of employees hired before notice to bargain was given, or the services of persons who perform management functions or are employed in a confidential capacity in matters related to industrial relations, hired before notice to bargain was given, is not violating the provisions of section 94(4)(a) of the Code.³

The date on which employees were trained to perform bargaining unit work was not relevant:

the date on which employees ... may have been trained to perform bargaining unit work is not relevant to the analysis that the Board must perform to determine whether section 94(4)(a) of the Code has been violated. It is the hiring date, not the training date, that is relevant to the application of section 94(4)(a).⁴

The CIRB confirmed “workplace” in section 94(4) of the CLC refers to a geographical location and does not require something more. As a result, because these four employees all worked at the same address as the bargaining unit, they worked at the same “workplace”:

the term “workplace” refers to a geographic component, which takes into account the place where the employees, who are in a legal work stoppage situation, perform their duties. This geographic component must be identified in each case, taking into account the factual circumstances of each situation.⁵

Data Analysis Work

The individual performing this work was hired as an employee in 1995. In the winter of 2025, she became a “dependent contractor.” The CIRB noted the definition of “employee” in the CLC includes a “dependent contractor.” Therefore, this individual was still an employee within the meaning of the CLC when the strike occurred.

Because the individual was an employee outside the bargaining unit who was hired before the notice to bargain was given (*i.e.*, in 1995), it did not matter whether or not she was doing bargaining unit work. Furthermore, there was no evidence this individual’s workplace was anywhere other than the address at which the bargaining unit worked. Therefore, the CIRB held, the employer was entitled to use this worker to perform bargaining unit work during the strike.

³ At para 52.

⁴ At para 54.

⁵ At para 56.

Key Takeaways

This decision is helpful because it confirms Bill C-58 does not impose a blanket ban on an employer using replacement workers during a lawful strike or lockout. Rather, an employer is permitted to use a replacement worker, unless that worker falls within one of the prohibited categories set out in section 94(4) of the CLC.

Contingency planning should begin as early as possible, long before the employer receives notice to bargain, or a work stoppage, and preferably with the assistance of legal counsel, experienced in this area of the law. To maximize an employer's ability to continue operations during a work stoppage, at the very least:

- **Identify non-bargaining unit employees, dependent contractors and managers** who work at the work stoppage location and were hired before notice to bargain was given. These employees can perform bargaining unit work during a work stoppage.
- **Consider hiring additional non-bargaining unit employees** prior to notice to bargain being given. This may increase the number of employees available during a work stoppage.
- **Correctly document relevant employment information** including each employee's hire date and geographic workplace. Employment contracts, job records, reporting location, and any other evidence showing when and where the individual worked may be central to defending a complaint.
- **Consider whether a "maintenance of activities" agreement is appropriate.** Under the CLC, this agreement allows an employer to use bargaining unit employees during a work stoppage to prevent an immediate and serious danger to the safety or health of the public.

For more information or assistance contact your Sherrard Kuzz LLP lawyer or info@sherrardkuzz.com.

*The information contained in this article is provided for general information purposes only and does not constitute legal or other professional advice, nor does accessing this information create a lawyer-client relationship. This article is current as of **July 2026** and applies only to Ontario, Canada, or such other laws of Canada as expressly indicated. Information about the law is checked for legal accuracy as at the date the article is prepared but may become outdated as laws or policies change. For clarification or for legal or other professional assistance please contact Sherrard Kuzz LLP.*



Chambers
Ranked

Sherrard Kuzz LLP, Employment & Labour Lawyers

No "General Prohibition" on Replacement Workers in the Federal Sector - Current as of July 2026

Main 416.603.0700 / 24 Hour 416.420.0738 / www.sherrardkuzz.com