

Tabletalk

**CUPE's
Bargaining
Resource**

SUMMER 2017

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BARGAINING STRATEGIES: **PROTECTING SICK LEAVE**

CUPE 2073 beats back attack on sick leave

Workers at the Canadian Hearing Society (CHS) were on strike for 10 weeks to stop their employer from replacing their existing sick leave plan with an inferior short-term disability (STD) plan.

Representing 227 Ontario workers, CUPE 2073 members are 90 per cent women and 40 per cent deaf.

The local's contract expired in 2013. CHS claimed it could no longer afford the existing sick leave plan, where members banked unused days, with "cash out" on retirement.

At the same time, less than half of the members had enough sick days banked to carry them through the waiting period required for long-term disability. New members who hadn't had time to accumulate many sick days, and those who had previously used sick days, were vulnerable.

On the eve of the strike deadline, the CHS tabled a concessionary STD plan that provided just six sick days annually at full salary. The employer also proposed zero wage increases and lump sum payouts for a workforce that had gone four years without raises. This caused the strike.



Four weeks into the strike, CHS sent packages to each member's home, including details never tabled in bargaining. This attempt to union-bust was met with incredible solidarity. Members sent their packages back (or creatively destroyed them on social media) and told negotiators, "We're behind you all the way."

The local ultimately reached agreement to return to the table with a third-party mediator. They did so in a position of strength, knowing the membership would not settle for an inferior sick leave plan.

The goal was to bargain a plan that offered the greatest protection against illness or injury to the greatest number of members, along with percentage wage increases in every year of the contract, and a modest pension proposal.

CUPE 2073 presented a counterproposal that would improve coverage for

everyone, offering more salary protection to all employees. The plan they bargained combines an STD plan with sick days at 100 per cent of salary that can be placed in a reserve if unused at the end of the year. Reserve days can be used to top up STD payments from 75 to 100 per cent, and can also be used to cover the STD "qualifying" period. The plan also allows current employees to cash out sick leave banks, with the option of leaving up to 30 days in this new reserve.

This hybrid sick leave plan was a creative solution to a tough round of bargaining. The settlement also included wage and pension increases.

■ **Paul O'Donnell
and Andrea Addario**

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CUPE / Canadian Union
of Public Employees

We fight precarity when we mobilize

The laws around labour relations and employment standards govern how we organize new bargaining units, how we bargain collectively, and how we determine minimum standards to protect workers.

Times have changed. Most labour and employment laws were implemented before the massive expansion of precarious work. The result is that many vulnerable workers are denied the ability to join a union, and struggle to access minimum employment standards.

However, workers have not been silent. To fight the rise of precarious work, workers' organizations have demanded improvements to labour and employment law to provide greater

protections and make it easier to organize vulnerable workers.

As a result of this mobilization, both Alberta and Ontario have gone through employment law reviews. Both provinces have now tabled legislation to make it easier to join a union, provide protections to newly-certified bargaining units and make several improvements to employment standards. Changes include increased access to leaves, equal pay for part-time workers and new rules around scheduling. Notably, Ontario decided to follow the Alberta NDP's lead by announcing an increase in the minimum wage to \$15/hour, something that was originally outside the scope of the review.

More needs to be done, but these changes create conditions for

bargaining further gains – and they raise the floor for all workers.

These victories are the fruits of hard-fought campaigns by unions and other workers' organizations. Proposed changes to Ontario's *Employment Standards Act*, in particular, are the result of a massive campaign by *\$15 and Fairness*, a broad coalition of community and labour groups supported by CUPE and other unions through the Ontario Federation of Labour's parallel *Make it Fair* campaign.

These campaigns remind us that political action of various kinds is necessary to improve standards for workers.

There is no way that improvements in Alberta would be made without an NDP government. With an NDP government taking power in BC, we could see better employment laws in that province as well.

Political action is also about building support in communities for workers' demands, and using that organized support to put pressure on government to implement better laws. That kind of pressure is what forced the business-oriented Liberal government in Ontario to make improvements. Creating similar public support in provinces under the NDP will help those governments withstand any backlash from the business sector when they implement laws that benefit workers.

This is why CUPE supports mobilizing towards the ballot box as well as in coalition with other unions and with community organizations. Together, we are stronger.

■ Dan Crow



Photo credit: OFL Communications

Tabletalk is published four times a year to provide CUPE bargaining committees and servicing representatives with useful information for preparing and negotiating bargaining demands.

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CUPE / Canadian Union
of Public Employees

What longer parental leave means for CUPE members

In the fall of 2016, the federal government consulted on the idea of extending parental leave to 18 months. At the time, CUPE and our allies criticized the move for privileging wealthy parents while failing to address broader issues of fairness and access to parental leave.

We called for the government to instead broaden access for lower-income parents by lowering the eligibility threshold, extending the length of time workers have to accumulate enough hours, and increasing the benefit rate.

However, the government went ahead with its plans. In its 2017 budget, the federal government extended parental leave from 12 months to 18 months.

Legislation to change the *Employment Insurance Act* and the *Canada Labour Code* is making its way through Parliament and is expected to take effect in late 2017 or early 2018.

Under the new rules, parents will have two options. They can take 35 weeks of leave in a 12-month period at 55 per cent of their insurable earnings (up to a maximum of \$543 per week), or they can take 61 weeks of leave in an 18-month period at 33 per cent of their insurable earnings (up to a maximum of \$326 per week). Parents will not be able to combine the two options, and parents already on leave at the time the law comes into effect will not be able to convert their leave.

Maternity leave will remain 15 weeks at 55 per cent of insurable earnings, regardless of how parental leave is taken.

Quebec runs its own parental insurance program, so the changes will not apply to parents there.

Once the legislation takes effect, workers outside of Quebec in federally-regulated industries (such as transport, banking or communications) will have access to the new benefit and new protected leave without requiring any changes to

their collective agreements. Workers in Nova Scotia, which already offers 18 months of parental leave, will also benefit immediately.

For workers in other provincially-regulated jurisdictions, however, access may vary. *The Employment Insurance Act* applies to all Canadians, which means all workers outside of Quebec can receive the extended EI benefits as long as they have enough insurable hours to qualify. However, until changes are made to provincial labour and employment laws, depending on the language of the collective agreement, the longer leave may not be protected – and the worker may not be guaranteed their job back at the end of the leave.

The provinces are not required to harmonize their laws and they may not be in a rush to do so. For instance, Alberta recently announced reforms to their provincial *Employment Standards Code* to align Alberta's leave provisions with changes made to EI Special Benefits and to the *Canada Labour Code* in 2012.

Top-ups: Bargaining implications

Nearly half of CUPE members have a collective agreement which includes a top-up, or supplemental unemployment benefit (SUB), for parental leave. These SUBs grant the employee a payment from the employer that covers the difference between the EI benefit rate and a higher percentage of the worker's normal salary for some or all of their leave. For example, a collective agreement might give workers a SUB equal to 75 per cent of their current salary for 20 weeks of leave.

Generally, the language on SUBs does not specify an EI benefit rate or a maximum SUB amount. This means that for workers who opt for the longer parental leave at a 33 per cent



benefit rate, the employer would now be responsible for paying the difference between 33 and 55 per cent, in addition to the difference between 55 per cent and the negotiated level.

Employers may try to fight this increased financial commitment.

However, the case law seems to be on the workers' side: as long as collective agreement language is clear, employers are responsible for this additional cost. Even if employers do not fight their increased responsibility during the life of the current collective agreement, they may try to limit their responsibility in future rounds of bargaining.

Locals should speak to their staff representatives about strategies for negotiating language in response. One option is to ensure that the dollar value of the top-up remains the same for all employees, regardless of the length of their leave.

Next steps

While we wait for the new changes to come into effect, CUPE locals should review their provisions on parental leave.

Here's a parental leave checklist:

- Review the length of protected leave.
- Review the length and amount of supplemental benefits.
- Identify where changes need to be made in order to ensure workers' access to this new benefit.
- Check if language is clear regarding the right of workers to accumulate seniority and vacation; and to receive other benefits during the period of an 18-month leave.

CUPE will continue to press the government to make these much-needed changes, so that parental leave, and indeed all EI benefits, are more accessible to all Canadians.

■ Chandra Pasma

Stop Bill C-27



On the one-year anniversary of their election, the Trudeau Liberals introduced a controversial piece of pension legislation, Bill C-27, to the House of Commons. They did this very, very quietly. They didn't put out a press release, or tweet out a single tweet. Not even a selfie!

When a government acts this quietly, it should set off major alarm bells. Bill C-27 would rewrite federal pension law that applies to federally-regulated workplaces (like Crown corporations, airlines, rail, telecommunications and banks). And it needs to be stopped.

The legislation would open the door for federally-regulated employers to convert secure Defined Benefit (DB) pension plans into insecure Target Benefit (TB) plans, taking away plans that will pay and turning them into plans that may pay.

Even worse, C-27 would permit these changes not only on a go-forward basis, but on a retroactive basis as well. With the consent of plan members, an employer can retroactively convert years or decades

of past pension promises into a "target" pension that may – or may not – be paid at the supposedly-promised amount.

Canadian pension law has traditionally treated a Defined Benefit pension promise as a legal obligation of the employer. If the employer promises a pension, they are obligated to pay what they've promised. This is not controversial and Canadians unanimously agree with this principle. Bill C-27, however, would turn this on its head. What was once an employer liability is effectively shifted to plan members and even, potentially, to retirees.

This is just wrong. Canada is a country where a deal is a deal.

These workers traded their labour in exchange for wages and a guaranteed pension. Workers held up their end of this deal. But if employers are permitted to walk away from the pension guarantee, they are effectively breaking years of these past deals, and expropriating compensation back from workers and retirees. Of course, workers cannot get their labour back retroactively!

Employers, not surprisingly, support this legislation. It opens the door for them to write off their existing pension liabilities and shifts the collective bargaining goalposts significantly in their favour. This bill is an attack on pension security nationwide. If passed, the bill would set a powerful precedent that provinces may follow.

Before the election, Trudeau made repeated and clear promises that he would not change federal pension laws to re-open pensions. Bill C-27 does exactly that. It is clearly another broken promise from the Trudeau Liberals.

C-27 has only had first reading in the House of Commons, but the government could move it closer to becoming law at any time.

CUPE and our allies have done a lot of work to stop this bill. Let's keep going. Contact CUPE National's pension researchers to find out how your local can help stop Bill C-27.

Visit cupe.ca/pensions for more information and to connect.

■ **Mark Janson**