

# How Blaine Higgs' Progressive Conservatives Paralyzed Nursing Home Workers' Right to Strike

The impacts of *Bill 17: An Act to Amend the Essential Services in Nursing Homes Act*

Nursing home workers have faced many attacks from the sitting Progressive Conservative government since their election in 2018. They have been through delayed and difficult bargaining, wage offers below inflation, and legislated changes to their bargained pension benefits, to name a few.

In 2019, nursing home workers faced one of the worst attacks: legislated changes that harmed their right to strike.

## Some legal background

In 2009, Shawn Graham's Liberals introduced the *Essential Services in Nursing Homes Act* to limit the right to strike of CUPE members working in nursing homes. In December 2018, the NB Labour and Employment Board (the "Board") recognized the unconstitutional nature of this law. The Board found that the Act had denied workers' constitutional right to fair collective bargaining, including their right to withdraw services. As the

right to strike was prohibited, the law should have started a process to compel parties to a necessary alternative dispute resolution mechanism (such as binding arbitration), but it didn't. In anticipation of this decision by the Board, the Higgs government introduced Bill 17 to make complicated changes to this unconstitutional law. They worked with the Peoples' Alliance of New Brunswick MLAs to pass the Bill in early 2020.

## The issues with Bill 17

Setting "designations" means the union and employer will negotiate which workers will provide essential services in the event of a strike. Essential services are the services that are required to ensure the health, safety or security of the nursing home residents. This process happens during the collective bargaining process as defined by the *Industrial Relations Act* and the *Essential Services in Nursing Homes Act*. "*Designated workers*" must work during a strike, so they are not allowed to picket during their working hours.

In Bill 17, the proposed process to designate essential services in nursing homes is long and complicated. The 51 nursing homes represented by the New Brunswick Council of Nursing Home Unions would have to go through their own individual process of designations, without relying on regional and/or level of care trends in other homes. Also, all the work that has been done on this front prior to the Bill being introduced has been considered null and void.

Also, the proposed dispute resolution process in Bill 17 is stacked in the favour of the employer. If the union (or the

employer) thinks that the proposed essential service designations would prevent meaningful collective bargaining (for example, by only having 2-3 employees per nursing home allowed to strike), either party can apply for binding arbitration. Adding binding arbitration to the Act is a good thing, but not in the way the Progressive Conservatives introduced it. They have added factors that an arbitrator must consider when giving their decision.

Here's an example that shows why the added factors are unfair for nursing home workers: an arbitrator would have to consider a comparison between the wages and benefits of a nursing home "cook" (code 600) to a cook working at a privately owned fast-food restaurant.

Nursing home workers have faced too many serious attacks under this government. They cannot afford another 4 years of Blaine Higgs and his Progressive Conservatives.



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