

#17 REGULATION OF STRIKES, LOCKOUTS AND PICKETING

I. INTRODUCTION

The *Labour Relations Code* imposes certain requirements on parties before and during strike or lockout action.

This Bulletin outlines the obligations of employers and trade unions seeking to engage in a strike or lockout. It also sets out their responsibilities during such action.

This Bulletin also provides information about the Board's procedures for handling complaints about strikes, lockouts and picketing. These complaints may arise either from the threat of an unlawful strike or lockout, or during a lawful strike or lockout.

II. PRE-CONDITIONS TO A LEGAL STRIKE OR LOCKOUT

The Code prohibits strikes and lockouts unless:

- no collective agreement is in force, except under the bridging provisions of section 130;
- the party held the appropriate vote and filed the results as required;
- the strike or lockout vote remains current;
- the party served proper notice to take the action;
- the action begins on the date in the notice; and
- the recommendations of any disputes inquiry board appointed have been released or voted upon.

See: Sections 71 to 74.

A party wishing to take strike or lockout action must apply to the Board for a supervised vote. The Code prohibits taking such a vote after 2 years from the end of the cooling-off period. *See: Sections 75 to 77; Bulletin 16.*

Once the vote is complete, the party must file the results with the Board.

Strike or lockout vote results remain current for 120 days from the day of the vote. After 120 days expire, if no strike or lockout has begun, the party must take a new vote if it wishes to take strike or lockout action.

Before starting strike or lockout action, a party must serve proper notice. The notice must specify the date, time and initial location at which the strike or lockout will commence. The Code requires that the party intending such action serve written notice. The other party must receive this notice at least 72 hours before the strike or lockout begins. *See: Section 78.*

A party intending to strike or lockout must also notify the mediator.

The parties can agree to amend a strike or lockout notice. Such agreement must be in writing. *See: Section 79.*

If no action occurs on the date in the notice or, if the parties amend the notice, the original notice expires. *See: Section 80.*

If the Minister appoints a Disputes Inquiry Board before a lawful strike or lockout occurs, the party cannot begin strike or lockout action until:

- ten days after the parties receive the recommendations of the Disputes Inquiry Board, or
- seventy-two hours after the parties receive the results of a Board-conducted vote on the DIB recommendations, unless the vote results in a collective agreement.

See: Section 105(3).

III. PICKETING

Once a lawful strike or lockout is in progress, the Code allows persons to engage in picketing and to try to persuade others not to enter the employer's place of business or do business with the employer. *See: Section 84(1).*

The right to picket in connection with a labour dispute is subject to the following conditions:

- it must be peaceful;
- it must take place only at the striking or locked-out employees' place of employment, or premises deemed as such under section 84(2);
- it must be conducted without wrongful acts.

Section 84(3.1) of the *Code* states that obstructing or impeding a person who wishes to cross a picket line from doing so is a wrongful act.

The Board has the power under section 84 of the Code to regulate lawful picketing. It will do so where necessary to maintain the lawful character of the picketing and preserve the peace. The parties may themselves reach agreement on picketing protocols. *See: Section 84(2)(b),(3),(4); Cargill Foods v. UFCW Local 1118 [1997] Alta.L.R.B. LR-025.*

IV. NON-STRIKING EMPLOYEES

The Code restricts the means by which employees of either the affected employer or an outside employer may support striking or locked-out employees. *See: Section 85.*

An employee cannot refuse to load or take delivery of "struck" goods from a carrier unless the carrier itself is directly engaged in a lawful strike or lockout. These goods are often known as "hot cargo".

Employees who are not involved in the strike or lockout may not refuse to do their work because the "struck" work is not being done by union members or is being done by someone else. An employee may not be disciplined for refusing to perform the work of another employee on legal strike. *See: Section 149(f).*

V. OBLIGATIONS AFTER A LEGAL STRIKE OR LOCKOUT

When a legal strike or lockout ends, employees affected by the dispute may request a resumption of employment. Employees requesting resumption of employment are entitled to preference over any employees hired to replace them during the dispute. *See: Section 90(1).*

The right to a resumption of employment does not apply to an employee who has been lawfully terminated during the dispute.

Where a dispute ends but no collective agreement is in place, the returning employees are entitled to their former positions, on terms negotiated individually with the employer. Discriminating against employees because they exercise their rights under the *Code* is prohibited. *See: Section 90(4).*

The right to resumption does not apply where the employer permanently discontinues some or all of its operations, or no longer employs employees to do certain work. *See: Section 90(3)(b).*

During negotiations to resolve the dispute, the employer and union may reach an agreement for an orderly return to work. This agreement may establish a schedule for employees to return to work. *See: Section 90(3)(a).*

If no return-to-work agreement exists, each returning employee must request a resumption of employment in writing. If the strike or lockout resulted in a new collective agreement, this request must occur within 14 days of the date on which the employee learns the strike or lockout ended. In any case the request must come within 30 days of the end of the strike or lockout action. *See: Section 90(2).*

If the strike or lockout ended by the termination of the union's bargaining rights, the same 14 and 30 day time periods apply.

If the strike or lockout ends because 2 years have passed, the employee must make the request to return to work immediately.

VI. APPLICATIONS AND COMPLAINTS

Regulation of Lawful Picketing

Any person affected by a strike or lockout may apply to the Board for an order regulating lawful picketing in connection with the dispute. *See: Section 84(5)(b).*

Any party complaining about a strike, lockout or picketing must apply by letter to the Board. The application must specify:

- name, address, fax and telephone number of the person making the complaint;
- where appropriate, the name of a contact person or solicitor to whom correspondence may be directed, along with the address, phone and fax number;
- name, address, fax and telephone number of the union involved in the action and its contact person;
- name, address, fax and telephone number of the employer involved in the action and its contact person;
- certificate number, if applicable;
- the names of any persons or parties allegedly involved in the illegal action. The complainant should make it clear who the complaint is against. Also include information on how to notify these persons.
- the sections of the Code alleged to be violated;
- the particulars of the complaint, including details of the activities giving rise to the application; *See: U.A. Local 488 v. Don Bell [1985] Alta.L.R.B. 85-073.*
- if a collective agreement is in force, the parties to the agreement and its term, including a copy of the collective agreement, where possible; and
- the nature of the remedy sought against each of the parties who are the subjects of the complaint. The complainant should include a draft form of the order sought.

See: Rules of Procedure, Rules 4, 5, 5.1, 6, 7; Application for Cease and Desist Order.

When the Board receives a complaint, the Director of Settlement immediately reviews it. If it is complete, the Director may recommend any appropriate pre-hearing steps. This may include assigning an Officer to assist in resolving the dispute. In many cases the Director will recommend to the Chair that the matter proceed directly to a hearing. *See: Rules of Procedure, Rule 22(1)(h); Bulletin 2.*

Applications Under Section 84.1

For the purposes of section 84(1) of the *Code*, the following premises are deemed to be a place of employment of striking or locked out employees, and the person or business undertaking that work or providing the services are deemed to be the employer under section 84(2):

- premises at which work that is normally done by striking or locked-out employees is done during a strike or lockout;
- premises the employer uses to further a lockout or resist a strike, or
- premises at which a third party assists the employer in furthering a lockout or in resisting a

strike by performing services for the employer that it does not normally provide.

Section 84(1.1) of the *Code* does not allow a person or trade union to picket at the premises identified in section 84(2) unless they are permitted to do so by an order of the Board, and the picketing is also subject to any determinations or declarations the Board makes as part of the order.

Applications for an order under section 84(1.1) should be made to the Director of Settlement via letter. The Director of Settlement will notify all affected parties about the application. The application letter should include detailed information about the proposed picketing location(s) and their status as a premises under section 84(2). Applications under section 84(1.1) may be made any time after notice of legal strike or lockout is provided under section 78.

Where an employer and/or affected party does not oppose an application under section 84(1.1), this should be indicated in writing to the Board as soon as possible after being notified of the application. In such circumstances, the Board may proceed with the order. An employer and/or affected party opposing the application will be asked to provide a written response outlining in detail the basis for the objections, and/or list any declarations sought to be addressed in the order. Where an application is opposed, the Board will proceed expeditiously, and will endeavour to hold a hearing within 48 hours.

Complaints about Strikes, Lockouts and Unlawful Picketing

A strike or lockout may be unlawful because the pre-conditions to a legal strike or lockout have not been met, or because a strike or lockout by the parties involved is unlawful under any circumstances.

The Code prohibits engaging in an unlawful strike or lockout. It also prohibits calling, counselling, procuring or threatening an unlawful strike or lockout. *See: Otis Canada Inc. v. Elevator Constructors [1997] Alta. L.R.B.R. 486.*

Any affected person or party may complain under section 16(1) that a prohibited act in connection with a strike or lockout has occurred. An affected person or party may also file a complaint that:

- unlawful picketing has occurred; *See: Section 84(2)(a), (4).*
- employees have refused to handle "hot cargo"; *See: Section 85(b).*
- employees have refused to work because union members or non-union members did or did not do other work; *See: Section 85(a).* or
- "dispute-related misconduct" has occurred. *See: Section 154.*

Parties

Any party filing a complaint must use the format specified by the Board which is the same as the application to regulate lawful picketing set out above. A complaint may name as respondents a union, employer, employers' organization, or specific individuals. It may also name a defined, ascertainable class of unnamed persons, for example:

"All persons employed by Cooper Industries at its Taber Plant who are represented by the United Widget Workers Union".

Notice of Hearing

The Director of Settlement immediately notifies the persons or parties named in the application or complaint and advises them of any scheduled hearing. The form of notice used may vary with the location of the activity, the number of parties, and the urgency of the situation.

Where a hearing is held on an urgent basis, the Board will normally notify a trade union or employer by telephone. The Rules of Procedure allow the Board to give such notice to a responsible official of the party. Written notice by courier, fax, or personal delivery will follow at the earliest opportunity. *See: Rules of Procedure, Rules 11, 12, 13.*

The Board will normally notify individuals or groups of persons by posting notices at the place of employment. It may also direct that a bargaining agent give notice of the hearing to such persons. *See: Rules of Procedure, Rule 14.*

Because of the nature of these applications and complaints, the Board normally deals with them on an urgent basis. The Board tries to provide a minimum of four hours notice of the hearing.

Replies

The respondent must file a reply to the application identifying those items in the application with which it agrees and disagrees. Where it disagrees, the respondent shall provide specifics as set out in Rule 8 and Information Bulletin 2. Each respondent shall also list the dates and times it is available for hearing and the number of witnesses expected.

Hearings, Directives and Interim Directives

A person applying for an order restricting lawful picketing must advance cogent reasons why an order is appropriate. Where such reasons are advanced the Board will balance the interests of the applicant against the interests of those engaged in the lawful picketing. It will consider the following factors in deciding whether to make an order:

- how direct is the interest of the picketing persons or unions;
- the possibility of violence arising out of the picketing;
- the desirability of preventing an escalation of the dispute;
- the picketers' right to free expression of opinion; and
- any other factors it considers relevant.

See: Section 84(3).

Where a breach of the Code pertaining to illegal strikes, lockouts, or picketing is proven, the Board may issue a directive designed to correct the unlawful action. *See: Section 17(1).*

An applicant for a directive must satisfy the Board that one or more of the unlawful acts referred to in Sections 86 or 87 have occurred. The applicant must prove the essential facts alleged through oral testimony. Witnesses must testify to these facts through their personal knowledge. *See: Sections 86, 87.*

During the course of its proceedings, the Board may also issue interim directives. These are directives effective for a limited period of time, usually until a full hearing can be concluded. They are designed to give interim remedies in urgent situations until the Board completes a full hearing

into the complaint. *See: Sections 12(2)(e), 17(1)(a).*

An applicant for an interim directive must provide initial evidence of facts that establish a prima facie case of prohibited conduct. Further, the Board must be convinced that an interim directive is necessary in the circumstances. Once this evidence is established, the Board may issue a interim order and then continue or adjourn its inquiry to allow fuller presentation of evidence at a later time.

In appropriate cases, affidavit or oral evidence based on the personal knowledge of the witness may be sufficient, even in the initial absence of cross-examination. The Board may also assign an Officer to observe the activity complained of. The resulting Officer's Report may then be relied upon by the Board. *See: Rules of Procedure, Rule 26.*

Service of Directives

The manner by which the Board serves either type of directive depends upon the circumstances of the case. Service may include the posting of notices, personal service, mail service or any other method the Board panel may direct. Notice of any order regulating picketing will be posted at the place of employment. *See: Rules of Procedure, Part III.*

Scope of Directives

The Board may direct what action, if any, the parties shall do or refrain from doing. These directives usually require any party found to be in contravention of the Code to cease those activities. In addition, sections 86 and 87 allow the Board to direct what action other parties or persons shall take to remedy the unlawful action. *See: Sections 17(1), 86, 87.*

A directive or interim directive to cease an illegal strike or lockout or picketing is binding upon the party to whom it is addressed. It also applies to any further strike, lockout or picketing that occurs for the same or a substantially similar reason. *See: Section 88(1).*

A directive of the Board is normally effective immediately.

VII. NON-COMPLIANCE WITH BOARD ORDERS AND FILING OF ORDERS IN COURT

Under section 88(2) of the Code, the Board is required to file a copy of a directive, interim directive, or order referenced in section 88(1) forthwith upon the request of a party. The Board may also, in its discretion, file a copy of a directive, interim directive or order referred to in section 88(1) in the absence of a request: *See: Section 88(2).*

A directive, once filed, is enforceable as a judgment or order of the Court. It can therefore result in contempt of court proceedings for any violation.

The Code also provides that failure to act on a Board order may result in a complaint under the Code. Any contravention of the Code or of a Board order is also an offence, although no prosecution is permitted without the consent of the Minister of Labour and Immigration. *See: Sections 161, 162.*

VIII. COURT JURISDICTION AND INJUNCTIONS

Under the Code, the Board is primarily responsible for regulating strikes, lockouts and picketing. The Courts retain their authority to restrain such activities where:

- there is a reasonable likelihood of danger to persons or property. or
- where a hearing before the Board is impractical in the circumstances.

See: Sections 91, 92.

In the latter case, the Court may issue an order which remains in effect until the Board determines the matter.

IX. OBLIGATIONS FOR FIREFIGHTING AND AMBULANCE OPERATORS

Firefighters and ambulance operators and their employers as identified in sections 96(1)(a) and (b) are not permitted to engage in strikes or lockouts. In collective bargaining, these groups use compulsory arbitration boards to resolve disputes.

Striking or locking out by persons and parties covered by Division 16 is a prohibited practice.

Sections 114 and 115 set out the special procedures and remedies the Board can use should such a situation arise.

X. EMERGENCIES

In Division 18, the Lieutenant Governor in Council may replace any procedures in a dispute with emergency procedures. This can occur in a situation that could cause damage to health or property or hardship to persons outside the dispute. *See: Sections 112, 113.*

In this case, all strike or lockout action must cease and the Minister appoints an emergency tribunal to settle the dispute.

It is prohibited conduct for parties covered by an order under Division 18 to strike or lockout. Sections 114 and 115 set out the special procedures and remedies the Board can use should such a situation arise.

See also:

Information Bulletins 2, 4 and 16
Rules of Procedure

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