

# STRIKES AND LOCKOUTS UNDER REGISTRATION

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## INTRODUCTION

The [Code](#) tightly regulates strikes and lockouts that take place under registration bargaining. For such strikes and lockouts to be legal, they can only occur:

- on a consolidated basis, following the trade grouping set out in the Board’s biennial consolidation order;
- after a Board-supervised consolidated strike vote carries with the necessary 60%-60% formula vote; and
- until the Minister refers the trade’s dispute to a Construction Industry Disputes Resolution Tribunal (DRT), after which the strike or lockout must end.

This policy describes:

- how the parties apply for and how the Board supervises strike or lockout votes;
- how parties strike or lockout under registration; and
- termination of strikes and lockouts.

A separate policy describes the overall process of issuing consolidation orders and registration bargaining, see: [[Consolidation Orders and Registration Bargaining, Chapter 25\(c\)](#)]. The right to strike or lockout ends with a Ministerial reference of the dispute to a CIDRT. See: [[Construction Industry Disputes Resolution Tribunals, Chapter 25\(j\)](#)].

This policy uses the term “group of trade unions.” For some registrations, this means a single trade union. For other registrations, it means those local trade unions that, together, negotiate province-wide for that trade under one registration certificate. Reference to a “trade” means the parties to a registration certificate: the registered employers’ organization (REO) plus the applicable trade union or group of trade unions. See: [[Section 163\(2\)](#)].

## STRIKE OR LOCKOUT VOTES

All strike or lockout activity for parties to registration bargaining depends on the Board’s consolidation order. See: [[Section 185\(1\)](#)]. The Board order groups individual trades together. All the trades will come from the same construction industry sector. For illustration purposes, in this policy, we will assume the Board has issued a consolidation order grouping 10 trades together.

Section 186 says strike action can only be taken if:

(...) a strike vote has been supervised in accordance with section 185 and resulted in a vote in favour of strike action.

Section 188 says the same thing for lockouts. The rest of this section describes how parties apply for supervised strike or lockout votes, and how the Board carries out its supervision, all under Sections 185 or 187. For ease of reference, this policy describes strike votes first. Supervised lockout votes are virtually the same, and are described briefly after strike votes.

### ***Who Applies and When?***

Section 185(2) describes who can apply, and when:

185(2) A group of trade unions may apply to the Board for the supervision of a strike vote at any time after the expiry of the cooling-off period referred to in section 65(7) and after the expiry of any collective agreement previously in force with the registered employers' organization.

It is the “group of trade unions” that applies. This is **not** the grouping in the consolidation order (in our example, all 10 trades), but rather it is each of the individual “groups of trade unions” who are each parties to an individual registration certificate. For example, the unions representing carpenters (and therefore party to the registration agreement for carpenters) would only apply for carpenters, not for carpenters, cement masons, labourers, etc. The carpenters group of trade unions would apply, not each local within that “group of trade unions.”

It is the “group of trade unions” that must apply when there is more than one trade union local in the “group of trade unions” for that trade. See: [[Section 163\(2\)\(a\)](#)]. Individual locals within that group cannot apply on their own.

The trade union locals within the group must have rules to govern their bargaining as a “group of trade unions.” See: [[Section 175\(4\), \(5\) and \(6\)](#)]. Disputes between the individual locals within the group about strike-vote applications must be resolved under those rules. If the rules prove inadequate, the Board can be asked to impose a suitable rule to deal with the problem. It may do so on short notice if necessary. See: [*Certain Building Trade Unions v. Certain REOs* [1991] Alta.L.R.B.R. 454 at 458].

Before the group of trade unions can apply for a supervised strike vote:

- The collective agreement must have expired. Because of Section 183, this means no group of trade unions can apply for a strike vote until May 1st in the bargaining year.
- The REO and the group of trade unions or union must have gone through enhanced mediation and the 14-day cooling-off period that follows.

### ***When Does the Board Supervise a Vote?***

The Board receives separate strike-vote applications from each group of trade unions (that is, for each trade separately). It does not supervise votes right away. It waits until there are enough timely applications to conduct a consolidated vote—that is, a vote among all of the trades grouped together by the Board’s consolidation order. This is because of Section 185(3), which says:

185(3) The Board shall not supervise a strike vote with respect to a group of trade unions in a sector until the Board receives applications from at least 60% of all those groups of trade unions in a sector that the Board has consolidated under section 184 and that have not settled the terms of a collective agreement.

If a consolidation order grouped 10 trades together and all 10 remained unsettled, the Board would need 6 timely applications before supervising a consolidated strike vote. If 2 of those 10 trades had settled, there would be 8 trades “that have not settled the terms of a collective agreement.” In that case, applications from 5 of those 8 unsettled trades would satisfy the 60% requirement.

For a discussion of the phrase “settled the terms of a collective agreement,” see: [*Certain Building Trades v. Certain REOs* [1991] Alta.L.R.B.R. 454 at 457]. In that case the Board held:

... the words "and that have not settled the terms of a collective agreement" exclude only parties that have a firm agreement. They do not exclude memoranda of agreement subject to ratification. The whole point of ratification is that the principals (employees or contractors) may reject the proposed agreement. The parties do not have to have an executed collective agreement document, but the terms of the agreement cannot be subject to some contingency. For example, parties may reach this point when the party needing ratification notifies the other that ratification has been achieved.

See also: [[Consolidation Orders and Registration Bargaining, Chapter 25\(c\)—The Period When Strikes and Lockouts are an Option](#)].

### ***Who Participates in the Consolidated Strike Vote?***

The Board proceeds to supervise a strike vote amongst the unsettled groups of trade unions in the grouping as soon as it has applications from the necessary 60%. The 40% or fewer trades (or groups of trade unions) that have not applied for a strike vote also participate in the consolidated strike vote. This is so, even if trades within that 40% have not yet passed through enhanced mediation or the cooling-off period under Section 65(7). Section 185(1) says the Board must supervise consolidated strike votes on the basis of the consolidation order. The Board explained its ruling on this point in detail in *Certain Building Trade Unions v. Certain REOs* [1991] Alta.L.R.B.R. 454 at 459-461.

Individual trades may settle after the Board gets the necessary 60% applications, but before the vote. If they settle absolutely, the Board will exclude them from the vote, because they are no longer “unsettled.”

If their settlement is subject to ratification, they remain in the vote. A pending ratification may affect the choice of an appropriate polling date. The Board has said it expects parties to adopt quick ratification procedures if a multi-trade construction dispute is in a critical stage. The Board may have the power, on an application under Section 59 or otherwise, to rectify the problem if a party tries to hold up an authorized and timely consolidated strike vote using a ponderous ratification process. See: [*Certain Building Trade Unions v. Certain REOs* [1991] Alta.L.R.B.R. 454 at 458].

### ***How Does the Supervision Take Place?***

Running the consolidated strike vote is the responsibility of the affected groups of trade unions. As with the supervision of normal strike votes, the Board must approve the procedures in advance. The Board's [Voting Rules](#), particularly Part III, apply as appropriate. Section 185(4) provides:

185(4) The Board shall require a return from each group of trade unions participating in the consolidated vote showing

- (a) the number of persons entitled to vote and voting,
- (b) the number of votes in favour of strike action, and
- (c) the number of votes opposed to strike action.

This means, except in exceptional circumstances, each group of trade unions conducts its own vote and tallies its own results.

Unions compile their voters lists in the same way as normal strike votes in accordance with Section 76. See: [[Strike and Lockout Votes, Chapter 28\(b\)](#)].

What happens if a minority trade (i.e., one that has not applied and is not part of the 60%) says it will not participate? Section 185 contemplates the Board supervising one consolidated vote. Section 185(4), combined with the powers under Section 12 and 15, allows the Board to give any direction necessary to make sure all affected parties are polled. This may include appointing a returning officer and actually conducting the vote if necessary.

The Board might also use these powers to override, if necessary, any proposed polling procedure that unduly delays the conduct of the vote to the detriment of the applicants making up the initial 60% majority. See: [*Certain Building Trade Unions v. Certain REOs* [1991] Alta.L.R.B.R. 454 at 462].

### ***Counting the Overall Result***

Once the votes within the various groups of trade unions have taken place and their returns under Section 185(3) filed, the Board must tally the overall result. Section 185(5) sets out the formula:

185(5) The strike vote with respect to each of the groups of trade unions consolidated in the vote shall be deemed to have been not in favour of a strike unless

- (a) the votes in respect of at least 60% of the groups of trade unions result in a vote of at least 50% of the employees entitled to vote and voting in each of the groups of trade unions in favour of strike action, and
- (b) at least 60% of the employees entitled to vote and voting in the overall consolidated vote, vote in favour of strike action.

First, the Board looks at the results from each participating trade. There must be a majority vote (>50%) in favour in at least 60% of the groups of trade unions participating. In the example where there are 10 unsettled trades, at least 6 of the groups of trade unions must have achieved majority support in the individual votes amongst their own members.

After checking that figure, the Board then adds up all the returns. It calculates the total number of employees voting overall, and the number that supported strike action. If the overall majority in favour of strike action is less than 60%, the vote fails.

If the vote fails (on either ground—lack of enough trades with >50%, or lack of the overall 60% figure) no trade in the consolidation order grouping can strike. If it succeeds, all trades may strike (see below). A majority strike vote by one trade does **not** allow it to strike on its own if the overall vote fails.

### **Lockout Votes**

The process of supervising lockout votes is virtually the same as that for strike votes. Obviously, since the REOs must conduct an employer vote, the process of conducting the vote itself will be different. For guidelines on appropriate forms of supervision see: [[Employer Vote Procedures, Section Chapter 28\(g\)](#)].

Section 76(5)(b) defines “employers affected by the dispute” who are entitled to vote in a lockout vote. The Code makes no provision for weighted voting for lockout votes. Each affected employer only gets one vote in each REO’s dispute, without regard to the size of its workforce.

## **STRIKE AND LOCKOUTS UNDER REGISTRATION**

Section 186(1) prohibits strikes under registration unless the strike is legal under the [Code’s](#) specific registration bargaining provisions:

186(1) Notwithstanding anything in this Act, no trade union or group of trade unions named in a registration certificate, no person acting on behalf of such a trade union and no person employed in the construction industry who is affected by registration shall strike or cause a strike in respect of the construction industry unless the strike is permitted by this Division.

Section 188(1) is a similar prohibition on unauthorized lockout action. Any violation of these two sections can lead to a cease and desist application before the Board. See: [[Cease and Desist, Chapter 30](#)].

Section 186(2) sets out the conditions before a registration strike can lawfully occur:

186(1) Notwithstanding anything in this Act, no trade union or group of trade unions named in a registration certificate, no person acting on behalf of such a trade union and no person employed in the construction industry who is affected by registration shall strike or cause a strike in respect of the construction industry unless the strike is permitted by this Division.

(2) A group of trade unions wishing to strike may do so only if

- (a) a strike vote has been supervised in accordance with section 185 and resulted in a vote in favour of strike action,
- (b) all those groups of trade unions that were involved in the consolidated strike vote and that have not settled the terms of a collective agreement serve notice to strike and strike at the same time, and
- (c) a strike notice is served on the registered employers' organizations in accordance with section 78.

### **The Strike Vote**

The conditions for a successful strike vote are set out above.

### **Common Notice**

Section 186(2)(b) says, for a strike by any group of trade unions to be lawful, all those involved in the consolidated strike vote (except those that have settled in the interim) must “serve notice to strike and strike at the same time.” This section appears to give force to the “consolidated” aspect of registration bargaining.

Section 186(2)(b) does not say how one or more groups of trade unions can force a reluctant group of trade unions, consolidated with them, to serve strike notice and then strike. Unlike the strike vote issue, the Code contains no provision for majority decision making on this point. So far, the Board has not had to rule on this question. The only comment it has made about then Section 184(2) reads:

During this hearing, several issues arose about the conduct of any strike. Such issues are best answered in the context of actual circumstances. However, the words of section 184(2)(b) are:

*184(2) A group of trade unions wishing to strike may do so only if*

*(b) all those groups of trade unions that were involved in the consolidated strike vote and that have not settled the terms of a collective agreement serve notice to strike and strike at the same time, and*

The two underlined portions use the same language as section 183, and therefore our interpretation of those phrases, as set out above, would apply. The employers' organization asks what happens

if a union signs a memorandum on the eve of a strike, but needs ratification? The answer would appear to be that the legislation contemplates their participation in the strike. However, two factors soften this apparently anomalous result.

First, as we noted above, ratification does not have to take a long time. In this respect, going on strike while having an agreement subject to ratification is no more anomalous than staying on strike after achieving such a memorandum. Second, subject to section 79 the degree to which a union exercises its economic leverage once it enters the strike phase can vary, as shown by the Board's decision in *V.S. Services Ltd. (Alberta Hospital, Edmonton) v. Health Care Employees Union of Alberta* [1990] Alta.L.R.B.R. 523.

See: [*Certain Building Trade Unions v. Certain REOs* [1991] Alta.L.R.B.R. 454 at 462].

### ***Service of Strike Notice on the REO***

The service of strike notice in a registration bargaining strike must meet the same procedural and timing requirements as apply in ordinary bargaining. Section 78 of the [Labour Relations Code](#) sets out these requirements.

The provisions governing lockouts in Section 188 are a mirror image of those governing strikes. They suffer from the same lack of clarity about how any REOs can ever lockout if even one REO refuses to serve notice or lockout.

## **TERMINATION OF STRIKES AND LOCKOUTS**

Once the Minister refers items in dispute between parties to a registration to a CIDRT for resolution, any strike or lockout affecting that dispute must end. Section 189(2) provides:

189(2) When the Minister refers items in dispute to the construction industry disputes resolution tribunal under subsection (1), any strike or lockout in existence between the parties shall be deemed to terminate and the terms and conditions of employment that applied to the parties immediately prior to the strike or lockout shall be deemed to continue.

Often, there will be no strike or lockout at the time the Minister refers the dispute to CIDRT. While this section does not say so directly, it implies that no strike or lockout can begin after the Minister refers that particular dispute to CIDRT.

The reference to CIDRT reinstates the terms and conditions in the former collective agreements, which then last until the CIDRT award. Section 189(2) makes no direct reference to an employee's right to return to work. This reinstatement provision may be sufficient to allow employees to return to work under the collective agreement, in preference to any replacement workers. It is also arguable that the reference to CIDRT is the equivalent to a "settlement of the dispute" so that the Section 90 reinstatement rights apply. The Board has never had to decide these issues.

If a strike or lockout occurs, or continues, after a reference to CIDRT, affected parties may apply to the Board for a cease and desist order. See: [[Cease and Desist, Chapter 30](#)].