

ILLEGAL STRIKES & LOCKOUTS

INTRODUCTION

Sections of the [Labour Relations Code](#) and other legislation discuss unlawful strikes and lockouts. Unlawful strikes and lockouts can occur both during the negotiation and the term of a collective agreement. Unlawful strikes may be intentional or inadvertent (e.g., spontaneous or accidental). This policy discusses:

- illegal strikes;
- illegal lockouts; and
- Section 114—dues suspension;
- Section 115—dues compulsion;
- Section 116—loss of bargaining rights; and
- processing complaints and remedies.

ILLEGAL STRIKES

Section 1(v) of the Code defines a strike as:

1(v) “strike” includes

- (i) a cessation of work,
- (ii) a refusal to work, or
- (iii) a refusal to continue work

by 2 or more employees acting in combination or in concert or in accordance with a common understanding for the purpose of compelling their employer or an employers’ organization to agree to terms or conditions of employment or to aid other employees to compel their employer or an employers’ organization to accept terms or conditions of employment;

Unions meeting the requirements of the Code may call a lawful strike. See: [[Strike and Lockout Votes, Chapter 28\(b\)](#); [Strikes and Lockouts, Chapter 30\(a\)](#); [Strikes of Lockouts Under Registration, Chapter 25\(i\)](#)]. All other types of strikes are unlawful. Section 86 of the [Code](#) empowers the Board to end unlawful strikes:

86 Where the Board is satisfied that

- (a) a trade union called or authorized or threatened to call or authorize an unlawful strike,
- (b) an officer, official or agent of a trade union counselled, procured, supported or encouraged an unlawful strike or threatened an unlawful strike,
- (c) employees engaged in or threatened to engage in an unlawful strike,
- (d) any person has done or is threatening to do an act and the person knows or ought to know that, as a probable and reasonable consequence of that act, another person or persons will engage in an unlawful strike, or

(e) a trade union, employee or other person has contravened section 84 or 85,

the Board may, in addition to and without restricting any other powers under this Act, so declare and may direct what action, if any, a person, employee, employer, employers' organization or trade union and its officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or threat of an unlawful strike or the contravention of section 84 or 85.

Section 96 indicates some instances where strikes are prohibited by statute and are replaced by compulsory interest arbitration:

96(1) This Division applies to the following:

- (a) firefighters and, to the extent that they bargaining collectively with firefighters, municipalities and Metis settlements;
- (b) employers who operate approved hospitals as defined in the *Hospitals Act*, and all the employees of those employers.

(2) No employees, trade union, employer or employers' organization to which this Division applies shall strike, lock out, cause a strike or lockout or threaten to cause a strike or lockout.

(3) This Division applies notwithstanding any other provisions of this Act.

Section 70 and 71 of the [Public Service Employee Relations Act](#) prohibit strikes in the public sector and outline various fines that may be levied against those causing or attempting to cause a strike. Similarly, Section 3 of the [Police Officers Collective Bargaining Act](#) prohibits strikes.

ILLEGAL LOCKOUTS

Section 1(p) defines a lockout as:

1(p) "lockout" includes

- (i) the closing of a place of employment by an employer,
- (ii) the suspension of work by an employer, or
- (iii) a refusal by an employer to continue to employ employees,

for the purpose of compelling the employer's employees, or to aid another employer in compelling the employees of that employer, to accept terms or conditions of employment.

Employers or employer's organizations meeting the requirements of the Code may lawfully lockout employees. See: [[Strike and Lockout Votes, Chapter 28\(h\)](#); [Single-Employer Lockout Polls, Chapter 28\(c\)](#); [Strikes and Lockouts, Chapter 30\(a\)](#); [Strikes and Lockouts Under Registration, Chapter 25\(i\)](#)]. All other types of lockouts are unlawful. Section 87 of the Code empowers the Board to end unlawful lockouts:

87 Where the Board is satisfied that

- (a) an employer or employers' organization called or authorized or threatened to call or authorize an unlawful lockout, or
- (b) an officer, official or agent of an employer or employers' organization counselled, procured, supported or encouraged an unlawful lockout or threatened an unlawful lockout,

the Board may, in addition to and without restricting any other powers under this Act, so declare and may direct what action, if any, a person, employee, employer, employers' organization or trade union and its officers, officials or agents shall do or refrain from doing with respect to the unlawful lockout or threat of an unlawful lockout.

Section 96 indicates some instances where lockouts are prohibited by statute and are replaced by compulsory interest arbitration:

96(1) This Division applies to the following:

- (c) firefighters and, to the extent that they bargaining collectively with firefighters, municipalities and Metis settlements;
- (d) employers who operate approved hospitals as defined in the *Hospitals Act*, and all the employees of those employers.

(2) No employees, trade union, employer or employers' organization to which this Division applies shall strike, lock out, cause a strike or lockout or threaten to cause a strike or lockout.

(3) This Division applies notwithstanding any other provisions of this Act.

Section 70 and 71 of the [Public Service Employee Relations Act](#) prohibit lockouts in the public sector and outline various fines that may be levied against those causing or attempting to cause a lockout. Similarly, Section 3 of the [Police Officers Collective Bargaining Act](#) prohibits lockouts.

SECTION 114—DUES SUSPENSION

Section 114 of the [Code](#) provides the Board with special powers in the event of an illegal strike:

114(1) If a strike that is prohibited by Division 16 or 18 of this Part commences, the Board may direct the employer to suspend the deduction and remittance of union dues, assessments or other fees payable to the bargaining agent by the employees in the bargaining unit that is on strike.

(2) The suspension under subsection (1) shall continue for a period of one to 6 months, as directed by the Board, from the date on which the employer commences the suspension.

(3) When the Board directs the employer to commence the suspension, it shall serve the bargaining agent with a copy of the directive.

(4) The bargaining agent that is served with a copy of the directive under subsection (3) may apply to the Board within 73 hours after service of the directive, but not afterwards, for a determination as to whether a strike has occurred.

(5) If the bargaining agent does not make an application under subsection (4), the employer shall suspend the deduction and remittance of union dues, assessments or other fees in accordance with the directive of the Board.

(6) If the bargaining agent makes an application under subsection (4), the employer shall not suspend the deduction and remittance of union dues, assessments or other fees unless and until the Board makes a determination under subsection (7)(b) that a strike has occurred.

(7) If the bargaining agent makes an application under subsection (4), the Board may

- (a) if it determines that no strike has occurred, cancel the directive under subsection (1), or
- (b) if it determines that a strike has occurred, confirm the directive under subsection (1) and order that the suspension shall take place for the period specified in the directive, and thereupon the employer shall suspend the deduction and remittance of union dues, assessments and other fees in accordance with the directive.

(8) Notwithstanding any collective agreement of this Act, an employee does not become ineligible for employment with an employer only because the employee fails to pay union dues, assessments or other fees, the deduction and remittance of which have been suspended under this section.

(9) At the end of the suspension period the employer shall resume the deduction and remittance of union dues, assessment and other fees in accordance with the collective agreement, but the employer shall not deduct and remit union dues, assessments and other fees with respect to the suspension period.

(10) No provision may be made in a collective agreement in substitution for the suspension of the deduction and remittance of union dues, assessments and other fees under this section.

In essence, Section 114 allows the Board to direct an employer to cease collecting dues under the collective agreement if a union has engaged in an illegal strike for between one and six months.

SECTION 115—DUES COMPULSION

Section 115 of the [Code](#) provides the Board with special powers in the event of an illegal lockout:

115(1) If a lockout that is prohibited by Division 16 or 18 of the Part commences, the Board may direct the employer who locks out the employer's employees to pay the union dues, assessments and other fees payable by the employees to any bargaining agent that represents them.

(2) The payment under subsection (1) shall continue for a period directed by the Board of one to 6 months from the date on which the lockout commences.

(3) The employer may apply to the Board within 72 hours after receiving the directive under subsection (1), but not afterwards, for a determination as to whether a lockout has occurred.

(4) If the employer does not make an application under subsection (3), the employer shall make payments in accordance with this section.

- (5) After hearing an application under subsection (3), the Board may,
- (a) if it determines that no lockout has occurred, direct that the employer need not comply with the directive under subsection (1), or
 - (b) if it determines that a lockout occurred, direct the employer to make the payments referred to in this section.
- (6) payments required to be made under this section are a debt owing to the bargaining agent and may be collected from the employer by civil action.

In essence, Section 115 allows the Board to compel an employer to pay the union the dues it owes under the collective agreement in the event of an unlawful lockout. To date, the Board has not yet heard any cases on this section.

SECTION 116—LOSS OF BARGAINING RIGHTS

Section 116 provides Cabinet with the power to revoke a union's bargaining rights following an illegal strike. Similarly, Cabinet can revoke an employers' organization's right to represent employers following an illegal lockout. The provisions read:

- 116 Notwithstanding anything in this Act, the Lieutenant Governor in Council may direct the Board
- (a) to revoke the certification of a trade union that causes or participates in a strike that is prohibited by Division 16 or 18, or
 - (b) to prohibit an employers' organization from representing employers for the purposes of collective bargaining if the employers' organization causes or participates in a lockout that is prohibited by Division 16 or 18.

Cabinet has not yet used the powers outlined in Section 116.

PROCESSING COMPLAINTS & REMEDIES

Unlawful strikes and lockout often come before the Board as cease and desist applications. See: [[Cease and Desist, Chapter 30\(c\)](#)]. The Board may issue a directive ordering an end to the unlawful strike or lockout. Such an order may be filed with the courts and consequently becomes enforceable in Court. See: [[Enforcement of Directives, Chapter 35\(a\)](#)].

Sections 114 and 115 applications may be initiated by a party to a dispute. In Section 114 applications, the Board has:

- advised all affected parties of the matter and requested replies;
- heard evidence and argument; and
- issued a directive.