

# STRIKES AND LOCKOUTS

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## INTRODUCTION

One potential outcome of an industrial dispute is a strike or a lockout. In order for a legal strike or lockout to occur, the union(s) or employer(s) involved must comply with the provisions of the *Labour Relations Code*. See: [[Strike and Lockout Votes, Chapter 28\(b\)](#); [Single Employer Lockout Polls, Chapter 28\(c\)](#)]. Picketing regulation and disputes related misconduct are discussed elsewhere. See: [[Picketing, Chapter 30\(b\)](#); [Dispute-Related Misconduct, Chapter 30\(d\)](#)]. Illegal strikes and lockouts are dealt with through cease and desist applications. See: [[Cease and Desist, Chapter 30\(c\)](#); [Illegal Strikes & Lockouts, Chapter 30\(e\)](#)]. Strikes and lockouts do not end employees' pension and insurance rights. See: [[Insurance and Pension Rights, Chapter 30\(f\)](#)].

This chapter discusses several issues related to legal strikes and lockouts, including:

- what is a strike/lock-out?;
- conditions under which strikes and lockouts are permitted;
- rotating and progressive strikes;
- 24-hour lockouts;
- impact of a strike on non-striking employees;
- when a strike or lockout ends;
- revocation applications during a strike; and
- the resumption of work after a strike or lockout has ended.

## WHAT IS A STRIKE/LOCKOUT?

The *Code* defines a strike as a cessation of work, a refusal to work or 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 ... to agree to terms or conditions of employment” or to aid other employees to do the same. This definition contains three basic elements: 1. a refusal to work; 2. concerted action; and 3. the purposive or subjective element of intent. See: [*McGavin Foods Limited v. Retail, Wholesale and Department Store Union, Local 980* [1988] Alta. L.R.B.R. 270]

The *Code* defines a lockout as including the closing of a place of employment by an employer, suspending work or refusal 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 and conditions of employment.” See: [*Ironworkers 850 v. Western Archrib* [1998] Alta. L.R.B.R. 90]

## CONDITIONS UNDER WHICH STRIKES AND LOCKOUTS ARE PERMITTED

A strike or lockout may be conducted if the following conditions are met:

1. no collective agreement is in force (other than as result of the operation of s.130);
2. a Board supervised strike or lockout vote is conducted with a majority voting in favour of a strike or lockout;
3. strike or lockout notice is given and the strike or lockout commences on the day and at the time and location specified in the notice; and
4. where a disputes inquiry board is established, the time limits in section 105(3) have expired.

## ROTATING AND PROGRESSIVE STRIKES

When a union commences a legal strike, it is required to provide the affected employer(s) with 72 hours of notice. Section 78(1)(a) requires the notice specify the initial date, time and location of the strike. A union may decide at any time after the strike has commenced to alter the nature or location of its strike activity. This flexibility commonly leads to:

- **Rotating strikes:** Unions may choose to have members withdraw their services on a rotating basis. For example, a union may strike one employer site one day. The next day, the employees at the first location may return to work while a second location may strike. A different variation is where employees strike for a period of time, return to work and then strike again. The disruption rotating strikes cause is intended to pressure employers into accepting the union's last offer. Employers may pre-empt such a tactic by serving unions with lockout notice.
- **Progressive strikes:** A progressive strike is one where less than an employer's full workforce strikes. As time passes, additional employees or locations may join the strike. A progressive strike is intended to gradually increase the disruption experienced by the employer and pressure the employer to accept the union's last offer. Again, employers may pre-empt such a tactic by serving unions with lockout notice.

In *V.S. Services Ltd. v. HCEUA* [1990] Alta. L.R.B.R. 523, the Board ruled a union is not required to provide additional notice to the employer(s) once a strike has commenced including intermittent or rotating strikes.

## 24-HOUR LOCKOUTS

When an employer lockouts employees, the bridging provisions of Section 130 that extended the collective agreement during negotiations terminate. This means that employees who return to work following a lockout do so on the terms and conditions set by the employer.

Employers may choose to lockout their employees for a short period of time as a way to end the bridging provisions of Section 130 and thereby apply additional pressure on the union to settle the dispute. Although commonly called a “24-hour lockout”, there is no minimum duration required for a lockout and, in *Ironworkers 850 v. Western Archrib* [1998] Alta.L.R.B.R. 90, the Board ruled the employer had entered a state of lockout without any interruption in work. Historically, a 24-hour period allowed an employer to convey to all shifts that a lockout was in effect.

## IMPACT ON NON-STRIKING EMPLOYEES

A struck employer or one that has locked out a union, may still have personnel at work. These workers may be members of a different union, non-unionized, or workers statutorily excluded from the bargaining unit. A strike may impact these employees in several ways.

### ***Crossing a Picket Line***

Non-striking employees and their union(s) may be reluctant to cross a picket line. There are no provisions in the [Labour Relations Code](#) that allow non-striking employees to refuse to cross a picket line. Unionized employees who refuse to cross the picket line may be participating in an illegal strike. See: [[Illegal Strikes & Lockouts, Chapter 30\(e\)](#)]. Both unionized and non-unionized employees who refuse to cross the picket line may be subject to employer discipline.

### ***Performing Struck Work and Hot Cargo***

Section 149(f) prohibits employers from disciplining employees who are not on strike for refusing to perform the work of striking employees. This effectively permits employees to refuse to do the work of striking employees. Some workers are not considered employees under the [Code](#) (e.g., managers and those performing confidential functions related to labour relations) and these workers can be required to perform striking workers’ duties on pain of discipline.

Section 85(a) states that no employee shall refuse to perform work because other work is being performed by someone who is not a member of a union that is on strike. Section 85(b) prohibits employees from refusing to handle goods because the carrier is being struck or has locked out its employees. This is commonly referred to as a “hot cargo” provision.

## **WHEN A STRIKE OR LOCKOUT ENDS**

A strike or lockout ends when a settlement agreement is reached (a new collective bargaining agreement or otherwise) or after 2 years expire from the date the strike or lockout commenced. While the strike or lockout ends after 2 years, the union's certification is unaffected and remains in place and a new notice to commence collective bargaining must be served.

## **REVOCAION APPLICATIONS DURING STRIKES**

The Board's consent must be obtained before a revocation application can be filed during on ongoing strike. Before consent will be granted, the Board must generally be satisfied the economic contest is over, that the strike is lost, that the strike can no longer exert appreciable economic pressure, and that further bargaining is likely to be futile. Without evidence to this effect, consent will generally not be granted. See: [[Certain Employees of Shaw Conference Centre v. United Food and Commercial Workers Union, Local No. 401](#) [2002] Alta. L.R.B.R. LD-040]

## **RESUMPTION OF WORK**

Once a dispute is over, employees normally return to work. This return can happen in a number of ways.

### ***Return to Work Agreements***

As part of a settlement, an employer and a union can make a return to work agreement. This agreement sets out the terms of the return to work such as the schedule. It may also discuss amnesty for employees who may have committed disciplinable acts during the course of the dispute.

### ***No Return to Work Agreement***

Employees may also return to work under the terms outlined in the [Labour Relations Code](#). If a strike or lockout ends, Section 90 provides that an employee may request in writing to return to work within 14 days of learning of the end of the dispute (and within 30 days in any event). If the strike or lockout ends because two years have elapsed, such a request must be immediate.

An employer is not required to reinstate employees if the employer no longer has persons engaged in performing work the same as or similar to the work performed by the employee prior to the cessation of work. For example, an employer may have automated a function during a dispute and no longer needs a particular type of employee. Similarly, the employer is not required to reinstate an employee if the employer has discontinued or suspended an operation. If the employer resumes operation, the employer must first reinstate those employees who have requested reinstatement.

### ***Returning When There is No Collective Agreement***

Employees may return to work without a collective agreement being in place. This could be because the union has called off a strike or the strike has run longer than two years and is deemed to have ended without a new agreement being reached. It could also be that the union's bargaining rights have been revoked during the course of the strike or lockout.

Employees who return to work under the provisions of the [Code](#) do so on terms reached by the employer and the employee. The employer may not discriminate against workers because of an employee having exercised the employee's right(s) under the [Code](#).