

DISPUTE-RELATED MISCONDUCT

INTRODUCTION

During a lawful work stoppage, unlawful behaviour may occur. In particular, one of the parties may try to disrupt lawful activities by the other party. Historically, third parties were often hired to pose as union members and disrupt picket lines, incite union members to unlawful acts, or report on union activities to the employer. Additionally, unions or union members may incite others to perpetrate violent and unlawful acts against employers. The [Code](#) prohibits actions intended to prevent, interfere with or break up lawful activities connected with a work stoppage. This policy describes:

- the statutory provisions;
- processing applications; and
- remedies.

STATUTORY PROVISIONS

Section 154

Section 154 provides:

154(1) No employer, employers' organization, trade union or employee and no person acting on behalf of an employer, employers' organization, trade union or employee shall

(a) engage in dispute-related misconduct, or

(b) use or authorize or permit the use of a person or organization of persons who are not involved in a dispute and whose primary object, in the Board's opinion, is to prevent, interfere with or break up lawful activities in respect of a strike or lockout.

(2) In this section, "dispute-related misconduct" means a course of conduct of incitement, intimidation, coercion, undue influence, provocation, infiltration or any other similar course of conduct intended to prevent, interfere with or break up lawful activities or likely to induce a breach of the peace in respect of a strike or lockout.

In general, Section 154 prohibits the employer, the union, an employee and any person acting on their behalf from committing such unlawful acts. Section 154 (1)(b) singles out individuals or organizations who are not connected with the dispute **and** whose primary purpose is to disrupt lawful activities. This subsection targets professional strike breakers or other persons hired or involved specifically to disrupt a legal work stoppage. It is **not** a blanket prohibition against the involvement of persons unconnected with the dispute. Certain situations are not unlawful:

- It is not unusual for politicians, members of other unions or labour organizations, or individuals or groups to “walk the picket line” with union members. Their primary purpose is to show their sympathy for a union’s position in a dispute.
- The employer sometimes hires “replacement workers” to perform the work of striking or laid-off employees. In *Securicor Investigation & Security Ltd. and United Steelworkers of America and United Steelworkers of America* 7105 [1983] 2 Can. L.R.B.R. (NS) 369 (Ont.), the Ontario Board noted that the replacement worker’s primary purpose is having a job and earning some money, not breaking the strike.
- There may be disagreement about whether a person performing bargaining unit work is connected with the dispute. In *CUPE 900 and Okanagan Mainline Municipal Labour Relations Association* [1974] 1 Can. L.R.B.R. 289 (B.C.), the BC Board found an alderperson who performed certain duties of striking city employees to be directly involved in the dispute. She was a member of the key decision-making bodies of one of the parties to the dispute. She had a personal stake in the activities and aims of the employer. The Board held that only a person “who is not a party involved in a dispute” can be a professional strike breaker. As the person was an alderperson and was directly involved in the dispute, she was not engaging in dispute-related misconduct.

Related Sections of the Code

Allegations of dispute-related misconduct will often occur in relation to activities on a picket line. See: [[Picketing, Chapter 30\(b\)](#)]. Section 84 defines lawful picketing and empowers the Board to regulate picketing. Section 84(2) allows the Board to make determinations and regulate picketing activities. It may consider how direct the involvement is of individuals and unions in the dispute. This section does not limit the powers of the Board in processing a dispute-related misconduct application. If the Board finds under Section 154 that such conduct has occurred, it has the same powers to deal with the complaint as it would under any other unfair labour practice complaint.

PROCESSING APPLICATIONS

A complaint about dispute-related misconduct will normally come to the Board in one of two ways:

- **As a “cease and desist” complaint:** This happens when an applicant believes immediate action is necessary to avoid something such as picket-line violence. The Board deals with these complaint in an expedited fashion. See: [[Cease and Desist, Chapter 30\(c\)](#)].
- **As an unfair labour practice complaint:** This happens when an applicant believes the other party has hired outsiders to provide advice and services to disrupt lawful activities during a work stoppage. In this case, the Board may process the complaint as any other unfair labour practice.

REMEDIES

The Board, finding the respondent had engaged in dispute-related misconduct, has the power to impose remedies. Section 12 of the [Code](#) gives the Board the powers to:

- Make interim or final orders, decision and directives, including requiring the respondent to cease conduct found to be in contravention of the [Code](#). For further reference on remedies, generally, See: [[Remedies, Chapter 19\(d\)](#)]. The Board has not yet made any remedies involving dispute-related misconduct complaints. In *Securicor Investigation & Security Ltd. and USWA and USWA 7105 (above)*, the Ontario Board ordered several remedies.
- Make a declaration of unlawful activity and a cease and desist order.
- Award compensation to the union for the time the Board determined the unlawful activities had prolonged the strike.
- Require that the security firm involved give written notice to any affected union whenever an employer retained it to act in connection with an actual or expected work stoppage in the province. This notice was to contain a reference to the Board's findings in the present case, and an acknowledgement of the security firm's awareness of and respect for the employees' rights under the Act.