



C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8  
Édifice C.D. Howe, 240, rue Sparks, 4<sup>e</sup> étage Ouest, Ottawa (Ont.) K1A 0X8

---

## INFORMATION CIRCULAR

*The following is one in a series of information circulars prepared by the administration staff of the CIRB. The circulars are designed to provide employees, trade unions and employers with general information and a clearer understanding of Board processes. This information circular is an informal tool and is not binding on the Board.*

### **No. 06—Unlawful Strikes and Lockouts**

#### **The Collective Bargaining Framework**

A strike or lockout is a legitimate part of the collective bargaining process.

The *Canada Labour Code (Part I—Industrial Relations)* recognizes that employees can lawfully engage in a strike against employers, and employers can lawfully lock out their employees in an effort to compel or persuade "the other side" to agree to terms and conditions of employment, **provided they do so in accordance with the provisions of the Code.**

The *Code* contains extensive provisions to assist parties to resolve collective bargaining disputes, including the appointment of conciliation officers, conciliation boards and commissioners, and special mediators of the Federal Mediation and Conciliation Service (FMCS) of Labour Canada. Their task is to assist employers and unions to reach agreements without recourse to "economic action." It is only after these processes have been tried and the Minister of Labour is satisfied that further third party assistance would be of no value that the parties can initiate a lawful strike or lockout.

When a collective agreement has been concluded, it represents an agreement between the union and the employer on terms and conditions of employment and other matters, for a specified period of time. The agreement is binding on the union, the employer, and every employee in the bargaining unit. A collective agreement must be for a duration of at least one year, and must contain a mechanism for resolving disputes that arise concerning the application and/or interpretation of that agreement. The grievance procedure, as this process is usually known, must provide for binding arbitration by an outside third party.

Since a grievance procedure is included in the collective agreement for resolving disputes, no strikes or lockouts can take place during the term of the agreement.

## **WHAT IS A STRIKE OR LOCKOUT?**

Section 3(1) of the *Code* defines strikes and lockouts as follows:

- *"strike" includes a cessation of work or a refusal to work or to continue to work by employees, in combination, in concert or in accordance with a common understanding, and a slowdown of work or other concerted activity on the part of employees in relation to their work that is designed to restrict or limit output.*
- *"lockout" includes the closing of a place of employment, a suspension of work by an employer or a refusal by an employer to continue to employ a number of his employees, done to compel his employees, or to aid another employer to compel his employees, to agree to terms or conditions of employment.*

## **WHEN IS A STRIKE OR LOCKOUT UNLAWFUL?**

A strike or lockout is unlawful, at any time, if there is no union, or where there is a union and the requirements of the *Code* in acquiring the right to lockout or strike have not been met.

The *Code* recognizes the grievance arbitration process as the appropriate method for settling disputes that arise concerning the interpretation and application of provisions in a collective agreement (sometimes called "rights" disputes), during the period the collective agreement is in effect. Even though a strike or lockout is a legitimate collective bargaining tactic to put economic pressure on the other party to settle terms of a new collective agreement (sometimes called an "interest" dispute), unions and employers are not allowed to begin a strike or lockout action before the dispute settlement mechanisms in the *Code* have been exhausted.

The terms and conditions of a collective agreement continue to be in effect beyond its expiry date, right up to the time that the dispute settlement mechanisms under the *Code* have been exhausted, and 21 days have elapsed since the Minister of Labour has "released the parties." In the orderly scheme for resolving collective bargaining disputes that is set out in the *Code*, it is not strikes and lockouts themselves that are regulated. What is regulated is when they can occur. For details, see sections 89(1)(a) to (f) of the *Code*.

## **EXAMPLES OF UNLAWFUL STRIKES AND LOCKOUTS**

The Canada Industrial Relations Board interprets each situation on its own facts and circumstances, but...

A strike by employees who are attempting to obtain recognition of their collective bargaining rights by an employer rather than going through the certification process is unlawful.

A strike or lockout arising from frustration with the slowness of collective bargaining, a "sitdown," "study session" or other concerted work stoppage by some or all employees arising from a dispute in the work place (such as contracting out, discipline of a shop steward) is unlawful if it occurs before the right to strike or lockout has been acquired.

A strike or lockout does not have to involve employees walking off the job and/or forming a picket line to meet the definition of strike or lockout in the *Code*.

According to the Board, the following activities may also constitute unlawful strikes:

- a ban on, or concerted refusal to work overtime, even if in some cases the collective agreement provides for individual voluntary overtime;
- a refusal to handle "hot goods" where not provided for in the collective agreement;
- a refusal to cross the picket line of another trade union;
- a work to rule, such as a "slow wheel" in the railway industry.

The Board may also declare that an unlawful lockout occurs when an employer lays off or does not recall laid-off employees and, instead, transfers their work to another company controlled by the same employer, all for the purpose of forcing employees to accept new conditions of employment.

### **About Picketing**

While the *Code* contains provisions that limit the right of employees to participate in a strike, there are no provisions concerning the location, duration and manner of picketing.

The regulation of picketing activity is left to authorities in the province where the picketing occurs. The proper authority, such as a court or a labour board depending on the jurisdiction, may grant an injunction to restrain picketing, to limit such things as the number of pickets and their locations, but the Board has no authority to do so.

### **Approach and Role of the Board**

The Board takes a remedial, non-judgemental approach in responding to applications involving unlawful strikes and lockouts. The Board's primary objective is to put an end to the work stoppage as quickly as possible, and to get everyone back on the job, rather than to punish the union and the employees, or the employer.

The Board and its industrial relations officers (IRO) will, where appropriate, look for an underlying cause, and may attempt to resolve the dispute informally in direct discussions with the parties, sometimes at the site of the work stoppage. In circumstances where the same parties continue to take part in further unlawful work stoppages, the Board will deal sternly with those parties and may use the full array of deterrents at its disposal to ensure that the law is upheld.

The Board's approach is in keeping with its overall responsibility to promote constructive and harmonious relations between unions and employers. Accordingly, the Board gives top priority to applications respecting unlawful strikes and lockouts, and expedites all proceedings, both informal and formal.

## **FILING AN APPLICATION**

### **What is the first step?**

A telephone call to the nearest [Board office](#) to advise of a developing situation or an impending application is a good first step. Advance notice enables the Board's regional staff to assess the situation and consider ways and means of dealing with it. An industrial relations officer may be assigned to assist the parties to resolve the matter informally, while the Registrar alerts the Board, and makes advance arrangements for the assignment of a Board panel and the scheduling of a hearing, should one be required.

### **When can a formal application be filed?**

An employer may file an application with the Board when it believes that a union has declared or authorized a strike or that employees are participating in a strike that is prohibited by the *Code*. Similarly, a union may file an application with the Board alleging that an employer has declared or caused a lockout of employees in contravention of the *Code*.

It is not necessary to wait until a strike or lockout is actually taking place to file an application. If there is good reason to believe that a strike or lockout is likely to occur, an "anticipatory" application may be filed. A telephone call to the nearest Board office can be helpful in understanding the requirements of the Board, and it will serve to alert the Board and its staff to the situation and to the impending application.

### **How do you file an application?**

The Board does not provide an application form. An application must be in writing, comply with Board Regulations 34 or 35, and include the following information:

- names, addresses and telephone and telecopier numbers of the persons affected by the application, including unions, employees and their representatives;
- details of the events giving rise to the work stoppage and reasons why the applicant believes it is unlawful;
- remedies sought from the Board;
- copy of the relevant collective agreement.

An application may be delivered by hand, by messenger or by facsimile transmission to the Registrar at the closest Board office.

Where the applicant is seeking an immediate public hearing, the applicant must also deliver a copy of the application to the persons affected. The Board must then receive confirmation from the applicant as to the date, time and manner of delivery. This important procedure enables the Board to schedule a hearing on very short notice.

## **What happens next?**

When a formal application is filed, the Board will acknowledge receipt and will ensure that a copy of the application and of the documentation is provided to any union, employer or person named in the application. Parties named are given an opportunity to file written submissions in response to the application, within the time period set by the Board.

Where it appears that the parties or the situation may benefit from the involvement of an industrial relations officer, the Registrar will appoint one. The IRO assigned will, where appropriate, attempt to uncover the underlying cause of the work stoppage, and work with the parties on an informal basis to seek an accommodation that will result in an end to the work stoppage, and avoid further more formal proceedings.

While the informal process is going on an assessment is made of the degree of urgency involved. Arrangements are made for a Board panel to be assigned and a date for a hearing is set. The hearing is usually held in the community where the work stoppage is taking place.

The informal process may continue right up to the time of the hearing, if it still seems that a settlement is possible. If a settlement is reached, the hearing will not take place. If no settlement is reached, the IRO will not give any information to the Board concerning the informal discussions.

The Board gives its highest priority to dealing with unlawful strike and lockout applications. When the local Board office receives advance notice of the application, the Board and its staff can get a head start on making arrangements for both the involvement of a IRO and the more formal hearing.

## **About the hearing**

If a matter cannot be settled informally, the Board will normally conduct a public hearing before making a determination.

The Board will hear evidence and argument as to whether a strike or lockout within the meaning of the *Code* is taking place or about to take place, whether it is unlawful, and what remedy is appropriate in the circumstances. This will normally include the nature of the work stoppage, such as a work to rule, a ban on overtime or a refusal to cross a picket line, whether a collective agreement is in effect, and whether the dispute settlement provisions of the *Code* have been exhausted, and the criteria set out in section 89 of the *Code* have been met. The Board may seek the agreement of the parties on certain facts to expedite the hearing. The Board takes a non-technical approach.

In keeping with the urgency associated with this type of application, the Board will normally continue the hearing process without interruption until the parties have presented their cases and the Board has all required information to make a decision. The Board will then withdraw to deliberate and may wish to make its decision known to the parties orally within hours of the

conclusion of the hearing. If a formal order is required, it is usually issued shortly after the hearing.

## **Remedies**

The *Code* gives the Board the power to make specific remedies where it finds that an unlawful strike or lockout is taking place.

The Board may make a declaration that a strike is unlawful, that the union has declared or authorized a strike, and that employees are participating or are likely to participate in it. The Board may also issue a "cease and desist" order:

- requiring the union to revoke its authorization for the strike and to notify the employees;
- enjoining employees from participating in the strike;
- requiring the employees to perform their duties;
- requiring the union to give notice of the order to its members.

The Board may also make a declaration that the employer has declared or is about to declare or cause a lockout. The Board may also issue a "cease and desist" order:

- forbidding the employer to declare or cause the lockout;
- requiring the employer to discontinue the lockout and permit the employees to return to work;
- requiring the employer to give notice of the order to its employees;
- compensating employees for remuneration lost during the unlawful lockout.

In considering remedies in unlawful strike and lockout cases, as in the more informal processes that precede the hearing, the Board adopts a problem-solving approach, keeps in mind the labour relations realities unique to each situation, and does not always come up with a purely legal remedy. For example, the Board has refused to issue an order when the strike or lockout had already ended. If the union is found not to have authorized or declared a strike, the Board may simply order the employees to perform their duties. In one case, where the union voluntarily revoked its authorization of activities that the Board found to be an unlawful strike, no order was issued. In another, the Board declined to issue an order, but it assigned a IRO to monitor events following a finding of an unlawful strike. Where a union or an employer continue to cause unlawful work stoppages, the Board will consider using stronger measures to ensure compliance with its orders.

## **Enforcement of Board Orders**

The Board's approach to tailoring the terms of formal orders to meet the circumstances in each case has resulted in a high degree of acceptance by the parties and persons affected.

Where an order is not complied with, however, a party may apply to the Board to file the order in the Federal Court of Appeal, where it has the same weight as an order of that Court. Enforcement

of the order then becomes a matter for the Federal Court, not for the Board, and failure to comply with that order can result in contempt of court proceedings.

Unlawful strikes and lockouts are offences under the *Code*, punishable on conviction by substantial fines. However, no prosecution can be initiated against unions, employers, or their representatives, unless the prior consent of the Board is obtained. The Board will inquire into the reasons for non-compliance, and may or may not consent to prosecution, depending on the circumstances.

*Revised 2001*