



Strike Action: Law and Lessons Learned

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Agenda

- Preconditions to Striking
- Planning for Strike Action
 - Negotiating a strike/picket protocol
 - Establishing and Delivering Strike Pay
- Strategic striking
- Understanding Psychology on the Picket Line
- Ending a Strike
 - Return to Work Agreements

Strike Action - Preconditions

- s.93 of *The Labour Relations Act*
 - Must have strike vote
 - Reasonable notice, reasonable opportunity & must be secret ballot
 - Union is not required to strike if there is a vote in support of strike action
 - Essential Services Agreement if applicable
 - No notice requirement in LRA – but check essential services agreement and collective agreement

Planning for Strike Action

- Laying the groundwork early on
- Member outreach / communication with members is key
 - Need to inform and build support for bargaining committee
 - Have a plan to get the vote out in favour of strike
 - Have a plan to maintain support for the strike, once commenced
- Obtaining personal contact information – phone and email

Planning for Strike Action – continued

- Establishing Committees:
 - strike coordinating committee,
 - financial committee (dealing with strike pay, benefit premiums, raising funds/donations),
 - public relations
- Strike Pay
 - set out in union constitution / bylaws
 - system for tracking picket attendance through picket captains
 - retaining payroll provider

Planning for Strike Action - continued

- Strike / Picket Protocol:
 - Payments for (Certain) Benefits by Union
 - Arrangements for payment of outstanding wages or vacation pay owing
 - Address how those who work during strategic strike will be paid
 - Addresses rules for picketing, such as:
 - How long picketers can stop vehicles for and how many cars can pass after delay;
 - The location of picket lines, strike trailers, fire barrels, and public relations material;
 - The time of picketing and number of picketers per location;
 - Access by picketers to washrooms or electrical power;
 - Access for management or emergency vehicles;
 - Dispute resolution mechanisms
 - Provision for re-negotiation

Strike Action – Implications

- Collective Agreement is terminated – no longer in force
 - *Greensteel Industries Ltd.*, [1982] M.L.B.D. No. 3 – terminating employees during strike
- Unfair labour practices by employer
 - Section 16 – discipline for refusing to perform work of striking employees
 - Section 17 – denying or threatening to deny pension or benefits to which employee is or was entitled but for the cessation of work due to strike;
 - Section 18 – where strike/lockout, and union tenders premiums for medical, dental, disability, life or other insurance scheme, if employer denies, cancels, refuses, fails to remit...

What is a "strike"?

As per LRA, a "**strike**" includes

- (a) a cessation of work, or
- (b) a refusal to work, or
- (c) a refusal to continue to work, or
- (d) a refusal to continue the standard cycle or normal pattern of operation in a place of employment, or
- (e) a slow down of work, or
- (f) an activity in relation to their work that is designed to restrict or limit output,

by or on the part of employees 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 in compelling the employer of those other employees to agree to terms or conditions of employment;

What is a "lockout"?

As per LRA, a "lockout" includes:

(a) the closing of a place of employment, or

(b) a suspension of work, or

(c) a refusal by an employer to continue to employ a number of his employees,
or

(d) a substantial alteration by an employer in the standard cycle or normal pattern of operation in a place of employment,

done or made to compel his employees, or to aid another employer to compel his employees, to agree to terms or conditions of employment;

Striking – definitely not all or nothing

- Strikes are very broadly defined; definition is “non-exhaustive”: ATU Local 1505, Order No. 1689: “almost any concerted activity on the part of employees in relation to their work” (i.e., not criminal or other unlawful acts)
- Examples:
 - rotating strikes, overtime bans, work-to-rule campaigns, slowdowns and many other more imaginative job related activities
 - “...not ...informing the public of their obligation to pay a fare.” and not monitoring payment
 - not carrying radios normally carried to facilitate communication with manager;
 - not filing paperwork, booking off sick, being unavailable for assignments, rotating withdrawals of service, increasing length of breaks, etc., etc, etc. Be creative!

Why consider a “strategic strike”?

- Less predictable for Employer
- Union members not deprived of their income over long periods of time
 - more likely members will support the strike
- Public support for strikers may be enhanced (e.g., if striking in health care during COVID)
- If Union anticipates needing to wait out the 60 days before applying for the Board to settle a Subsequent Contract (s.87.1 of The LRA) – could be 80 days before arbitrator appointed.

Picket Line Psychology

- Evolution of Picket Line morale
- Communications with the Employer - getting back to the bargaining table
- Communications with the Media - who communicates and defining the message

Role of Picket Captains

- Liaison between strike coordinator and picketers
 - track attendance of members,
 - written record of activity including attempts to provoke or incite members to commit unlawful acts,
 - video record of events on the picket line,
 - ensure members conduct themselves in lawful manner and in accordance with Picket Line Protocol

Ending Strike: Applying to MLB to terminate strike / lockout

- Process is set out in section 87.1 of *The Labour Relations Act*
 - Been on strike / lockout for minimum of 60 days;
 - Have been assisted by conciliator / mediator for at least 30 of the 60 days;
 - Applicant has been bargaining in good faith, and it is not likely that a collective agreement will be concluded within 30 days of further bargaining.
 - Board can order termination of strike or lockout – and either Board or an arbitrator can settle the Collective Agreement

Ending strike: Return to work agreements

- Section 12 of the LRA creates reinstatement rights for employees who went on strike
 - After a strike, employees must be reinstated:
 - in accordance with the provisions of the collective agreement (if an agreement was concluded); or
 - in accordance with an agreement between the employer and the bargaining agent respecting the reinstatement of the employees in the unit; or
 - where there is no collective agreement or reinstatement agreement, in order of seniority

Ending a strike: return to work agreements

- Can bargain for beyond what is provided for in section 12 of the LRA
 - Clarify that no interruption of employment, seniority or continuous employment
 - Deal with situations where certain employees cannot return immediately
 - Respond to particular concerns of the bargaining unit
- More latitude in negotiating provisions about return to work if strike is ended consensually.

Questions?



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Thank You



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