
Note to readers: Headline was chosen by the Vancouver Sun, not LabourWatch. The term "strikebreaker" can be correctly used for the Ekati situation where existing employees, both PSAC union members and PSAC unionized employees (who have not voluntarily joined PSAC) are crossing the picket line to do their work. However, we doubt these employees would see themselves as strikebreakers in the negative connotation of the term. They likely have a range of reasons for crossing, from needing money, to wanting to exercise their freedom of expression right to oppose their union by going to work. We have read that some Ekati employees who are not crossing the line are working elsewhere and not walking the line. PSAC does not appear to be taking action against these members for working elsewhere. PSAC is using "replacement picketers" – that is picketers who are not employees at the mine. The union opposes the law that allows replacement workers and allows members to go to their job but will use replacement picketers.

PSAC guilty of making empty threats against strikebreakers

John Mortimer, Special to the Sun

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Unionization may have seemed like a good idea at the time. But 16 months later, the Public Service Alliance of Canada (PSAC) has yet to deliver an acceptable collective agreement to BHP Billiton's 385 unionized employees at the Ekati diamond mine 300 kilometres outside Yellowknife. Miners are walking the picket line, while a third of them exercise their right to work. More than half made an application to decertify the union.

While that application was recently dismissed, mainly on technical grounds according to media reports, the employees will be able to apply again if they want to.

PSAC is not pleased by this dwindling enthusiasm, and is threatening to fine employees who work their jobs. Its message to those who don't toe the union line is coercive, but simple: Don't cross the line, pay the fine or do the time -- in court.

An interesting approach to boosting team loyalty -- but the threats are misleading and, ultimately, empty.

Current Canadian common law, that covers Ekati employees, does not allow PSAC to use Canada's courts to enforce the collection of fines. PSAC is well aware of this fact.

In an internal PSAC memo dated September 17, 2004, then-national president Nycole Turmel informed the union's board of directors that she was in possession of "a legal opinion that clearly and without ambiguity" concluded the union has "no legal ability to enforce the collection of fines" from its members in higher courts.

Contrary to that legal advice, PSAC seems committed to intimidating union members and unionized employees into picket line obedience by threatening to fine them.

As recently as last month, Turmel herself penned a column (in the Canadian HR Reporter) expounding on the necessity of collecting union fines to protect collective bargaining. She has known for the past 18 months that such fines aren't legally binding, yet there was no acknowledgement of that in her column. PSAC, recently elected a new president whose people continue handing out fine threats in writing.

In other parts of Canada, PSAC has taken its own members to court and, by spinning the facts of these cases, it is using these 'rulings' to erroneously trumpet the idea that Canadian law supports fines. Nothing could be further from the truth.

First, under Canadian labour law, union members have the right to report to work (except in Quebec); rather than a duty to report to the picket line.

Second, the courts have not endorsed union efforts to penalize those who don't walk the picket line or who choose to cross it.

An Ontario small claims court ordered three PSAC members to pay union fines, but each ruling was made "in absentia." That is, union members didn't show up -- most likely because they were too intimidated, couldn't afford legal counsel or failed to receive proper notice of court dates from PSAC. In fact, one court ordered garnishee was recently reversed when the union member retained counsel and went back to court to challenge PSAC.

So it's time to break the myth that these cases were "won." The rulings only underscore the axiom that defendants generally lose if they fail to show up for small claims court hearings.

In fact, the Canadian LabourWatch Association is unaware of any Canadian court upholding a union fine for working during a strike where a union member has appeared in court with a lawyer to argue the law.

A review of jurisprudence shows fines assessed by trade unions are viewed by courts as penalties, not debts or damages.

Only Saskatchewan has legislation that permits unions (in limited circumstances) to levy such fines, but employees there may soon challenge that legislation.

What does this mean for Ekati employees?

Union members have the legal right to work without penalty. One way to communicate any dissatisfaction with the union's conduct is to ignore the threats. Employees are free to choose to work (or not) during the course of a strike. That choice is difficult enough without deceptive and misleading threats from PSAC.

They should ask PSAC to disclose its 2004 legal opinion and go to court to protect their legal rights if the union executes its threat.

Finally, employees should seriously question their support for a union that utilizes such tactics when the decertification window opens again.

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