

ARE FINES FOR CROSSING THE PICKET LINE FAIR?

Some unions are fining members who cross the picket line during a strike, and the courts are getting involved.

No. And they're not endorsed by a court

Ashakedown of union members to pay intimidating fines for crossing picket lines during strikes is underway. Some unions are flexing their financial and legal muscles by sending teams of lawyers and staffers to pursue defenceless union members. Their message: pay up or go to court.

Recent court "wins" have emboldened unions to trumpet the idea that Canadian law actually supports this heavy-handed tactic. Nothing could be further from the truth.

First, under Canadian labour law, union members have the right to report to work instead of the picket line in every province except Quebec. The only other province to limit replacement workers is British Columbia, but union members may still work during a strike.

Second, the courts have not endorsed union efforts to penalize those who don't walk the picket line. They simply ruled in favour of the union because union members were too intimidated to go to court, too poor to afford legal counsel or failed to receive proper notice of court dates from the union.

An Ontario small claims court has ordered four members of the Public Service Alliance of Canada (PSAC) to pay thousands of dollars in fines to their union for siding with management or not picketing during its 2004 federal strike. This prompted PSAC to proclaim that its retribution is court-endorsed and announce it plans to prosecute another 200 members.

But the court's ruling is not a legal endorsement of union tactics. In truth, PSAC's "wins" only underscore the power of union intimidation and the axiom that defendants generally lose if they don't show up to defend themselves in small claims court.

Unhindered by these facts, PSAC still claims its wins are a triumph for labour law and continues to disseminate false information in the hopes that it will keep employees, especially union members, from crossing picket lines.

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JOHN MORTIMER

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

So it's time to break the myth that these cases were "won," and encourage members to get legal counsel and go to court to protect their legal right to work without penalty. The law is clearly on the side of employees: union members don't have to pay fines for choosing to work.

Third, the unions are propagating false information about court rulings to intimidate employees. Googling the Internet for more research on fines levied by other unions turns up the Telecommunications Workers Union (TWU). It is issuing fines to Alberta members who worked during last year's Telus dispute. Thousands of union members crossed picket lines. Some fines are reported to be as high as \$10,000 — even though its own constitution says fines are "not to exceed \$1,000."

To encourage payment, TWU Local 207 posted judicial decisions on its website, claiming they are "four cases where union fines have been upheld by Canadian courts."

Once again, a union is misleading its own members and the public. While the cases appear to allow some level of internal union discipline, such as membership suspensions, not one of the cases posted by the TWU upholds a fine against a union member for crossing a picket line.

Clearly, the only way for unions to command the support of members is to deceive them with misinformation or browbeat them

during internal, union-run trials that have been described by posters in a chat room on www.labourtalk.ca as a "kangaroo court," where "no amount of argument can change [their] opinion." One chat room member wisely cautioned those who are hijacked by the TWU tribunals to "avail themselves of the services of the lawyer."

The conduct of PSAC and the TWU demonstrates the glaring power imbalance that exists in Canadian labour law. Union dues pay for union lawyers and staffers to challenge the very members who pay the dues. In other words, employees not only pay for the attorneys to prosecute them, they also have to pay for their own legal representation.

Taxpayer-supported resources are available to help non-unionized employees through employment standards and human rights issues with employers, but no such resources exist for unionized employees who have legal issues with unions.

The LabourTalk web forum indicates that some TWU and PSAC members may be forming a group to work with a lawyer and there are lawyers who feel strongly enough about this issue that they have offered pro bono representation to employees. But employees should not have to rely on the charity of lawyers. Employees should have access to legal counsel similar to an employment standards branch (possibly financed through their dues) when they challenge unions.

Protecting the rights of employees — even when challenging their unions — must become a pillar of Canadian labour law. Ensuring that they have access to legal representation is a positive first step.

John Mortimer is president of the Canadian LabourWatch Association, which provides information on unions and unionization to inform employees about their legal rights and responsibilities. He can be reached at john@labourwatch.com or visit www.labourwatch.com for more information.

ARE FINES FOR CROSSING THE PICKET LINE FAIR?

Some unions are fining members who cross the picket line during a strike, and the courts are getting involved.

Yes. They protect collective bargaining

There has been some to-do lately about the issue of fines imposed by unions against members who have crossed their own picket lines to work during a strike. This article is intended to set the record straight.

The constitution of the Public Service Alliance of Canada (PSAC) provides that any member who is in a legal strike position and who engages in "strikebreaking" by performing struck work, shall have a fine imposed against him in an amount that is exactly equal to the amount of pay earned by that employee through his strikebreaking.

What is the purpose of these fines?

Clearly, the purpose is to ensure workers who perform such work do not benefit at the expense of their co-workers. Why is that an important goal to achieve? Because the use of strikebreakers causes labour disputes to become more prolonged, bitter and volatile. When an employer chooses to use strikebreakers, it makes an already tense and difficult situation worse. The use of strikebreakers also creates an even greater power imbalance than exists in favour of employers. People who perform such work tilt the scales of labour relations unfairly in the employer's favour because they let it continue its operations.

The federal government has thus far refused to enact amendments to the Canada Labour Code to prohibit the use of strikebreakers (sometimes euphemistically referred to as "replacement workers"), although the last Parliament came very close and it's the law in a number of Canadian jurisdictions. Banning this practice offers immense benefits of collective bargaining and economies. It helps in achieving faster resolutions of labour disputes and in reducing the number of strikes and lockouts that actually take place.

In the historical parlance of the labour movement, a person who performs struck work is referred to as a "scab." It is conduct that has been powerfully condemned by

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unionized employees and their families for as long as collective bargaining has existed. The author Jack London summed the reasons up well:

"The scab sells his birthright, his country, his wife, his children and his fellow men for an unfulfilled promise from his employer."

London wrote those words more than 100 years ago. While much has changed in the world, some things will never change. Strikebreaking is still a base attack on the very livelihoods of employees and on their ability to provide a good life for their families. Strikebreakers consciously go to work despite the fact the strike was called after a majority of their co-workers had voted to strike. That makes them an irresponsible minority.

Let's face it: strike action is a measure of last resort used by workers to obtain a collective agreement that is acceptable. It involves great sacrifice on the part of the workers who honour the picket line. That's why the decision to strike is never taken lightly. With PSAC, it is employees themselves who vote on whether to take strike action. It is a democratic process in which the will of the majority is tested and respected.

Once a strike commences, employees who respect the picket lines suffer income loss that is ongoing until they return to work with their new contract.

Strikebreakers, on the other hand, seem to care only about maintaining their own income flow during a strike, while letting others bear the burdens and make the sacrifices.

At the end of a strike, the fruits of the new collective agreement cannot be withheld from the employees who chose to cross the picket line. Strikebreakers reap all of the benefits gained through the sacrifice of their co-workers, without contributing one iota to the

achievement of those gains. Worse still, their actions, whether intended or not, clearly undermine the collective bargaining process. If this is not freeloading then what is?

Without legislation that bans the use of scab labour, what is a union to do if it cannot persuade people to act responsibly? One answer is the process of union discipline, an adjudication by one's peers which may result in suspensions or expulsions from membership in the union. And, yes, the imposition of fines.

The question of whether union fines are enforceable through the courts, like many legal questions, is arguably unsettled in Ontario. In Saskatchewan, by comparison, labour legislation expressly gives unions the right to fine strikebreakers. A few PSAC local unions are testing the law in Ontario. We will soon see whether fines are enforceable in that province, as a Superior Court of Justice decision is expected in a few months' time.

Some people will claim one has the right to cross picket lines. While they will be correct that strikebreaking is still legal in most Canadian jurisdictions, one really has to ask: just what sort of "right" are we talking about here, anyway? It is the right to conduct oneself as a freeloader upon the sacrifice and contribution of others, at the direct expense of others, by making strikes and lockouts more prolonged and volatile or dangerous. That sort of behaviour is destructive, it is wrong and it should never be upheld as a valid right. The best solution is the enactment of legislation that prohibits the use of strikebreakers. Governments must show leadership on this issue. But until they do so, the PSAC will impose fines on its members who cross the line

Nycole Turmel is national president of the Public Service Alliance of Canada, a trade union that represents nearly 160,000 public and private sector employees across all provinces and territories, ranging from members of the federal public service to diamond miners in Canada's North.

Note: After the above columns were published April 24, 2006 we received the following 2004 memo from PSAC President Nycole Turmel to her Board of Directors stating she had a legal opinion on fines stating that courts would not collect them from the union. This media had received prior press coverage in the Ottawa Citizen. Subsequently, PSAC did not amend its Constitution as recommended by the relevant Board Committee who said the fine provision should be removed. PSAC continues to fine members and to use their members forced dues to sue them in court.

Note that Ms. Turmel in writing her column did not disclose this knowledge of the law she had obtained by paying lawyers with her members dues to provide an opinion that has been ignored.

September 17, 2004

TO: National Board of Directors
Public Service Alliance of Canada

FROM: Nycole Turmel

RE: Fines

I am aware that a number of Locals/members are taking a hard line in communications with regard to the imposition of fines under Section 25, Sub-Section (3) of the PSAC Constitution, which reads as follows:

Any disciplinary action taken under the provisions of Sub-Sections (1) and (2) of this Section for a cause listed in Sub-Section (5) (n) of this Section shall include the imposition of a fine that equals the amount of daily remuneration earned by the member, multiplied by the number of days that the member crossed the picket line, performed work for the employer or voluntarily performed struck work.

Specifically, they are threatening members who cross a picket line that we will be taking legal action, including the filing of a claim in a small claims court.

While this action is in keeping with the Constitution as worded and interpreted, it has the potential to undermine the credibility of the Locals/ members making the threat.

The PSAC has a legal opinion that clearly and without ambiguity concludes that we have no legal ability to enforce the collection of fines, and would lose any legal action at more senior levels of the justice system.

I referred this legal opinion to the NBoD Discipline Committee for its review, and am now in receipt of a recommendation from the Committee that I exercise my authority as National President and write Section 25, Sub-Section (3) out of the Constitution since it is unenforceable, and will ultimately be written out by the Courts if we do not act in our own regard.

While I support the Committee's recommendation, I had hoped to have a discussion at the October NBoD meeting before taking any action. That is still my intention. That said, I think that it is imprudent and detrimental to the interests of the membership for the Union at the National, Component, Local and Branch levels to threaten fines, when we now know that they are effectively unenforceable.

While the Section remains in the Constitution and in force at this time, I would urge you to advise your Locals that they should not raise the issue of fines in membership communications pending an October 2004 NBoD discussion on the issue.

In Solidarity,

Nycole Turmel
National President

c.c. Branch Directors