

## 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

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