

Workplace Lockouts

The lockout of employees at the workplace by employers is a practice that has been engaged from time to time. It is not known to be a common practice and one that is arbitrarily exercised. Under the industrial relations practice, a lockout has a legal basis where the employer resorts to debar unionized employees from entering the workplace where there is a declared labour dispute. When this occurs, the actions of the employer would have created a work stoppage. This effectively means that the employer would have denied the employee the right to work.

The lockout as initiated by the employer is fundamentally different from that of strike action. In the case of the latter, the employees would have refused to work, having been so instructed by their trade union. In effecting a lockout, the employer is usually driven to do such, where there is reason to believe that the employees are not accepting to work under the terms and conditions which the enterprise has imposed. It is important to understand that the problem comes when the employees respond to imposed conditions or those which vary from what was agreed upon, under a collective bargaining agreement.

Employers who are keen to use the lockout are to be reminded that this process cannot be exercised at their whims and fancies. This is clearly pointed out in the legal definition of a lockout which states that a lockout occurs when management shuts down a company's operations to prevent unionized workers from working. It is said to be a tactic which is used by employers to hinder the efforts of trade unions to gain leverage in a labour dispute. Based on this definition, an employer who moves to lockout an individual employee without good reason, which mainly would relate to cause, runs the risk of acting illegally. In the event that cause is used as the reason, then there must be sound evidence to support the employer's claim that the employee is perpetrating an act of stealing or thief, or is indulging in some subversive actions.

Inasmuch that the lockout takes place in response to a strike by employees, employer may find themselves in a dilemma when it is considered that the lockout is intended to deny unionized workers access to the workplace. Those non-unionized workers can indirectly become victims of the lockout. The saving grace for the employer is that work at the enterprise may continue with the non-unionized workers and other temporary employees. This is a situation that can lead to rising tensions and so employers should be cautious in how they institute the policy of a lockout while at the same time seeking to continue the business operation as usual. In most instances, temporary hired labour are considered as strike breakers, and hence could evoke some level of hostility from those employees who are locked out of work.

DENNIS DE PEIZA: Labour & Employee Relations Consultant: Regional Management Services Inc.,
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Good industrial relations practice if followed, would ensure that any such volatile situation is avoided. This can happen if the processes of consultation followed by conciliation/mediation and as a last resort arbitration, are pursued. The serving of notice prior to an intended strike or lockout is not a bad thing to contemplate, as it might serve the useful purpose of hastily having a resolution to the impasse concluded. Those employers or agents of the employer who take matters into their own hands should be mindful of the fact that their action should always be taken within the framework of the law. It is accepted that employees have the right to strike and equally so, the employer reserves the right to lock out the employees where an industrial dispute exists. A lockout is basically illegal where the employer acts in bad faith in honouring provisions or concluding a collective bargaining agreement. A lockout is not acceptable where the employer attempts to deal directly with individual employees or simply refusing to bargain.

Employers are justified in taking what is known as a defensive lockout. This is where the employer can only lock out employees in defense of their organization's economic stability. It is reasoned that a defensive lockout is an employer response to union actions like sabotage, strike threats, strikes or work slowdowns. The lockout is intended to serve the specific purpose of forcing the union to agree to a reasonable, legitimate bargaining position. There is however no justification for an employer or his agent to engage in unfair labour practices. Unfair labour practices include activities such as intentionally withholding information that the union has a right to access, hiring replacement employees on a permanent basis during the lockout, negotiating with individual employees, and anything else that intentionally targets union jobs. Employers ought to be aware that the consequence of a lockout like a strike, can be impairable damage which is done to employer-employee relationship.