

# Section 6: Resolving Labour Disputes

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## Overview

In this section, you will learn:

- different ways in which labour-management disputes may be resolved
- to identify those affected by a work stoppage and to analyze the extent to which they are affected
- how and why labour disputes and their resolution differ in the public and private sector
- to identify the 10-year trend in work stoppages in Canada and to estimate the cost
- the meaning of the following terms: labour relations board, private sector, public sector, third party costs

## What if there is a dispute?

Most disputes involving union members and management are resolved without affecting the consumers of the good or service produced. Grievance procedures, negotiated as part of the collective bargaining process, are a great help. Labour law provides for appeals to a third party such as a **labour relations board** when necessary. The greatest risk of disruption occurs when the collective bargaining process fails to produce a negotiated agreement. But even when a collective agreement ends, most often both sides agree to continue work under the terms of the expired agreement. Negotiations proceed without a work stoppage until a new agreement is reached. The law, however, does give employers the right to lock out workers. It also gives most unions the power to slow production or to strike, which usually stops production entirely. This happens rarely; 97 per cent of contract negotiations are settled without a strike.



### Hockey Star Wars

#### Episode 4: The Players Strike and the Owners Strike Back

The National Hockey League Players' Association signed its first formal collective bargaining agreement with the NHL on May 4, 1976. Three more agreements were negotiated without incident until September 15, 1991. By then, Bob Goodenow had replaced Alan Eagleson, who had been the executive director of the NHLPA since it was founded in 1967. No agreement was reached by September 15, but both sides agreed to continue negotiations. Over the

season, many issues were resolved. Among those that were not was the issue of whether the clubs or the Players' Association would receive the money that trading card companies paid to use pictures of the players. Until then, the Standard Player's Contract had specified the money belonged to the clubs. It had never been a big issue because there was not much money involved. By the beginning of the '90s, trading cards had become big business worth millions annually.

On April 1, 1992, just seven days before the end of the regular season and the start of the playoffs and still without a collective agreement, the players struck. It lasted ten days. The season resumed, and the playoffs began after the owners gave the NHLPA the right to collect the trading card money. Other issues were left unresolved.

But the owners were not happy. Since 1967, the League had expanded from 6 teams to 26. Each expansion brought added millions in franchise fees to the owners, but players' salaries also escalated. In 1975, the average NHL player earned \$73,000. By 1993, the average player's salary was \$450,000, and the owners' operating losses were averaging a million dollars a club. Somehow the owners had to slow this rate of salary increase. They wanted a salary cap.

The players weren't happy either. There was an ongoing dispute over free agency. A free agent can negotiate a new contract with any club once his current personal contract expires. Many potential buyers mean the player will likely be able to negotiate a much better contract. For some time, players had been freed from contracts that bound them for life to one team. They could now negotiate with other teams; but if another team signed a player, it would also have to compensate his old club with draft picks, other players, or a combination of the two. This "equalization compensation" often had to be decided by third party arbitration. This meant no team would know for sure what it might cost in lost players when it signed a star from another team. Naturally, that restricted the market by restricting demand, and the players didn't like that.

Throughout September of 1994, owners and players tried without success to establish a collective agreement to cover the 1994-95 hockey year. The owners vowed a players' strike would not happen again. On October 1, they "postponed" the beginning of the season. The postponement lasted 103 days until January 11 when the two sides came to terms and a 48-game season began.

Sources: Adapted from *Net Worth: Exploding the Myths of Pro Hockey* by David Cruise and Alison Griffiths. Toronto: Penguin Books, 1991; various news and magazine reports from September 1994 to February 1995. Negotiation positions and final terms of the agreement as reported by *The Canadian Press*, January 7, 1995.



## Activity 6.1

Considering the data in Figure 6.1, do you think the players should have been unhappy with their average salary?

Athletes		Spectators	
Basketball	\$1,960,000	Physician	\$124,500
Baseball	1,484,000	Autoworker	52,700
Football (NFL)	1,050,000	Nurse	38,000
Hockey	525,000	Truck Driver	29,850

Sources: National Hockey League Players' Association; National Basketball Players Association; National Football League Players Association; Major League Baseball Players Association; Revenue Canada.



## Activity 6.2

Who is the winner of a tied game? In most negotiations, each side gets some of what it wants because each side can present a good case and has power to back up its position. In the end, the players avoided a salary cap while the owners avoided unrestricted free agency. There was something for both parties. But what of the costs of the 103-day "postponement" of the season? Costs are often hard to determine in dollar terms, but some effort should be made so that the costs of an agreement may be weighed against its benefits.

1. A cost/benefit analysis begins by identifying the stakeholders, that is, the groups affected by the action. Make a list of those groups that you believe would be affected by the "postponement," and explain how they would be affected. Rank order the groups from the most to the least affected.
2. You probably put either the players or the owners at the top of your list. It is difficult to exactly determine a dollar value of cost, but do your best based on the following data:
  - 40% of the season was lost to the "postponement"
  - the average NHL salary for the 1994–95 season was \$525,000
  - there were 700 players in the NHL
  - the average yearly ticket revenue earned by a team was \$70 million
  - there were 26 teams in the League
3. What other revenues would players or clubs have that would not be included in the above data but still be lost?



## Activity 6.3

Read the following case study of the Saskatchewan nurses' strike, then answer the following questions.

1. If you had been a resident of Saskatchewan at the time, would you have supported the actions of the nurses or the government? Explain why.
2. This case illustrates both the strengths and weaknesses of the strike weapon. What were they in this case?
3. Health care in Canada is provided by government as a public service. It is provided to all as needed without personal cost—as public funds permit. If the provision of health care were left to a competitive market where services are provided only to those who can pay for them, what would likely have happened to each of the following and why?
  - (a) nurses' salaries
  - (b) the total cost of health care
  - (c) the percentage of the population who received health care

### Case Study: The Saskatchewan Nurses' Strike

Canada's public health care system traces its origins back to Saskatchewan in 1961. Tommy Douglas, former Premier of Saskatchewan, is the individual most associated with its birth. Some may have thought it somewhat ironic that nurses in the birthplace of Medicare would go on strike in April 1999. The nurses felt they had no other choice.

In some provinces, like neighbouring Alberta, the provincial government had declared that nurses were essential workers and replaced strikes with a system of compulsory arbitration. Such was not the case in Saskatchewan. The nurses' strike there was a legal one.

Some thought it ironic that the 8,400 registered nurses struck. The NDP government was considered to be a friend to labour, universal health care, and other social programs. Many were surprised when the NDP government removed the nurses' legal right to strike by legislating them back to work only six hours after they struck. It then imposed a new collective agreement based on the government's original bargaining position: a two per cent annual wage increase over three years.

Nurses defied the back-to-work legislation and a court injunction, which made their strike illegal. This meant they were subject individually to an initial fine of \$2,000 plus \$400 a day. Their union was fined \$50,000 plus \$10,000 a day.

"The union will not direct people to go back to work," Rosalee Longmoore, president of the Saskatchewan Union of Nurses, said. "People have made a personal choice to stay out and we can't tell them to go back."

Though the union didn't officially tell nurses to strike, it did support their decision and promised to pay any fines. It also promised to maintain essential services for the duration of

the strike. But that meant only the most serious cases got treated and hospitals accepted only emergency cases and discharged all but the most ill.

What made the nurses who were normally so reluctant to strike decide to do so? Provincial governments across Canada had cut back the money they spent on health and other social programs during the 1990s to help eliminate deficits. Nurses across Canada were frustrated and angry and felt they were underpaid. Many hadn't enjoyed much of a wage increase for years. Their working conditions had deteriorated. Jobs had been lost through hospital closings. Full-time nursing positions had been transformed into part-time ones – the so-called “casualization” of the nursing profession.

Nurses also saw that governments were responding to the widespread concern about deteriorating health care. The federal government in Ottawa had promised \$11.5 billion more for the health care system over the next five years. Provincial governments were promising to replace the nurses who had lost their jobs because of downsizing. In 1996 alone, 5,433 nurses prepared to leave for the U.S. where the pay and working conditions were so much better. The Canadian Nurses Association predicted that the existing shortage, coupled with an ageing population and more home care, would mean a demand for 100,000 new nurses by 2011.

The Saskatchewan nurses were not the first. A month before, they had seen the provincial government in Newfoundland legislate its nurses, the lowest paid in Canada, back to work after a nine-day strike. It also imposed a settlement that increased salaries by only seven per cent over three years.

In Saskatchewan, the nurses' union sought a 22 per cent increase in wages over three years that would bring them up to the same average level as members of the province's civil service. They also wanted better working conditions. Ms. Langmoore said nurses could no longer cope with staff shortages that had resulted in poor patient care and forced overtime.

“Anger has been building for a decade because employers and administrators and this government have not listened to the issues that nurses have addressed in their workplace,” she said.

On April 18, nine days after the strike began, nurses ended their walkout. It appeared the provincial government was prepared to increase wages and improve working conditions at a cost of 13.7 per cent – more than twice the original legislated amount had been. The government also indicated that it intended to collect the fines set in its back-to-work legislation, an amount that totalled \$43.8 million by April 18.

Sources: O'Hanlon, Martin. “Saskatchewan nurses say they will defy any court ruling.” *The Canadian Press*, April 9, 1999; Simpson, Jeffrey. “It all started with nurses.” *The Globe and Mail*, April 14, 1999. Reprinted with permission from *The Globe and Mail*.

## Are strikes too costly?

An analysis of the costs of the 1994–95 hockey lockout reveals the heavy cost of the action to both players and owners. In the case of the Saskatchewan nurses' strike, the costs to the nurses in lost income and possible fines seem considerable. The cost to the public in terms of the consequences of reduced service and the political cost to the government of the strike are hard to determine. Did these costs simply outweigh any benefits produced?

Two parties are involved in any economic transaction – the buyer and the seller. Markets work efficiently when a buyer is willing to pay a price that covers the entire costs of production. Unfortunately, markets are not always good at passing on all the costs of production to the purchaser. That means that a third party – that is, someone who is neither the buyer nor the seller – ends up paying some costs.

When a few large producers and organized labour dominate a market, a serious dispute and work stoppage will usually cause some **third party costs**. Consumers have few alternatives, and the economy is so interdependent that when workers in one industry strike, it can set off a chain reaction that affects many other workers. When the hockey owners locked out the players, the owners, players, and fans were not the only ones to suffer. Many others paid the cost in terms of lost work and income.

Third party costs become particularly heavy when an essential service (such as nursing) provided by the public sector (government) is involved. The service is a necessity and there is only one provider. What is someone in need to do when the sole provider cannot provide? Throughout the nurses' strike, the nurses maintained emergency services, but all elective surgery was cancelled and some patients had to be flown to hospitals in the U.S. for care.

How costly are strikes? Unfortunately, there is no way to accurately measure this. However, we can measure the amount of time lost because of work stoppages, which will help us assess how serious a problem it is.



## Activity 6.4

1. Look at Figure 6.2 on the next page and describe the trend in person-days not worked and the per cent of estimated working time lost during the 1990s.
2. Calculate the average number of person-days not worked and the per cent of estimated working time lost for the 1990–1999 period.
3. According to Statistics Canada, the total value of labour income earned in 1999 was \$493,275,000,000. Figure 6.2 tells us that person-days not worked due to strikes for the year was .08% (that is, 8/100ths of 1%) of the total possible days worked. Calculate the value of the days lost.

**Figure 6.2: Chronological perspective on work stoppages in Canada, 1990–1999**  
(Work stoppages involving one or more workers)

	Person-days not worked	% of estimated working time
1999	2,445,740	0.08
1998	2,443,880	0.08
1997	3,610,210	0.12
1996	3,351,850	0.11
1995	1,583,070	0.05
1994	1,606,580	0.06
1993	1,516,640	0.05
1992	2,110,180	0.07
1991	2,516,090	0.09
1990	5,079,190	0.17

Source: Human Resources Development Canada. "Chronological Perspective on Work Stoppages in Canada." Reproduced with the permission of the Minister of Public Works and Government Services Canada, 2001.

## What are the alternatives to a strike?

In the **private sector** of the economy, where there are two or more firms competing in a market, a strike is of less concern to the public. Its costs are greater to the employer and employee. The employer may lose its business to a competitor whose workers are not on strike. The employees will lose their jobs if the company goes bankrupt or, as is seen more often in these days of freer trade, simply closes operations and moves to another country. The total cost of a strike falls heavily on employer and employee and tends to discourage the use of the strike weapon.

In the **public sector** of the economy, where government alone offers a service that is often considered essential to the public's welfare, a strike is controversial. If public servants such as police, firefighters, doctors, nurses, or teachers go on strike, their services cannot be replaced. There are no competitors or substitutes. The costs of striking may be considerably greater, and more of them will have to be paid by a third party – not the employer, not the workers, but the public.

Government, the employer in the public sector, tries to limit the worst effects of public sector strikes in a variety of ways. Collective bargaining legislation often puts strict limits on when and how a strike may occur in the public sector. For example, when the public employer and employees cannot reach agreement, a third party must be called in to try to mediate. The mediator or conciliator tries to find ways to get the two sides to compromise but has no power to impose a settlement.



## Activity 6.5

Government may legislate several alternatives to the issue of strikes in the public sector. Some of the options are discussed below.

1. Identify all the groups that would be affected by each option, and analyze the benefits received or costs imposed on each one by each option.
2. Choose the option you favour, or propose another approach. Support your opinions with good arguments and factual information.

**Option 1:** Allow public workers to strike. Nurses in Saskatchewan had the power to strike and used it. The provincial government legislated them back to work in five hours, but the nurses defied the legislation. Nurses maintained what they considered essential services during their strike, but surgeries had to be cancelled and some people left the province for medical care. The last time the government did this, it lost the next election.

**Option 2:** Ban strikes by public employees altogether. Although this would appear to reduce third party costs, that is not necessarily so. If public workers are demoralized and think they are being treated unfairly, and their wages, benefits, and working conditions deteriorate, their productivity will suffer. The public will pay in terms of deterioration in service. If the public is sympathetic to the public employees, the government may face defeat in the next election. There is always the possibility that employees may defy the law and strike anyway.

**Option 3:** Grant a limited power to strike. In Quebec, British Columbia, Newfoundland, and the federal public service, a tribunal determines which public services are considered essential using criteria set down by law. Public sector workers are allowed to strike but must maintain the services identified as essential by the tribunal.

**Option 4:** Replace the power to strike with compulsory arbitration. Under such a system, a third party who is knowledgeable, objective, and usually acceptable to both sides is appointed to resolve the dispute. The arbitrator listens to the arguments of both sides and has the power to make a judgement that is legally binding on both employer and employees. This alternative produces a solution without the costs of a strike. However, there are costs. Neither side may be satisfied, which can lead to continuing and escalating labour difficulties. All available evidence suggests that it also reduces the likelihood that the parties will be able to reach an agreement on their own. It may also reduce the likelihood that either side will make concessions during negotiations because a widespread perception exists that arbitrators will simply “split the difference” between the two sides.

**Option 5:** Final offer selection. This is a form of arbitration in which the arbitrator must select the position of one side or the other. This may be on an issue-by-issue basis or on the basis of the total package. Each side presents its “final offer” to the other, and the arbitrator must select one or the other. The arbitrator cannot select a middle ground.

## Glossary

**Labour relations board:** A group of experts in labour law who are appointed by government to administer and enforce labour regulations.

**Private sector:** That part of the economy where production is carried on by firms owned by individuals who compete against each other in markets in search of profit.

**Public sector:** That part of the economy where government provides goods and services.

**Third party costs:** Costs of production or consumption that are paid by someone other than the producer or consumer who benefits. Pollution is an example of a third party cost. Third party costs are an example of an inefficient market.

