
Labour and Employment Law

April 30, 2021

Tough Collective Agreement Negotiations: Are Employees Really “Without a Contract”?

“The Port of Montreal’s longshoremen have been without a contract since December 2018.”

Throughout successive labour disputes, including the current one between the Maritime Employers Association and the longshoremen of the Port of Montreal, you have probably already read or heard in the news a statement that unionized employees have been “without a contract” since the expiry of their collective agreement. But what does this wording really mean? What is the legal regime in such a situation?

The law¹ provides that, as of the expiry of a collective agreement, until the right to strike or to lock out is exercised, the employer cannot change the working conditions of the employees. Working conditions are frozen.

The law also provides that the employer and employees may provide in their collective agreement that its conditions will apply until a new agreement is signed. It is indeed a clause that is sometimes included in the text of collective agreements.

It should also be noted that while this is by no means a legal obligation, it is common for the employer and employees, when entering into a collective agreement,

to agree on a salary increase retroactive to the expiry date of the previous agreement.

Finally, if the employer cannot change working conditions before the right to strike or lock out is exercised, this does not mean that any change in working conditions is a retaliatory measure and is prohibited. The employer is always allowed to carry on with the operations: “business as usual” remains the norm. The employer can therefore make decisions related to the working conditions of employees that correspond to the normal course of its activities and which are not inconsistent with its usual practices.

So next time you hear the expression “without a contract”, you will understand that employees do have an expired collective agreement but that the law

¹ S 59 of the *Labour Code* and, to some extent, s 50 of the *Canada Labour Code*.

IMPORTANT

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protects their existing working conditions and their bargaining of power.

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