

Submitted by :- Dr. Kumud

Department :- Management

Collage:- J.D. Women's College

Course :- MBA (PG)

Semester :- 3 RD

Paper :— MB HC 02

Topic :- Industrial Disputes

Subject :- Industrial Relation

Lockout:

According to Industrial Disputes Act, 1947, lockout means closing of a place of business of employment or the suspension of work or refusal by an employer to continue to employ any number of persons employed by him. Thus, lockout means refusal of employer to give work to workmen with the intention of arm-twisting them to accept the will of the player or to force workers to withdraw their demands. A lockout is a work stoppage in which an employer prevents employees from working. It is declared by employers to put pressure on their workers. This is different from a strike, in which employees refuse to work. Thus, a lockout is employers' weapon while a strike is raised on part of employees.

Features of Lockout:

- i. Closure of industrial undertaking when employer apprehends a destruction (or) damage to his property in the event of industrial dispute.
- ii. As long as employer refuses to give work, there is suspension of employer-employee relationship.
- iii. It is a weapon in hands of the employer to force them to give in to his demands. It is an antithesis of strike

Following acts do not amount to lockout:

- i. Termination of employee by retrenchment.
- ii. Termination of more than one person at a time.
- iii. Prohibiting an employee from working.
- iv. Declaration of lockout on the ground that workers have refrained from attending work.

Picketing:

When workers are dissuaded from work by stationing certain men at the factory gates, such a step is known as picketing. If picketing does not involve any violence, it is perfectly legal. Pickets are workers who are on strike that stand at the entrance to their workplace. It is basically a method of drawing public attention towards the fact that there is a dispute between the management and employees.

The purpose of picketing is:

- a. To stop or persuade workers not to go to work
- b. To tell the public about the strike
- c. To persuade workers to take their union's side

Gherao:

Gherao in Hindi means to surround. It denotes a collective action initiated by a group of workers under which members of the management are prohibited from leaving the industrial establishment premises by workers who block the exit gates by forming human barricades. The workers may gherao the members of the management by blocking their exits and forcing them to stay inside their cabins. The main object of gherao is to inflict physical and mental torture to the person being gheraoed and hence this weapon disturbs the industrial peace to a great extent.

Prohibition of Strikes and Lockouts:

Employees are prohibited from striking according to the section 22 of Industrial Disputes Act, 1947. Employees, who are working in a public utility service, cannot go on a strike without giving a notice of strike within the six weeks before striking. They cannot go on strike either within fourteen days of providing the strike notice or before the expiry of the date of strike specified in any such notice. The same rule applies to the employers. Employers who are carrying on a public utility service cannot lockout any of their employees without giving them a prior notice within six weeks before the lockout or within the fourteen days of giving such a notice. Moreover, the notice of strike or lockout is to be given in a prescribed manner showing the number of persons involved in the strike/lockout. A notice should be issued on the day on which the lockout is declared just to intimate the appropriate authorities about the lockout. The employer is supposed to report the number of notices of strikes received by him to the appropriate government or the authority prescribed by the government within the five days of receiving such notices.

Illegal Strikes and Lockouts:

A strike or a lockout is illegal if it is declared in non compliance with the section 22 of Industrial Disputes Act 1947, that is, if the notice period is not served or if the strike is held within the fourteen days of issuing the notice of strike. If a strike or lockout has already taken place and is being referred to a Board, the continuance of such a strike or lockout is not illegal provided it is in compliance with the provisions of Act. Moreover, a lockout declared in consequence of an illegal strike or a strike declared in consequence of an illegal lockout shall not be deemed to be illegal.

Penalty for Illegal Strikes and Lockouts:

A workman who is involved in an illegal strike can be penalized with imprisonment for a term extendable to a month or with a fine or fifty rupees or both. In similar way, an employer who initiates and continues a lockout is punishable with imprisonment extendable to a month or with a fine of one thousand rupees or both.

According to Section 25 of Industrial Disputes Act 1947, no person should provide any sort of financial aid to any illegal strike or lockout. Any person who knowingly provides such a help in support of any illegal strike or lockout is punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Lay off and Retrenchment

(a) Disputes of right, which relates to the application or interpretation of an existing agreement or contract of employment.

(b) Disputes of interest, which relates to claims by employers or proposals by a management about the terms and conditions of employment. According to the Industrial Disputes Act, 1947 and the many judicial decisions which have been handled down by courts and tribunals, industrial disputes may be raised on any one of the following issues –

(i) Fairness of the standing orders.

(ii) Retrenchment of workers following the closing down of a factory, lay off, discharge or dismissal, reinstatement of dismissed employees and compensation for them.

(iii) Benefits of an award denied to a worker; non-payment of personal allowance to seasonal employees; the demand of employees for medical relief for their parents.

(iv) Wages, fixation of wages and minimum rates, modes of payment and the right of an employee to choose , one of the awards when two awards on wages have been given.

(v) Lockout and claim for damages by an employer because employees resorted to an illegal strike.

(vi) Payment of hours, gratuity, provident fund, pension and travelling allowance.

(vii) Disputes between rival unions.

(viii) Disputes between employers and employees.

Lay Off:

According to Section 25A of the Act, provisions relating to lay off, contained in 25C, to 25E, shall not apply to industrial establishments such as – factory, a mine and a plantation or – (a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month or (b) to industrial establishments which are of seasonal character or in which work is performed only intermittently.

In the case of a factory, mine and plantation the Act has made special provisions relating to lay off. In the case of the other two types of establishments, however, the Act itself has made an exception. As such, in case a question arises whether an industrial establishment, is of a seasonal character or whether work is performed therein only intermittently the decision of the appropriate government shall be final.

According to Section 25C, a workman who is laid off is entitled to compensation equivalent to 50% of the total basic wages and dearness

allowance for the period of lay off this right of compensation is, however, subject to conditions under the Act.

Retrenchment:

According to Section 2(00) of the Act “retrenchment” means the termination of a workman for any reason whatsoever otherwise than as a punishment implicated by way of disciplinary action but does not include –

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or

(c) Termination of the service of workman on the ground of continued ill-health. As pointed out by the Supreme Court in *State Bank Vs N. Sundra Money, 1976* the word ‘termination’ may refer either to termination by the notice or by efflux of time.

Accordingly, the employer may give a composite order; both for employment and termination this section does not explain the phrase, ‘for any reason whatsoever’. However barring the three circumstances, a workman may be retrenched for any reason such as – automation, rationalization, financial loss, etc.

Section 25G of the Act lays down the procedure to be adopted by the employer while retrenching workman. According to this section the employer has to follow the principle of ‘last come, first to go’ and retrench the workman who was the last person to be employed in that category of workman. This is the ordinary principle to be followed for the purpose of retrenchment or workmen belonging to different categories.

However, if the employer retrenches any other workman than the one who was employed last he has to record the reasons for doing so. This procedure need not be followed if there is an agreement between the

employer and the workman to the contrary. Further, this procedure is applicable only to the citizens of India.

If after retrenchment the employer proposes to employ persons he has to according to Section 25H, give an opportunity to the retrenched workmen for re-employment and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. Even this provision is applicable to citizens of India.

There are Four forms of conflicts as under Industrial disputes in the Industry

(a) Strikes:

A strike is a spontaneous and concerted withdrawal of labour from production (or service giving) temporarily. It is a collective stoppage of work try a group of workers for pressuring, their employers to accept their demands. The Industrial Disputes Act, 1947 has defined a strike as “an assertion of work by a body of persons” employed in an industry under a common understanding of any number of persons, who are or have been so employed to continue to work or to accept employment strikes are of 9 types-

- (i) Sympathetic strike to show sympathy to workers of other industries
- (ii) General Strike by all or most of the unions in an industry
- (iii) Unofficial Strike – Strike undertaken without the consent of the unions
- (iv) Sectional Strike – refusal by a section of a given class of workers, to perform their normal duties
- (v) Bumper Strike – When the unions plan to paralyse the industry. Such strikes are supported by the contributions of those who are still at work.
- (vi) Sit down or tool down or pen down strike – workers cease to perform their duties, but do not leave the place of work.

(vii) Show down strike or Go slow strike – workers do not stop working, but put breaks to the normal way of doing things.

(viii) Lightning Strike – Strike out of provocation, workers may go on strike, without notice or at a very short notice.

(ix) Hunger Strike – To gain sympathy from the public and get noticed by the employer, workers may decide to forego food for a specified period. Small batches of workers may also go on a relay hunger strike, in a sequential order.

(b) Lock Outs:

Lock out is the counterpart of strike. It is the weapon available to the employer to dose down the factory till the workers agree to recover work on the condition laid down by the employer. If it is impossible to meet the demands of the workers, employers may decide to go for lock out. An employer may pull down the shutters (or close the factory's main gate) so as to bring psychological pressure on the workers, to agree to conditions or face the closure of the unit.

(c) Gherao or Surround:

Gherao means to surround. In the method, a group of workers initiate collective action, aimed at preventing members of the management from leaving the office. This can happen outside the factory premises too. The person who are gherao are not allowed to move for a long time, sometimes even without food or water.

The National Commission on Labour has opined that gherao tend to inflict physical duress (as against economic pressure) on the persons affected and endanger not only industrial harmony but also create problems of law and order

(d) Picketing and Boycott:

When picketing, workers often carry / display signs, banners and play cards, prevent others from entering the place of work and persuade others to join the strike. Boycott aims at disrupting the normal functioning of an enterprise. Through forceful appeals and negative behavioural acts, striking workers prevent, others from entering the place of work, and persuade them they not to cooperate with the employer.

Types of Industrial Disputes – As per Industrial Dispute Act, 1947

The various types of industrial disputes are categorized into four categories:

1. Gherao:

In this method the employees prevent members of management from leaving the office. The NCL refuses to accept it as a form of industrial protest because it amounts to criminal conspiracy under section 120-A of the IPC and is not saved by section 17 of the Trade Unions Act, 1926.

2. Lock-Out:

As per section 2(1) of the I.D. Act, 1947, lockout means the “closing of a place of employment or the suspension of work, or the refusal of an employer to continue to employ any number of persons employed by him”. Thus lock-out is the counter part of strike and in general, favoured to the employer because by the use of this weapon the employer resists the demands of the workers. In the same way, the temporary suspension of work called lay-off is not lockout.

3. Boycott:

Boycott means absence from work place and to disturb the normal working of the organization and not to cooperate with the employer.

4. Strike:

As per section 2(q) of the I.D. Act, 1947 strike means “a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment”.

Strikes may take place in a number of ways as:

(i) General strike – It is a strike by all or most of the unions in an industry or a region.

(ii) Stay-in-strike, sit-down, pen-down, tool down – In these types of strikes the worker presence on the work place but cease to perform their duties.

(iii) Go-slow strike – In this type of strike the workers do not stop working but reducing the output and entitled for full wages. This situation is to be more harmful than total cessation of work by strike.

(iv) Hunger strike – All or some of the workers may decide to forego food for a specified period in order to gain sympathy from the public, government and others.

(v) Lightning strike – In this type of strike the workers may go on strike without notice or very short notice by provocation but such strikes are prohibited in public utility services under section 22 of the ID Act, 1947 in U.P., M.P. Gujarat and Maharashtra where notice is required to be given.