

The Canada Industrial Relations Board: A tripartite conspiracy against the working class

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The Canada Industrial Relations Board (CIRB) was until recently a relatively obscure body working to interpret and implement sections of the Canada Labour Code as it applies to federally regulated industries. However, the minority Justin Trudeau-led government—which is propped up by the New Democratic Party (NDP) and backed by the unions—has recently reinterpreted its powers, in a flagrantly arbitrary manner, to use it to suppress workers' struggles and illegalize strikes in lieu of more traditional parliamentary means, such as back-to-work laws.

The political establishment and trade union bureaucracy claim the CIRB is a “neutral” arbiter between labour and management that facilitates the reaching of “fair” and “balanced” collective agreements and helps maintain “labour peace” when the two come to loggerheads. In fact, the CIRB is a tripartite alliance of big business, the union bureaucracy and government. Its purpose is to regulate and suppress the class struggle in the interests of the capitalist elite.

Section 107: Trudeau government arrogates new powers to criminalize workers struggles

So far this year, the Labour Minister has used the CIRB and a cooked-up reinterpretation of Section 107 of the Labour Code to arrogate to himself new executive powers in order to break a series of strikes. The first was at WestJet, when airline mechanics walked out in July. The CIRB and Section 107 were deployed against railroaders at Canada's two major railway networks—Canadian Pacific Kansas City and Canadian National—in late August. Finally last month, Labour Minister Steve MacKinnon unilaterally ended strikes and lockouts at Canada's largest port operations in British Columbia and Quebec by again invoking Section 107.

With no serious opposition from the NDP or the union apparatus, Section 107 of the Canada Labour Code has been reinterpreted by the Trudeau government to give the Labour Minister what are effectively dictatorial powers through the CIRB. The section reads:

The Minister, where the Minister deems it expedient, may do such things as to the Minister seem likely to maintain or secure industrial peace and to promote conditions favourable to the settlement of industrial disputes or differences and to those ends the Minister may refer any question to the [CIRB] or direct the Board to do such things as the Minister deems necessary.

Never before this year did a Labour Minister invoke Section 107 to direct the CIRB to shut down a legal labour action and impose binding arbitration—implementing a form of rule by decree.

Even Lisa Raitt, who served as Conservative Prime Minister Stephen Harper's Labour Minister and first raised the possibility of using Section 107 to end strike action by Air Canada flight attendants in 2011, felt compelled to note that the Trudeau government has brazenly and illegally arrogated to itself strikebreaking powers.

Raitt told CBC News in August, “You can try to get the parties to agree to binding arbitration. Maybe you can write to the CIRB and ask them to impose binding arbitration ... but there's no way a minister can write a letter and say that everyone goes back to work and I'm sending you to binding arbitration.

“If you find a lawyer who can tell you that it's possible [for the minister to order the parties into arbitration], then I wish I had their advice 15 years ago. But as far as I'm concerned, you aren't able to do that,” she added.

However, this is just what the Liberals, with the complicity of the NDP and the trade union apparatus, have done.

As David Doorey, Associate Professor of Work Law and Industrial Relations at York University, noted in *The Law of Work* blog post in November, the Liberals' twisting of Section 107, has anointed the Labour Minister, whoever he or she may be, “*King of Labour Rights*, lord over the CIRB and the Code, at least until a court says otherwise.

“Of course, nobody believes that [Section 107] was intended to give a MOL [Minister of Labour] unrestrained power to essentially rewrite the Code however they ‘deem necessary.’ That would be absurd. Yet, that is the clear outcome of the Liberals' unprecedented use of [Section 107] over the past few months,” explained Doorey. “It doesn't matter whether anyone agrees with the MOL's opinion about what is ‘necessary’ to promote labour peace. The CIRB is powerless to refuse to do what the MOL directs. Full stop.”

With a nationwide walkout by 55,000 Canada Post workers now in its fourth week and the holiday season fast approaching, the Trudeau government is holding this newly cooked-up strike-breaking tool over the heads of postal workers.

What is the CIRB?

Established in 1999 as a replacement for the Canada Labour Relations Board, the CIRB is currently composed of 17 full-time and part-time members. They are appointed to fixed terms by the Governor in Council on the recommendation of the Prime Minister's Office, the Privy Council Office, the Labour Minister's office and a senior official of the Labour Ministry.

Needless to say, none of those appointed to the board represent the

interests of working people. All of those serving full-time on the board make six-figures salaries ranging from \$157,200-\$184,900 to \$291,600-\$343,000. This places them all comfortably in the top 10 percent of wage or salary earners in Canada. Meanwhile, part-timers receive a generous per diem of \$925 to \$1,295.

Among the 17 members are four “employer representatives,” drawn from the ranks of corporate executives and their lawyers, and four “employee representatives,” who are exclusively former top union bureaucrats. Eight vice chairpersons are drawn similarly from corporate law firms and the union bureaucracy.

Chairperson Ginette Brazeau is a seasoned federal Public Service bureaucrat, having worked her way from Industry Canada, the Labour Department and Federal Mediation and Conciliation Service to taking a position with the CIRB in 2008. Brazeau was appointed chairperson in 2014.

The business representatives on the board include a former vice president and general manager of the Canadian Manufacturers’ Association, a former senior legal counsel at the Canada Post Corporation and employer representatives with experience at Bell Canada, NAV CANADA, Canadian Pacific and Heenan Blaikie, a former high-power law firm whose partners included former Liberal Prime Minister Pierre Trudeau and former Conservative Party leader Erin O’Toole.

In addition to the board members, the CIRB also has a Client Consultation Committee, which counts among its union members representatives from the Canadian Labour Congress, the Teamsters, the Confédération des syndicats nationaux (CSN) and Unifor.

The representatives on the board drawn from the union bureaucracy are:

- Vice Chairperson **Roland Hackl**, who was vice president of the Teamsters Canada Rail Conference from 2017-2019 until his appointment to the board. At the time of Hackl’s appointment, Teamsters Canada President Francois Laporte welcomed him taking on an “extremely important position in the labour relations world.”
- Employee Representative **Lisa Addario**, legal counsel and then coordinator of the Representation Branch for the Public Service Alliance of Canada before joining the board in 2017.
- Employee Representative **Daniel Thimineur**, director of the legal department of Teamsters Joint Council 91 from 1993 until he joined the CIRB in 2018.
- Employee Representative **Paul Moist**, the president emeritus of the Canadian Union of Public Employees (CUPE). After 12 years as the head of CUPE, Moist retired in 2015 and took up a position on the CIRB in 2016. He was reappointed to another three-year part-time term at the end of last year.
- Employee Representative **Angela Talic**, vice president at-large of the International Longshore and Warehouse Union (ILWU) Canada, which bargains on behalf of West Coast dockers, from 2012-2014.

There is no evidence that any of these purported “employee representatives” have opposed in any serious way, either through public protest or threat of resignation, the Liberal government’s use of the CIRB and Section 107 to mount a far-reaching attack on the right to strike—an attack, moreover, that involves a power-grab by the government, through a patently false “reinterpretation” of the law, with chilling implications for all democratic rights.

In 2011, when Moist was president of CUPE, he postured against the Conservative Labour Minister Raitt’s turn to the CIRB to delay a strike by Air Canada flight attendants with a request for a “health-and-safety impact review,” denouncing it as “outrageous.” Moist declared, “Her rationale for this is disingenuous, and the use of the Canada Labour Code and the CIRB in this way is indefensible.”

No such vociferous protests have been issued by the NDP member Moist as he now sits comfortably on the board with his union president’s pension and as the Liberal government deploys its powers, not merely to

delay strikes, but break them outright.

Far from any protest, Talic, who was called to the bar in British Columbia in 2022, joined the three-member panel headed by Brazeau which enforced MacKinnon’s order to break the CPKC and CN strike. The panel ruled unanimously that the CIRB had no authority to review the minister’s orders, as “it has no discretion or ability to refuse to implement, in whole or in part, the minister’s directions or to modify their terms.”

The trade unions have responded to the Trudeau government’s arrogation of new executive strikebreaking powers through the CIRB and Section 107 with impotent, token protests. They have instructed workers to submit to MacKinnon’s CIRB rubber-stamped diktats, while announcing that they intend to “fight” the government in the courts, through challenges that will be decided years hence and have no impact on the concessions imposed by the arbitration procedures forced on workers by the government.

The unions have not called on the CIRB “employee representatives” to criticize, let alone quit the board, because they are determined at all costs to uphold up the “collective bargaining” system.

The reason for this is clear. The “collective bargaining” system, of which the CIRB is a key mechanism, is inextricably bound up with the privileges that the union bureaucracy derives from its role in policing the class struggle. Time and time again, the union bureaucracy has sacrificed the most basic interests of the working class to enforce the rules and regulations of the state-designed, pro-employer collective bargaining system. At the onset of the COVID-19 pandemic, the United Food and Commercial Workers (UFCW) publicly declared that it would not sanction meatpacking workers facing infection with the potentially deadly virus walking off the job against unsafe conditions, because that would violate the “collective bargaining system.”

These betrayals are not a matter of bad individuals but of the character of the nationalist union bureaucracy, which is oriented to protecting its privileges through the success of its “own” ruling class and ruthlessly upholds the subordination of workers’ lives and livelihoods to the capitalist profit imperative.

The latest experiences with the CIRB make clear that as the working class in Canada enters into struggle, it comes up against not only their employers but the straitjacket of the unions and the Liberal-NDP alliance to which the CLC aims to subordinate their struggles. And the Conservatives, led by the fascistic Pierre Poilievre, are just as rapacious in their desire to force the working class to submit to the demands of big business for ever greater profits.

Wherever workers have attempted to wage a genuine struggle for their interests, they have invariably been driven into headlong conflict with the trade union bureaucracies. However, if the working class is to make real advances, it must break out of the union straitjacket by forming of rank-and-file committees in every workplace, as striking workers at Canada Post have done with the formation of the Postal Workers Rank-and-File Committee, so they can advance a program for what workers need and not what management and the government say is affordable.

Rank-and-file committees will make it possible for workers to unite their struggles across Canada, and most critically to unite with their brothers and sisters internationally in the International Workers Alliance of Rank-and-File Committees (IWA-RFC) in the fight to place power back in the hands of workers on the shop floor.



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