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A back-to-work order would be bad news for Toronto

The cop-out labour strategy would simply lead to another strike in a few years

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Premier Dalton McGuinty says that he isn't going to order striking City of Toronto employees back to work just yet. Mr. McGuinty told reporters that, as long as union and management are talking, the provincial government will “hold our fire and allow the two sides to do what needs doing.”

Good. A back-to-work order now, or even in a week or two, would be wildly premature. Worse, it would ruin any chance of getting an affordable, lasting deal for Toronto.

A back-to-work order would mean appointing an arbitrator to settle the outstanding issues between the city and its unions. Arbitrators generally base their decisions on other, recent settlements, which in the city's case have seen workers awarded raises of about 3 per cent a year. With a \$350-million to \$500-million hole in its budget, Toronto can't absorb that – not in the midst of a punishing recession.

On the issue of sick leave, an arbitrator might not give the city what it wants either: an end to the expensive practice of banking sick days and cashing them in on retirement. Other city workers, like police and firefighters, enjoy that right and an arbitrator would have to take that into account.

So, in the end, Toronto would have endured a strike of who knows how long without coming out ahead on any of the issues that led to the dispute in the first place. That would raise the risk of yet another strike in future, a grim prospect for a city that is going through its third in a decade.

This is the inevitable dynamic put in place by the prospect of arbitration and back-to-work orders, a cop-out labour strategy that has settled like a dead hand on public-sector bargaining. Appointing an arbitrator always seems like such a sensible idea. The two sides aren't reaching a deal on their own, so why not appoint an independent referee to look at the issues and impose a settlement that's fair to them both?

The trouble is that if the union and employer suspect their dispute will be arbitrated, they have little incentive to settle it before a strike or lockout. Instead of bargaining to reach a deal, they bargain to position themselves for arbitration.

Say a union is seeking a 4-per-cent raise and the employer wants to give 0 per cent – in other words, a wage freeze. Normally, with luck and good faith, they would saw off at 2 per cent without a strike. If they know an arbitrator is going to step in, they are more likely to stick stubbornly to their opening positions, knowing the arbitrator will split the difference.

Something like this is at work in the current strike. The last city garbage strike in 2002 was settled by a provincial back-to-work order. An arbitrator came in to settle recent disputes with the police and the TTC. A back-to-work order ended the York University strike in January. Sensibly betting on a repeat, both the unions and city have been tap dancing around the issues for months, relieved of any real responsibility for the final outcome.

Both are feeling the wrath of the public as the strike sets in, but so what? They figure an arbitrator will let them off the hook. When the back-to-work order comes, Mayor David Miller can say to voters, “Look, I got tough with the unions and tried to save you money, but the arbitrator made the final call.” The union can say to its members, “We stood up to the city, and if we lost anything it was the arbitrator's fault.”

Labour lawyer Stewart Saxe says union-management relationships are like training a horse. If you let a horse make a mistake once it will make it twice. If you let it make the mistake twice it becomes a habit.

It's like that with the costly habit of arbitrating labour disputes. As long as the city and the unions know that a

higher power may come along to settle their quarrel, they will never get serious about what divides them.

Instead of just holding his fire, Mr. McGuinty should go much further and tell the city he is staying out of this scrap unless there is a full public emergency. We aren't there yet, not even close.

Yes, the strike is a nuisance for everyone – and far more than that for the poor strikers. The weather is steamy, the garbage is piling up, the city daycares are closed and wouldn't those pools be nice now. But essential services like transit, police and fire continue to run. Hospitals are open. The city is functioning. The only really serious problem is garbage, and the city is setting up special garbage-drop stations around the city to deal with that.

No wonder Economic Development Minister Sandra Pupatello is joking about what “babies” we are in Toronto. In her city, Windsor, city workers have been on strike for 11 weeks without disaster or provincial intervention. Crying for help at this point is just silly. This is the city that famously called in the army for a snow storm. Now we want the province to save us from a little trash?

So let's all calm down a bit and let this one play itself out as it should – through hard bargaining between the unions and the employer.