
MANAGEMENT DIRECTIVE

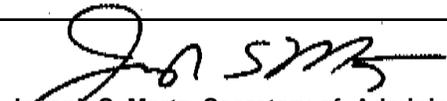
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COMMONWEALTH OF PENNSYLVANIA GOVERNOR'S OFFICE

Subject:

Guidelines to be Followed During Legal or Illegal Strikes

By Direction Of:


Joseph S. Martz, Secretary of Administration

Date:

May 25, 2006

This directive establishes policies and procedures to be followed in the event of legal or illegal strikes. More detailed guidance and procedures relative to these policies will be provided to agencies as the need arises.

1. **SCOPE.** This directive applies to employees in all agencies, boards, commissions, and councils and other agencies under the Governor's jurisdiction.

2. **OBJECTIVE.** To establish policy and procedures to be followed in the event of legal or illegal strikes. Except where specifically indicated in this directive, policy and procedures will be the same for both legal and illegal strikes.

3. DEFINITIONS.

a. **Strike.** Concerted action on the part of employees in failing to report for duty or in the willful absence from work, stoppage of work, slow-down, or failure to perform (in whole or in part) the full, faithful, and proper duties of employment for the purpose of inducing, influencing, or coercing a change in conditions or compensation or the rights, privileges, or obligations of employment.

b. **Legal Strike.** A strike which occurs after the expiration of a collective bargaining agreement and after a labor organization has complied with the requirements of *Sections 801 and 802 of the Public Employee Relations Act of July 23, 1970, Act 195*, relative to mediation and fact-finding.

c. **Illegal Strike.**

(1) A strike during the term of a collective bargaining agreement.

(2) A strike after the expiration date of a collective bargaining agreement, when the labor organization has **not** complied with the requirements of *Sections 801 and 802 of Act 195*.

(3) A strike in violation of a court-ordered injunction.

(4) A strike by police personnel covered by the terms of *Act 111, Policemen's and Firemen's Collective Bargaining Act of 1968*, or by corrections officers and other personnel at prisons or mental hospitals covered by the terms of *Section 805 of Act 195*.

4. POLICY.

a. All management, first-level supervisory and confidential employees, and employees not represented by a union DO NOT have a right to strike and will be expected to continue working. Employees in nonstriking bargaining units DO NOT have a right to refuse to cross a picket line and will also be expected to continue working. Employees in these categories are to be notified that unauthorized absences from work will result in their being placed on absence without leave and possibly subjected to disciplinary action. Employees in striking bargaining units assigned to operations deemed by the Commonwealth to be vital to public health, safety or welfare will be expected to work. Volunteers are to be used where necessary. When operating with a

- reduced work force, every effort must be made by employees to comply with safety laws and rules to protect both the public and employees.

b. First-level supervisors represented by a striking union and employees represented by other unions may be in sympathy with a strike and may claim to be unable to cross a picket line. If, in the opinion of management, every reasonable effort has not been made to cross a picket line, these employees should be placed on absence without leave and may also be subjected to disciplinary action.

c. No employee is expected to risk injury in attempting to report to work. Employees are to be directed to inform designated management officials, by telephone, if they encounter a risk of injury or other similar difficulty in crossing a picket line. Designated officials should take prompt action, through discussion with local union representatives or, if necessary, through use of local or state police to assist employees in gaining safe passage across a picket line. Discretion and good judgment are required to avoid overreacting.

d. All personnel working during a strike are to be given explicit instructions to refrain from making any inflammatory statements or taking any other actions that would inflame the working atmosphere during the strike, either at work or in public. All questions from the news media are to be referred to the Governor's Office of Communication.

e. Supervisory, management, and other nonstriking employees who are qualified should be licensed to operate essential equipment.

f. **Wage, Benefit, and Leave Entitlements.**

(1) **Wages.**

(a) During a strike, every effort will be made to continue issuing paychecks on a regular basis to all management, first-level supervisory, and confidential employees, employees not represented by a union, and bargaining unit employees not on strike. Instructions regarding paychecks for employees on strike will be issued by the Office of Administration (OA) and the Office of the Budget (OB).

(b) Payment of overtime to an exempt management employee or an exempt employee not represented by a union is authorized during a strike to the extent that the hours worked exceed the number of hours routinely worked by the employee. Payment of overtime to non-exempt management employees or non-exempt employees not represented by a union is authorized in accordance with *Management Directive 505.7, Personnel Rules*. First-level supervisors and employees in nonstriking bargaining units covered by an agreement or memorandum of understanding will be compensated in accordance with their agreement or memorandum. Confidential employees will be compensated in accordance with *Management Directive 515.12, Confidential Employees*.

(2) **Benefit Entitlements.**

(a) Employee benefits continue during a strike for management, first-level supervisory, and confidential employees, employees not represented by a union, employees in nonstriking bargaining units, and employees in striking bargaining units who work during the strike.

(b) State contributions for medical, supplemental health, and life insurance coverages will cease for striking employees during the period of the strike. Striking employees whose coverages cease may elect COBRA coverage to continue their medical and supplemental health insurance benefits or may convert their medical and life insurance coverages by paying premiums directly to the insurance carriers.

(c) Employees injured while on strike will not be covered by workers' compensation.

(3) Leave Entitlements.

(a) If a shortage of operating personnel in management, non-represented, or non-striking bargaining units is anticipated, annual, personal, compensatory, administrative, holiday, and combined leave should be cancelled for all employees at affected locations except for emergencies or other compelling reasons. Special attention must be given to the use of sick leave. Employees may be required to provide doctor's certificates or other evidence an agency deems appropriate to establish validity of sick leave.

(b) Annual, personal, combined, administrative, holiday, and compensatory leaves are to be cancelled for employees in striking bargaining units for the period of the strike, except that in the event of an illegal strike that affects only a single or several locations, leaves should be cancelled only for employees in the striking unit at the affected location(s). Agencies should notify employees, in writing if possible, of cancellations of leaves. Cancellations apply to leaves already begun as well as those approved but not yet begun. Requests for leave with pay for striking employees who call in during a strike are to be disapproved.

(c) Civil, sick, work-related injury, parental, family care, educational leave or sick leave without pay.

1 Employees on one of these leaves when a strike begins or who work during part of a strike and then request such leave during another part of a strike may continue or be granted such leave when it is clear that an employee's absence is a result of illness, bereavement, parental leave, family care, disability, attendance at an educational institution under a contractual agreement with an agency, duty as a juror or witness, or other circumstances for which the leave was originally granted. Records of employees must show that they were on civil, sick, work-related injury, parental, family care, educational leave, or sick leave without pay and not on legal strike absence. Leaves continuing after the beginning of a strike must be carefully reviewed to determine that employees are, in fact, unable to work.

2 Employees who exercise their legal right to strike or who are engaged in an illegal strike are not to be granted the above-referenced leaves for the duration of the strike. A striking employee whose leave had been pre-approved to begin at some date subsequent to commencement of the strike is to be advised that the leave is cancelled.

(d) Members of Reserve Components of the Armed Forces and the Pennsylvania National Guard are to be granted military leave, consistent with *Management Directive 505.7*, to participate in training or service during a strike.

g. Employees on strike are not eligible for unemployment compensation.

h. Discipline and legal action against striking employees:

(1) Employees who engage in an illegal strike are subject to disciplinary action, up to and including discharge.

(2) Striking employees who engage in unlawful conduct will be criminally prosecuted and are subject to disciplinary action, up to and including discharge.

(3) Striking employees who refuse to comply with a lawful order of a court enjoining a legal strike and are adjudged guilty of contempt are subject to disciplinary action, up to and including discharge. Discipline for employees adjudged guilty of contempt is not subject to any right of appeal.

i. Picketing.

(1) Given the varieties of Commonwealth properties, pickets should be kept, wherever possible, on the perimeters of such properties and not be allowed to roam at will. Attempts should be made in advance of any strike, if possible, to work out boundary lines with local union representatives so that pickets, law enforcement officers, and management personnel will know where picketing is allowed. The objective of these discussions should be to ensure that picketing is by small but orderly groups who do not interfere with access to premises.

(2) While it is expected that picketing will be peaceful and not interfere with normal access to state property or buildings, management personnel should be assigned to observe picket lines for improper or unlawful conduct. If there is mass or violent picketing, factual information is to be compiled and communicated to the Bureau of Labor Relations as soon as possible. (See Section 5.e.(12)(a) 3 c, page 6.) The

- Commonwealth may obtain an injunction to stop violent picketing or mass picketing which blocks ingress and
- egress to Commonwealth property and facilities.

- j. Except as described in paragraph k., agencies should establish plans and lines of communication
- both within the agency to share information generally, and externally with local officials relative to use of local and state police to assist with safe ingress and egress of agency facilities. Police should not be called for assistance unless they are absolutely essential to the maintenance of safety. The Bureau of Labor Relations is to be informed immediately of any use of local or state police.

k. The Department of General Services (DGS) shall establish plans and lines of communication with law enforcement personnel to assist with safe ingress and egress of buildings in the Capitol Complex or downtown Harrisburg and the State Office Buildings in Philadelphia, Pittsburgh, Reading, and Scranton. Agencies experiencing difficulty in the Capitol Complex or downtown Harrisburg should notify the Capitol Police. Agencies located in one of the State Office Buildings listed above who experience difficulty should notify the respective DGS Building Administrator.

l. Injunctions.

(1) An injunction may be granted against a legal strike only if the strike would create a clear and present danger to the health, safety, or welfare of the public. It is imperative that a precise and selective approach be used to identify those specific operations whose interruption would create one or more of these conditions. An injunction may be granted against an illegal strike whenever the court determines that an illegal strike is occurring.

(2) The Legal Office, OA, will coordinate the initiation of court actions, including actions to obtain injunctive relief, with the Attorney General and General Counsel.

(3) A petition seeking an injunction can be filed only after a strike actually begins; an injunction can be issued only after a hearing, with adequate prior notice, has been held. Because interruption of services in certain programs would be intolerable, agencies must be prepared to continue critical services between the commencement of a strike and the issuance of an injunction by a court.

5. RESPONSIBILITIES.

a. **The Legal Office, Office of Administration**, is to coordinate the initiation of court actions, including actions to obtain injunctive relief, with the Attorney General and General Counsel.

b. The Governor's Office of Communication is to release all public statements and news information relating to strikes and is responsible for all releases on policy matters.

c. The Bureau of Labor Relations is to:

(1) be responsible for all discussions with unions regarding the continuation of critical services.

(2) attempt to reach agreements with unions on the number of pickets and manner of picketing in the Capitol Complex and downtown Harrisburg and the State Office Buildings in Philadelphia, Pittsburgh, Reading, and Scranton.

d. The Department of General Services is to establish plans with law enforcement personnel to provide for safe ingress and egress of buildings in the Capitol Complex and downtown Harrisburg and the State Office Buildings in Philadelphia, Pittsburgh, Reading, and Scranton.

e. Each agency is to:

(1) make a thorough review and analysis of its operations to identify program areas in which interruptions in service would create a clear and present danger to public health, safety, or welfare and which, therefore, must be continued during a strike. Under certain circumstances an agency may not be able to identify a critical operation until after a strike has begun.

(2) identify areas where extensive property damage would occur in the absence of adequate maintenance.

(3) forward, when requested, a list of all essential program areas to the Bureau of Labor Relations.

(4) establish an information gathering organization at each location or facility to investigate incidents, prepare reports, maintain strike logs, take and catalog pictures, and obtain local news items.

(5) instruct all persons working during a strike to refrain from making inflammatory statements or taking any other inflammatory actions, either at work or in public.

(6) inform the Bureau of Labor Relations immediately of the use of any local or state police.

(7) notify employees on annual, personal, combined, administrative, holiday, and compensatory leaves of cancellations.

(8) at locations other than those specified in 5.c.(2), attempt to work out boundary lines for pickets with local union representatives in advance of any strike.

(9) in the event of an illegal strike by other than police, fire, or corrections personnel, contact the union, in writing, preferably by telegram, at both the local and state level and request their compliance with the no-strike provisions of the collective bargaining agreement. Request the union's specific actions as set forth in the peace and stability or no-strike provisions of the collective bargaining agreement.

(10) report legal and illegal strike absences through use of the SAPHR/Payroll Time Management System, and/or other designated reporting applications.

- (11) provide the Legal Office, OA, the General Counsel, or the Attorney General, upon request, with the following information to support any court action.

(a) Information required in the event of both legal and illegal strikes:

1 Information on the institution or facility involved:

a name and address of institution or facility and county name.

b name, address, and telephone number of superintendent or other person in charge who can provide current information on the strike.

c function of the institution or facility; e.g., mental health, mental retardation, highway maintenance, correctional-maximum security, and public assistance. Provide sufficient detail so that a clear understanding of the programs and services can be presented to the court.

d number and types of residents, clients or inmates, if applicable. Give reasonably detailed descriptions of their needs and their illnesses or disabilities.

e number of employees by bargaining unit (including managers and first-level supervisors) on complement at facility.

f estimated number of employees, by function and bargaining unit, needed to provide minimal services to residents, clients, or inmates. Also, indicate any volunteer assistance that is being used.

g estimated total number of employees, including management and first-level supervisory employees and volunteers, on hand to provide needed services.

2 Local union information:

a number designation of the local or locals involved and their union affiliation.

b names and home addresses of the officers and stewards of the local unions involved.

c office address of each local union involved.

d district council, regional or statewide subdivision of the union; name and address of district council or regional union representative, if known, for the area where the strike is occurring.

3 Description of strike activity:

a date and time of walkout.

b for each affected shift, the number of employees scheduled by bargaining unit and the number reporting by bargaining unit.

c if there is picketing, provide the following information:

- Date and time picketing commenced.
- Estimated numbers and locations of pickets.
- Department of pickets, i.e., peaceful or violent.

- Is there ready access to the property by management and supervisory personnel, employees who choose to work, volunteers, vendors making deliveries, and visitors or clients with business to transact with the employer without the threat of violence or harm? If not, carefully and completely describe the activity of pickets. Is it hostile? Is their language abusive? What effect is the picketing having on employees and others who are attempting to enter the facility and/or residents, patients, or clients? If possible, document any threats being made. Special attention should be given to what is said and by whom, and to any signs being carried or written material of an inflammatory nature that is being handed out. Gather any evidence that might be of use.

- If pickets have caused damage to Commonwealth, employee, vendor, visitor, or client property, provide specifics.

- Has there been damage to any Commonwealth employee, vendor, visitor, or client property? If so, describe completely. Estimate whether such damage may continue to occur.

- Are employees, vendors, visitors, or clients harassed or threatened while at or after leaving the work location? If they are, describe the incidents completely.

- Are state or local police at the scene? Why were they called? How long have they been there? Are they able to control the situation? Is their continuing presence needed to ensure order, safety, and access?

- Photographs and/or video should be taken, if possible, where mass picketing, violence or interference with normal access to state property or buildings occurs, and of any picketing by employees engaged in an illegal strike. Discretion is to be used in taking such pictures. PHOTOGRAPHS/VIDEO ARE NOT TO BE TAKEN OF PEACEFUL PICKETING BY EMPLOYEES ENGAGED IN A LEGAL STRIKE.

d if the strike may result in increased costs, such as for increased security or to replace services normally provided by the strikers, indicate the estimated amount of the increased cost and how it was calculated.

4 Effect of the Strike.

a Explain the need to provide uninterrupted services to residents, clients, or inmates and the impact on them of service interruptions.

b Describe the impact on the public, the community, local businesses, or others of service interruptions.

c Estimate the monetary or programmatic costs attributable to the strike. If the strike may result in a loss of funds or certification for the facility, indicate the statutory or other basis of such loss, when and how it would occur, and the estimated amount of funds that could be lost.

d If picket lines are preventing suppliers from delivering needed food or other supplies, indicate the impact on the facility if this continues (length of time supplies will last and effect of their loss on residents, clients, or inmates).

(b) Additional information required in the event of an illegal strike.

1 Date and time of communication from agency to union requesting compliance with the no-strike provisions of the collective bargaining agreement. Provide a copy of this notice to Legal Office, OA.

2 Nature of dispute leading to the strike:

a working conditions - specify whether a safety condition or other issue.

b discipline - name of employees disciplined, penalty, nature of offense, when discipline imposed.

c source of information - how and by whom management was apprised of the cause of walkout. What officials at the facility could testify to these facts.

d the degree to which the grievance procedure has been utilized to resolve the dispute.

This directive replaces, in its entirety, *Management Directive 590.5*, dated June 27, 2003.