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Canada

Strikes - Chapter 9

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Strikes - Chapter 9

Policy objective

To ensure an effective employer response to strikes in the federal Public Service.

Policy statement

The *Public Service Staff Relations Act* (PSSRA) acknowledges a right to strike and states the conditions under which participation in strike activity is unlawful. (S.102)

The employer recognizes that the right to strike as provided under the PSSRA is a legitimate option in the bargaining process, and will endeavour, as far as possible, to maintain service and operations, safeguard government personnel, property and facilities, and continue constructive relations with the unions and the employees engaged in lawful strike activities both during a strike and after its termination.

When a strike has ended, the employer will endeavour to restore normal conditions as soon as possible by attempting to re-establish sound relations with the unions and the returning employees and by maintaining regular hours of work as far as possible.

In the case of an unlawful strike, the employer will take action to have such unlawful activities ended as quickly as possible.

Application

This policy applies to all parts of the Public Service of Canada in respect of which Her Majesty as represented by the Treasury Board is the employer; i.e. those specified in the PSSRA, Schedule I, Part I.

Policy requirements

Lawful strikes

1. Advance planning

Once it is known that a bargaining unit or bargaining units have chosen the conciliation/strike process for dispute resolution, departments must begin planning and preparing for a possible strike by employees in the bargaining unit(s) involved. Such preparation includes:

1.1 identifying those services and functions that are necessary in the interest of the safety or security of the public;

1.2 reviewing all the positions in the bargaining unit(s) and identifying which positions should be designated and which positions should not be designated no later than three (3) months prior to the day on which notice to bargain can be served in accordance with section 78.1(4) of the PSSRA;

1.3 identifying other functions and services normally performed by employees of the bargaining units(s) involved that are to be continued during a strike by using available excluded employees and other available resources such as part-time workers not ordinarily required to work more than one-third of the regular hours and persons employed on a casual or temporary basis for less than three months;

1.4 training excluded employees, where feasible, to carry out duties other than those they normally perform. This form of advance preparation may allow the maintenance of some functions and services that would otherwise cease during a strike;

1.5 reviewing the safety requirements for operating equipment with a smaller or newly-trained complement of human resources and acquiring licences for those qualified employees who must operate equipment requiring a licence;

1.6 including an excluded representative of Departmental Security Services in departmental headquarters strike planning committees and establishing a security program, including a review of the critical security areas and emergency equipment available, a determination of what protection is needed and available from the fire, police and other security forces, and arrangements for security patrols. The review of critical security areas should include descriptions or plans of departmental premises or both, in the event that such material is later needed to support an injunction request;

1.7 considering establishing regional and headquarters strike centres;

1.8 where a department has decided not to establish regional or local strike operations centres, the local excluded manager will be responsible for:

- reviewing the critical security areas and emergency equipment available (the review should include descriptions or plans of departmental premises, or both, in the event that such material is later needed to support an injunction request);
- determining what protection is needed and available from the fire, police and other security forces, and arrangements

- for security patrols; and
- planning the assignment of duties to excluded employees including strike-related duties;
- notifying clients and other interested persons that a strike may take place (e.g. suppliers, contractors and maintenance personnel);

1.9 providing line managers with departmental guidelines on strike preparation, describing operational procedures to be followed during a strike and the basic rights and responsibilities of striking employees, non-striking employees of the striking bargaining unit, designated employees, managers and employees of non-striking bargaining units;

1.10 establishing close and continuing contact with the appropriate regional representative of Justice Canada and determining precisely what will be required in the event that an application for an injunction must later be sought. Justice Canada may also provide advice on the jurisdiction of the various police forces. Contacts should also be established with the police and fire departments prior to the strike to enlist their co-operation in ensuring the security of, and access to buildings;

1.11 establishing interdepartmental strike committees, on advice from the departmental directors of staff relations, in buildings or locations occupied by more than a single department. The committee will be responsible for ascertaining what measures should be taken to ensure continued access to the building during a strike. The chairperson of the committee should take action as described in 1.10. The committee should include the individual responsible for building security, and managers from the departments with sufficient authority to consider building closure during emergencies;

1.12 updating lists of all union executives and representatives across the country as such information might be required if injunctions are sought.

1.13 considering the assignment of other duties to employees who are members of a non-striking bargaining unit whose normal work may be curtailed as a result of a strike. If this is not possible, because of, for example, a prolonged strike, departments must consider:

- determining whether the employees concerned wish to use their vacation leave; or
- putting employees on off-duty status.

Before the latter is invoked, Treasury Board Secretariat must be consulted.

2. Steps to take when a strike is expected

Sometime during the weeks before a possible lawful strike, excluded managers must be informed of:

- 2.1 their role and responsibilities to the extent they are expected to differ from those that normally apply;
- 2.2 the extreme sensitivity of a strike situation and the need to carefully word all statements before, during, and after the strike;
- 2.3 the role and responsibilities of employees occupying designated positions;
- 2.4 the necessity of informing **all** employees of the distinction between lawful and unlawful picketing activities and of informing those who are members of a bargaining unit that is not in a legal strike position as follows:
 - that they are expected to come to work until advised otherwise;
 - what they are to do if they are unable to cross a picket line; and
 - that collective agreements which are still in effect are binding upon employees in bargaining units that are not on strike.

Note:

The foregoing information must be communicated to employees by means of a standard notice (Appendix C). This notice is to be posted on bulletin boards where matters of importance to employees are usually posted. Employees must be directed to pay particular attention to this notice when a strike is expected.

2.5 the need to review all pre-authorized applications for leave from employees in the bargaining unit that may go on strike where the period of the leave may extend into the anticipated period of the strike. Pre-authorized applications and new applications should only be approved in exceptional circumstances. In no case should an application for leave from an employee in the bargaining unit that may go on strike be approved which will simply permit the employee to avoid the consequences of a strike by means of being on leave during the strike;

2.6 the need to determine whether to return employees in the striking bargaining unit who are in travel status and on strike to their headquarters area or, where appropriate, to keep them in travel status under the Treasury Board Travel Policy but not pay them salary for time not worked. Striking employees who are returned to their headquarters area are in travel status during the return trip but such time spent in travel must not be considered time worked;

2.7 the need to review the situation of all teleworkers who are members of the striking bargaining unit(s). Existing telework arrangements may be continued or new ones approved **as long as management is satisfied that such arrangements continue to comply with the principles of the telework policy**. The employer's security standards, including such factors as the personal safety of employees and the protection of equipment and other government property, must be respected. Similar approval considerations must be made in the post-strike period;

2.8 the need to review the situation of all employees with a disability who will continue to work, including the nature of the work

performed by them, to plan for possible change in work location or other alternative work arrangements where there is particular concern for their personal security in the event of heavy or unruly picketing. The possibility of telework arrangements should be explored, keeping in mind the employer's security standards and the voluntary nature of employee participation in telework. Extra discretion must be exercised by management in assessing the situation on the picket line and for either ensuring the passage of non-striking employees who have a disability through the picket line or excusing them from duty.

3. Steps to take when a strike is imminent

As soon as it is evident that a strike is about to happen, departments must take the following steps **immediately**:

3.1 consider sending excluded managers to strike locations to maintain services at a level that is possible according to the departmental plan; to safeguard government property and facilities; to be available as representatives of management to meet with local union officers to iron out any local problems arising out of the strike situation (e.g. picketing: who, where, and how?); and to keep the strike log and provide information to departmental headquarters;

3.2 activate the departmental headquarters strike operations centre staffed by staff relations officers and other excluded employees;

3.3 the Director of Staff Relations must inform the Treasury Board Secretariat strike operations centre or alternatively the Director of Collective Bargaining that the departmental headquarters centre has been established, and liaison with Treasury Board Secretariat must be commenced;

3.4 regional and local strike operations centres must be activated and liaison established between those centres and the departmental headquarters strike centre.

Unlawful strikes

1. Steps to take when an unlawful strike is probable

As soon as it is known that an unlawful strike may take place, departmental headquarters must be notified of the situation immediately.

1.1 The Director of Staff Relations must ensure that the following steps are taken without delay:

1.1.1 the Director of Collective Bargaining in the Treasury Board Secretariat's Staff Relations Division is notified. Upon notification, the Director will contact the chief executive of the union requesting immediate action to ensure that the collective agreement is honoured. The Director may activate the Treasury Board Secretariat strike operations centre.

1.1.2 senior union officers are informed of the situation and reminded that the collective agreement is still in effect;

1.1.3 management in the location where the unlawful strike may take place is advised to do the following:

- remind employees and their local union officers that the collective agreement is still in effect;
- inform employees and the union that the grievance and adjudication procedure is the proper method to resolve the problems and that the employees' action can result in disciplinary action; and
- point out the prohibitions in the PSSRA against unlawful strikes and cite the financial penalties and various remedies provided by the law (see section 105, PSSRA).

Note:

Various methods can be used to reach employees, depending on the particular circumstances: direct oral communication, telephone calls, telegrams, posting notices, letters, etc.

1.1.4 where the circumstances are sufficiently serious, local management must be advised to **immediately**:

- notify security officers and review critical security areas;
- notify police or fire departments, or both, if necessary;
- consider the assignment of duties to excluded employees at the strike location so that services are maintained at a level that has been pre-determined by the department and to perform strike-related duties such as meeting with local union officials or employee representatives, or both, to ascertain the facts and the cause(s) of the strike, to attempt to get employees back to work, and to record strike-related information as described in the strike logs section.

1.2 If circumstances so warrant, departmental headquarters may decide to activate various departmental strike operations centres. In that event, Treasury Board Secretariat must be notified.

2. Steps to take when an unlawful strike has begun

Once an unlawful strike has commenced, departments must take the following steps **immediately**:

2.1 directors of Staff Relations must ensure that management in the location where the unlawful strike activity is taking place is advised to do the following:

2.1.1 inform employees and their local union officers that the collective agreement is still in effect, and that employees are

required to return to work;

2.1.2 inform employees and the union that the grievance and adjudication procedure is the proper method to resolve the problems and that the employees' action can result in disciplinary action;

2.1.3 point out the prohibitions in the PSSRA against unlawful strikes and cite financial penalties and various remedies provided by the law (see section 105, PSSRA);

2.1.4 notify departmental security services and, where circumstances are sufficiently serious, review critical security areas and notify police and fire departments;

2.1.5 assign duties to excluded employees, including strike-related duties and, where necessary or possible, arrange for the sending of excluded managers from other locations to the strike scene;

2.1.6 notify clients and other interested persons (e.g. suppliers, contractors and maintenance personnel);

2.1.7 begin monitoring the unlawful strike, to determine:

- its impact on operations;
- the employees who are participating in it;
- picket line activity where picket lines are established (nature of picketing, time, date, and location); and
- any other concerted action by employees on or outside government premises;

2.1.8 stop pay for the striking employees during their absence or withdrawal of services.

2.2 If measures taken to get employees to return to work are unsuccessful the department may need to request the Secretary of the Treasury Board to seek a back-to-work injunction.

2.3 If circumstances so warrant, departmental headquarters may decide to activate various departmental operations centres.

Strike operations centres

The network of departmental strike operations centres should be set up to facilitate the flow of information from the strike location(s) to departmental headquarters and the Treasury Board Secretariat.

The Treasury Board Secretariat normally requires precise and accurate information on the operational impact of a strike, the number of employees on strike and at work, and the situation with respect to the picketing of government premises. Other information requirements including the timing of reports are also determined by the Treasury Board Secretariat.

1. Treasury Board Secretariat operations centre

The Treasury Board Secretariat will staff a strike operations centre before a lawful strike, and in some cases, before an unlawful strike. Special telephones and other means of communication will be arranged for reports to the Treasury Board.

2. Departmental operations centres

2.1 Headquarters

When a strike becomes a real possibility, departments must activate their headquarters strike operations centre staffed by staff relations officers and other excluded employees to provide liaison with departmental regions and the Treasury Board Secretariat.

2.2 Regional and local

Depending on how a particular department is organized, it may wish to set up a number of regional and local operations centres to deal with strikes both lawful and unlawful. Regardless of whether a formal operations centre is set up or not, there must be enough excluded employees at the local and regional level to carry out the following in the event of a strike:

1. safeguard government property and facilities;
2. maintain operations and services at the level determined by the Department;
3. communicate pertinent and accurate information quickly to the departmental headquarters strike operations centre;
4. record information that may be required for legal or disciplinary measures, or both.

3. Setting up a departmental operations centre (headquarters, regional and local)

To set up an operations centre, the following will be needed:

- enough excluded employees to staff the centre up to 24 hours a day, if necessary;
- telephone and other communications services including cameras and video tape recorders;
- a list of names, telephone numbers (home and office), and addresses of the members of all regional and local operations centres or excluded managers in charge of regional or local operations where no operations centre has been set up;
- furniture, food, and other supplies to accommodate employees who might be required to work long hours including

- nights, and a petty cash fund for emergency needs;
- a strike log;
- newspapers, radio, and television sets to monitor news releases on the strike.

Strike logs - lawful or unlawful strikes

1. During a strike, Treasury Board Secretariat and departmental strike operations centres must maintain strike logs. In certain circumstances such as an unlawful strike which is expected to be of short duration, or in certain locations where it has been decided not to establish a strike operations centre, the same information must be recorded by an excluded employee assigned to that task.
2. Every incident that may have some relevance must be recorded and documented daily, in such manner as to provide proper evidentiary support for disciplinary action, an injunction application, or other legal measures.
3. Strike logs must be securely kept in the strike operations centres or, where no centre has been established, in the local, regional, and headquarters offices.
4. The following standard information must be included in strike logs:
 - the number of employees striking;
 - the number of employees who could legally be on strike but who are at work;
 - the number of designated employees absent from work;
 - picketing activity particularly at time of entry to work (location, numbers involved, duration, and nature of picketing activity; e.g. peaceful, picket-line incidents, mass picketing, interference with access to government facilities). Incidents and interference should be video-taped and statements promptly obtained from witnesses, if possible.
 - reports of operational impact;
 - copies of injunction orders;
 - any other pertinent information, including departmental communications with the public and/or the media and significant media reports.

Communications

1. The Treasury Board Secretariat is responsible for making statements to the news media and public about negotiations and other matters related to collective bargaining, including the overall strike situation. Departments are responsible for statements concerning operational matters and disruptions to normal services in consultation with their information officers.
2. During a strike, departments and the Treasury Board Secretariat must be able to communicate quickly with the media and the public and respond to their questions. Failure to respond immediately and factually to reporters, the public, and parliamentarians or to counter, when necessary, statements from other sources, can affect the public's confidence in the Public Service of Canada.
3. Departments must ensure that up-to-date information including accurate statistical information and the impact of strike activities on operations is quickly provided to their headquarters strike operations centre and to the Treasury Board Secretariat in the event that external communications are required at the national level.

Note:

Regional reporters often enquire about the situation elsewhere in the department and across the Public Service. Departments should provide regular updates internally to managers in the field, particularly those responsible for offices at which the public is served.

Picketing

1. Picketing in itself does not fall within the definition of a strike. Peaceful picketing by employees on strike or on their own free time for the purpose of obtaining or communicating information is permitted by law.
2. The use of force, threats of violence, blocking access to premises, trespassing on or damaging government property, or obstructing the public or employees from entering or leaving premises may constitute various offences under the *Criminal Code*. Employees participating in such behaviour may be subject to a court injunction as well as criminal prosecution. Their continued activity after an injunction is granted may result in contempt of court proceedings. Disciplinary action up to and including termination of employment may also be taken.
3. Catcalls, jeers or profane language by picketers on strike cannot be regarded in themselves as unlawful means of denying access to a department's premises.
4. During the strike, departments must observe the efforts of police to determine their ability to maintain access. If obstruction of access continues, police must again be contacted and their assistance sought. At all times, records of events must be kept, including observations of the location, number, identity and behaviour of the picketers, reports from employees who were subject to interference when entering or attempting to enter the workplace, the request for assistance from the police, including a detailed summary of conversations with police representatives, and observations of the actions by police to restrain picketers, including any evidence of the police's inability to control the situation. This information may be vital in supporting an application for an injunction restricting picketing.

It is also important that employees who participate or have participated in unlawful picketing be specifically identified. Where it is suspected that the picketers are from other local work locations, the assistance of the liaison committee in those locations must be sought in identifying the picketers in question where it is reasonable to do so. Departments must ensure that they have correct addresses for all employees in order to facilitate the service of legal documents. Departments may also be asked to assist in the service of documents on employees.

In buildings occupied by more than one department the inter-departmental strike committee should carry out the same functions as those described above.

5. Where government business is being carried on in government premises that are not normally used for purposes of public demonstration or expression, picketing by employees on a strike is not allowed in those premises when the form of expression is incompatible with the purpose of the workplace.

Where government business or operations are carried on in locations that are traditionally considered "public places", peaceful and lawful picketing may be allowed. Unlawful picketing that is obstructionist or violent in nature must not be permitted and should be curtailed by police intervention or injunction request, or both.

Departments occupying commercial premises as lessees cannot assume absolute protection from picketing. In such cases, the situation with respect to picketing at the exterior of the building should be closely monitored so that a request for an injunction limiting picketing may be made quickly if necessary. Departments must also take extra security measures inside the building to prevent the incursion of picketers from the commercial areas of the building into the departmental areas.

Injunctions

1. The Treasury Board Secretariat, in consultation with departments, will decide whether to implement legal measure such as prosecutions and back-to-work injunctions. The departments will decide whether to seek injunctions limiting picketing and to initiate actions for damage, in consultation with the employer, if necessary. In whatever course of action is taken, there should be an overall, joint strategy between the Secretariat and departments before, during and after a strike, and close liaison must be maintained.
2. In labour disputes, injunction proceedings may be used to accomplish the following:
 - to restrain a strike that is or would be unlawful;
 - to restrict or limit unlawful picketing.
3. To succeed in obtaining an injunction, the plaintiff must satisfy the court that:
 - there is a prima facie case based on the facts that the plaintiff would suffer irreparable harm if relief were not granted and that any possible prejudice would not be compensable in damages.
 - the hardship that would be done to the plaintiff if the injunction were not granted exceeds the harm that might result to the defendant if the injunction were granted;
 - the situation is urgent and thus there is no other appropriate redress.

4. Procedure

4.1 As a rule, labour injunctions are interlocutory; i.e. the order sought is for a temporary period prior to the trial. The evidence supporting an interlocutory injunction is normally presented by affidavit, a sworn statement by persons having first-hand knowledge of relevant facts. Relevant documentary material can be included as part of an affidavit (see sample affidavits, Appendix E, Guidelines 1 and 2). Consequently, where it is probable that an injunction order may be sought, departments should be prepared to identify those persons who know the necessary facts. These persons should be advised to have in their possession any relevant documentation which may be included as part of their affidavit, including basic physical descriptions of departmental premises, and descriptions of the impact on operations in areas of anticipated work stoppages.

4.2 In most instances the named defendant; i.e. the union or strikers, or both, must be served with the documentation to be introduced before the courts at least one day before the hearing. It is imperative, therefore, that departments specifically identify and provide correct addresses for at least some of the employees participating in the acts to be enjoined. Departments may also be requested to assist in serving the documents on the defendants.

4.3 If the injunction is granted, the court issues an order. It is the responsibility of the plaintiff to ensure that the order is brought to the attention of the employees covered by the terms of the order. To facilitate this, departments are requested to distribute copies of the order to as many of the employees concerned as possible. In addition, there should be other forms of notice such as media publicity and posting.

5. Jurisdiction of the Courts

5.1 The Federal Court has jurisdiction to issue injunction orders where the action to be enjoined concerns a breach of a federal statute (e.g. where a strike contravenes the *Public Service Staff Relations Act*).

Where an action to prosecute or a back-to-work injunction application is involved, the Secretary of the Treasury Board or an official authorized by the Secretary must formally request Justice Canada to seek the injunction.

5.2 Where unlawful picketing is involved, the legal proceedings must be initiated in the Superior Court of the province in which the picketing is taking place.

Where an action for damage or an application for an injunction to limit picketing is involved, ministers of the departments concerned may formally request Justice Canada to seek the injunction. In addition, to facilitate timely application for legal remedies, ministers may authorize deputy heads of departments, chief executive officers of agencies, and senior officials in the regions to request Justice Canada to begin legal proceedings.

Any request for an injunction must specifically include an undertaking to have the injunction order enforced (see sample letter, Appendix E, Guideline 5); that is, where strikers fail to respect the terms of the court order, police must be called and appropriate charges, such as disobeying an order of the court, laid. An injunction request automatically

commits the department to support the Attorney General and his or her officers in any legal action that may be required if court orders are violated.

6. Evidence

Evidence upon which any legal action is taken will be supplied by the departments concerned. Evidence falls into two main classes:

- witnesses, and
- documents and objects

6.1 Witnesses

Witnesses provided by departments should be excluded managers. They should be instructed to keep personal notes of events and conversations surrounding strikes and picketing.

The events and conversations referred to in notes must be ones of which the writer has first-hand knowledge. The writer should prepare them at the time of the events or conversations or immediately afterwards. The notes should be handwritten. If typed, the writer should check them for accuracy immediately after transcription, and sign and date them.

Notes will be useless unless they contain accurate and precise information regarding:

- the identity of individuals;
- the time and date when significant events or conversations, or both, took place; and
- the location where the events or conversations, or both, took place.

In legal proceedings, witnesses may use original notes that they made at the time the events occurred, or notes made as soon as reasonably possible after the events occurred.

Potential witnesses may also take photographs or videos. However, photographs and videos of events surrounding a strike or picketing should not be taken in a provocative manner.

6.2 Documents and objects

In addition to witnesses, departments may use documents and other objects as evidence in legal proceedings. For instance, documents such as telegrams, newsletters, and handbills may be useful. Objects such as picket signs and posters may help prove a point during a trial. Departments should retain any documents or objects that tend to show that employees planned to go on an unlawful strike or were counselled to do so. This advice applies to improper acts on a picket line as well.

Discipline

The employer's policy on discipline applies during a strike, and disciplinary action taken must be of a degree of severity appropriate to the nature of the offence and the attendant circumstances. In addition, strike related discipline must be applied in a relatively consistent manner throughout a Department or an Organization.

Terms and conditions of employment

1. General

When a bargaining unit(s) is in a lawful strike position, the collective agreement has expired and section 52 of the PSSRA (continuation in force of terms and conditions) no longer applies. The Treasury Board, under the authority of the *Financial Administration Act*, is empowered to determine the terms and conditions of employment that will apply to all non-striking employees of the bargaining unit, and may continue the provisions of the expired agreement, modify them, or set different terms and conditions of employment. In most instances, the terms and conditions of employment of the expired agreement are continued by way of a Continuation Order. Prior to a strike, Departments will be advised of the terms and conditions that will apply. Appendix B outlines employee benefits during a strike.

2. Pay administration

The Pay Administration Group of the Classification, Equal Pay, Information and Pay Division, Human Resources Policy Branch, will consult with the Staff Relations Division and provide instructions to departments on pay administration.

The Treasury Board Secretariat will notify pay offices as to when dues check-off will cease for employees in a bargaining unit which is in a legal strike position.

3. Leave administration

3.1 Vacation and compensatory leave

Generally, employees in the striking bargaining unit who are on leave when the strike begins may be allowed to continue on leave, but additional leave should not normally be granted. Employees who are participating in a strike and who have been scheduled to go on leave during the strike will not be permitted to do so.

As a general rule, designated employees are not to be granted annual or compensatory leave during a strike. However, under exceptional circumstances or in departments where 100% or close to 100% of an occupational group are designated, leave may be considered.

Employees who participate in picket line activities should not be allowed to remain on leave.

3.2 Sick leave and "other leave with or without pay"

Employees in the striking bargaining unit who are on sick leave or "other leave with or without pay" before the start of the strike should be permitted to continue on leave, subject to continuing satisfactory proof that they meet the conditions for the granting of the leave. Designated employees and employees in the striking bargaining unit who choose to come to work may be granted sick leave and "other leave with or without pay" at the discretion of the delegated manager, provided of course, they meet the conditions for the granting of the leave. Sick leave, or "other leave with or without pay" must not be authorized for employees who are on strike.

Employees are not to be granted sick leave or "other leave with or without pay" for those days during which they participate in picket line activities.

3.3 Leave for union business

Leave for union business to representatives and members of the striking bargaining unit is not to be granted during a strike.

Responsibilities

The Treasury Board functions as the employer and has overall responsibility for managing the federal Public Service during a strike.

The Treasury Board Secretariat is responsible for providing the Treasury Board with relevant information and advice on the strike and for communicating the employer's direction and providing advice on labour relations issues to departments. The Secretariat is also responsible for relations with the unions to attempt to resolve the dispute. Additional responsibilities of the Secretariat are described throughout the policy.

Departments are responsible for ensuring that government employees, property and facilities are properly safeguarded while at the same time maintaining the maximum level of service that is possible according to their own strike plans.

Staff Relations Divisions of departments, during the strike itself and in the pre-strike and post-strike periods, are responsible for advising and assisting management in carrying out this task, and for maintaining liaison between departmental management and the Staff Relations Division of the Treasury Board Secretariat. They are responsible for maintaining effective relations with the employees and the union representatives. They are also responsible for providing the Treasury Board Secretariat with timely and accurate reports.

Justice Canada provides advice to and represents the interests of the Treasury Board and departments in legal measures taken under the Criminal Code.

Monitoring

The Treasury Board Secretariat will assess departmental performance in dealing with strikes according to:

- the quality and accuracy of reports that are provided to the Secretariat;
- control of picket-line activity;
- the department's ability to apply sound labour relations principles to ensure effective strike response.

References

1. *The Public Service Staff Relations Act*
2. Relevant collective agreements.

Enquiries

Staff Relations Division
Human Resources Policy Branch
Treasury Board Secretariat

Appendix A

Definitions

For the purpose of this policy, the following terms have been defined for the most part in non-technical language. In most cases, precise, legal definitions may be found in Section 2 of the PSSRA.

bargaining agent (agent négociateur)

an employee organization that is certified by the PSSRB as the bargaining agent for the employees in a bargaining unit and is empowered to enter into a collective agreement with the employer.

bargaining unit (unité de négociation)

a group of employees that the PSSRB has determined to constitute a unit of employees appropriate for collective bargaining.

collective agreement (convention collective)

an agreement in writing, entered into under the PSSRA, between the employer and a bargaining agent, containing provisions respecting terms and conditions of employment and related matters.

designated position (poste désigné)

a position that is designated pursuant to section 78.1, 78.2 or 78.4 of the PSSRA and the designation of which has not been changed pursuant to section 78.4. Employees who occupy designated positions are prohibited from participating in a strike. Reference: Sections 2, 78 and 102 of the PSSRA.

employee (fonctionnaire)

a person employed in the public service other than part-time staff who work less than one-third of the normal work period, persons employed on a casual basis or on a term basis for less than three months, persons who occupy a managerial or confidential position, and other exceptions specified in Section 2 of the PSSRA.

employer (employeur)

Her Majesty in right of Canada as represented by the Treasury Board for various departments and agencies of the public service of Canada listed in Schedule I, Part I of the PSSRA.

excluded manager/excluded employee (gestionnaire exclu/fonctionnaire exclu)

a person who occupies a managerial or confidential position.

injunction (injonction)

a court order directing persons or classes of persons to do or not to do a particular act or thing.

managerial or confidential position (poste de direction ou de confiance)

means a position:

- a. confidential to the Governor General, a Minister of the Crown, a judge of the Supreme Court of Canada or the Federal Court, the deputy head of a department or the chief executive officer of any other portion of the Public Service;
- b. classified by the employer as being in the executive group, by whatever name called;
- c. of a legal officer in the Department of Justice;
- d. of an employee in the Treasury Board;
- e. the occupant of which provides advice on staff relations, staffing or classification;
- f. the occupant of which has, in relation to staff relations matters, duties and responsibilities confidential to a position described in paragraph (b) or (c); or
- g. identified as such a position pursuant to section 5.1 or 5.2, the identification of which has not been terminated pursuant to section 5.3.

strike (grève)

includes a cessation of work or a refusal to work or to continue to work by employees, in combination, in concert or in accordance with a common understanding and a slow-down of work or other concerted activity on the part of employees that is designed to restrict or limit output.

lawful strike (grève légale)

Employees may lawfully strike if

- the bargaining agent for their bargaining unit has chosen the conciliation method for the resolution of bargaining disputes, **and**
- there is no collective agreement applying to their bargaining unit in force, **and**
- seven days have elapsed from either, the receipt by the Chairperson of the PSSRB of the report of the conciliation board or conciliation commissioner, or the notification by the Chairperson to the parties of the Chairperson's intention not to establish a conciliation board or appoint a conciliation commissioner.

unlawful strike (grève illégale)

Strikes under **any other circumstances** are unlawful. Specifically, section 102 of the PSSRA prohibits employees from striking where

- they are not included in a bargaining unit for which a bargaining agent has been certified by the PSSRB (i.e. employees who are managerial or confidential exclusions from their bargaining unit, and those who are not represented by a bargaining agent), **or**
- their bargaining agent has chosen arbitration as the method for resolving bargaining disputes, **or**
- their bargaining agent has chosen conciliation as the method for resolving bargaining disputes and has subsequently elected pursuant to section 61(1) of the PSSRA, for the Alternate Dispute Resolution Process, for all terms and conditions in dispute, or
- their bargaining agent has agreed, pursuant to section 90 of the PSSRA to be bound by the recommendations of the conciliation board, or
- they occupy a position that has been designated under Section 78 of the PSSRA as having duties that are or will be necessary in the interest of the safety or security of the public, **or**
- there is a collective agreement in force which applies to their bargaining unit, **or**
- the seven-day period following the receipt by the Chairperson of the PSSRB of the report of the conciliation board or conciliation commissioner, or the notification by the Chairperson to the parties of the Chairperson's intention not to

establish a conciliation board or appoint a conciliation commissioner, has not elapsed.

Note: The law provides various remedies for dealing with unlawful strike activity including declaration of unlawful strike (PSSRA 104), application for consent to prosecute (PSSRA 107), actions for civil damages, injunctions and disciplinary action.

Appendix B

Benefits During a Strike

1. Superannuation

Time absent from work without pay due to strike activity is not considered pensionable service and contributions will not be made.

2. Supplementary death benefits

Where employees have earned enough in a month to pay their required monthly contributions, deductions shall be made and coverage maintained. Where earnings are insufficient, deductions cannot be made, but coverage will be maintained and outstanding contributions will be deducted from future earnings. If death occurs during the strike, any outstanding contributions would be deducted from the Supplementary Death Benefit payment.

3. Canada and Quebec pension plans

Canada and Quebec Pension Plans deductions are based on actual earnings. Deductions will continue to be made when there are earnings.

4. Public Service group benefit plans

Personnel offices can inform employees who proceed on strike, or on off-duty status as a direct result of a strike, of their continued coverage under the Public Service Group Benefit Plans.

Unless otherwise directed by the Treasury Board, coverage under the Group Benefit Plans will continue for employees who are absent without pay due to strike (i.e. a legal or illegal strike, or while on off-duty status as the direct result of a strike).

For this purpose, the Group Benefit Plans include the Public Service Health Care Plan (PSHCP), the Public Service Dental Care Plan (DCP), the Disability Insurance (DI) Plan, and the Public Service Management Insurance Plan (PSMIP) (including the Long-Term Disability (LTD) portion).

For the purposes of continued coverage and the payment of any required premiums/contributions under these plans, personnel offices should treat these absences as "leave with or without pay for other reasons".

5. Isolated posts allowances

An employee who is on strike is not entitled to any of the allowances or benefits of the Isolated Posts Directives.

6. Foreign Service Directives

The Foreign Service Directives, with the exception of Directive 56 (Foreign Service Premium) and Directive 58 (Post Differential Allowance) continue to apply in a legal strike situation.

7. Language training

Employees on language training when a strike begins may remain on language training if they wish. Employees scheduled to commence language training should be permitted to proceed as planned. The department concerned must ensure that such employees are attending language training courses by contacting the Public Service Commission.

8. Unemployment insurance

Where an employee has an interruption of earnings as the result of a strike, the department or agency is required to complete and distribute the Records of Employment according to prescribed procedures. Departments must refer employees to the appropriate Canada Employment Centre for information or advice on entitlement to Unemployment Insurance benefits.

9. Claims

Managers should exercise extra discretion in applying the provisions of the Risk Management policy (Information and Administrative Management Volume of the *Treasury Board Manual*), especially in regard to indemnification, claims and ex-gratia payments, and legal services for claims arising in the performance of a public servant's duties during a strike.

10. Other benefits

The general rule for other benefits, including some that are particular to certain groups, is that they cease for employees on strike. Departments may obtain advice from the Treasury Board Secretariat about specific problems.

Appendix C

Example of Standard Notice to Employees Concerning Picketing

Memorandum

TO: All Employees,
Department of
SUBJECT: Picket Lines

From time to time, picket lines may be set up around premises occupied by the Department of _____. Peaceful picketing by employees on a lawful strike or on their own free time for the purpose of obtaining or communicating information is permitted by law.

Blocking access to premises, trespassing on or damaging government property, the use of force, threats of violence, obstructing the public or employees from entering or leaving premises may constitute various offences under the Criminal Code and may also render the employees involved liable to disciplinary action up to and including discharge.

For the information and assistance of employees who are **not on a lawful strike**, we are providing the following guidelines, in connection with appropriate action to be taken in the event they encounter picket lines upon entering or leaving departmental premises.

1. Employees are expected to report to work as scheduled, that is, **be present**, at their prescribed time and place of work unless specifically excused or directed to report to another location or at another time.
2. Employees encountering interference or harassment by pickets in entering or leaving their assigned work location, **of a sufficiently serious nature to arouse concern over their personal safety**, are requested to telephone from the nearest available location. Arrangements will be made for the investigation of the situation on the picket line, and for either ensuring passage through the picket line or excusing them from duty.
3. Employees failing to observe the foregoing instructions and who do not report for duty at picketed locations will be considered as being absent without authorized leave, not entitled to pay, and subject to disciplinary action.

Appendix D

Relevant Forms

Title of Form	No. of form Issued by Available from Phone no.Fax no			
Notice to Employee	PSSRB	PSSRB	PSSRB	990-1800
Occupying Designated Position Form 13				990-3927

Appendix E

Guidelines

1. EXAMPLE OF AN AFFIDAVIT PRESENTING EVIDENCE

IN SUPPORT OF AN APPLICATION FOR AN
INTERLOCUTORY INJUNCTION IN A PROVINCIAL COURT
IN THE SUPREME COURT OF (PROVINCE)

BETWEEN:

ATTORNEY GENERAL OF CANADA

Plaintiff

AND:

THE PUBLIC SERVICE ALLIANCE OF CANADA

AND OTHERS

Defendant

AFFIDAVIT

I, _____ (Name), of (Street), (City), (Province), _____ make oath and say as follows:

1. That I am employed by Her Majesty the Queen in right of Canada to work as Director of the * * * District Taxation Office, Department of National Revenue, Government of Canada located at (Street), (City), in the Province of *** and as such I have

personal knowledge of the facts and matters herein sworn to be true and except where the same are stated to be sworn to on information and belief, in which case I verily believe them to be true.

2. That I am informed by (Name), Personnel Manager of the *** District Office in the Province of ** and verily believe that:
 - a. the defendant Public Service Alliance of Canada (the "Union") is an unincorporated association consisting of certain classes of employees who are employed by Her Majesty the Queen in right of Canada to work in various federal government offices throughout Canada, including the *** District Office located at (Street), (City), in the Province of * **.
 - b. the Public Service Alliance of Canada has been duly certified by the Public Service Staff Relations Board (the "Board") in accordance with section 34 of the PUBLIC SERVICE STAFF RELATIONS ACT, R.S.C. 1970, c. P-35 and amendments (the "Act"), as the bargaining agent for all employees of Her Majesty in the clerical and Regulatory Occupational Group (C.R. Group) of the Administrative Support Category, who are engaged primarily in performing clerical and regulatory service for departments and agencies of the Federal Government of Canada.
3. That I am informed by (Name) and verily believe it to be true that the headquarters of the (Province) Regional Division of the Union is located at (Street), (City), in the Province of ** where a representative of the Division, (Name of Representative), maintains an office. The telephone number is ***.
4. That I verily believe that the contents of any document required to be served in connection with the within action will be effectively communicated to the appropriate representatives of the Union if a copy of the same is left at the above described office.
5. That in my capacity as Director of the *** District Office I am responsible for its operation and in particular the administration of the federal Income Tax Act.
6. That the *** District Office presently employs (Number) continuing fulltime employees. About 15% of these employees are members of the C.R. Group referred to in paragraph 2(b) herein. This Group is currently legally on strike and is represented by the Public Service Alliance of Canada also referred to in paragraph 2(b) herein.
7. The *** District Office of the Department of National Revenue covers the (describe geographical boundaries that the office serves).

The Department of National Revenue has two principal objectives:

- a. to assess and collect the taxes, contributions and premiums imposed by law by encouraging voluntary compliance and deterring tax evasion and avoidance;
- b. to maintain public confidence in the integrity of the tax system.

These are achieved through the prospect of a tax audit and a presence among taxpayers so as to promote the belief that attempts to escape tax will not go unnoticed.

The major functions carried out are:

- a. the provision of information to assist taxpayers in filing;
- b. the audit of all sizes and types of corporate and individual taxpayers;
- c. the examination of returns of taxpayers deriving income from professions, commissions, investments;
- d. the prosecution of taxpayers who evade tax;
- e. the provision of information explaining actions taken;
- f. the identification of delinquent taxpayers and enforcement of compliance;
- g. the audit of payroll records to verify deductions made and benefits derived;
- h. the collection of outstanding accounts;
- i. the provision of rulings regarding insurability and pension ability;
- j. the determination of real estate and share values;
- k. the review of assessments under objection.

8. That as a result of extensive picketing and the refusal of pickets to allow our employees to cross the picket lines we will be obliged to pay staff for three days when they did not work at a cost of about \$50,000 a day. Collection action normally brings in about \$600,000 a day average, which funds the government has been deprived of for three (3) days. The audit activity has been curtailed to the extent that tax of about \$110,000 per day has not been assessed. At this time of year we receive (Number) phone calls daily, which service has been denied the public. We have not been able to deal with about (Number) taxpayers who would normally visit the office daily at this time of year. Thus, approximately (Number) people have so far been denied service.
9. That on (date), 19**, (date), 19** and on (date), 19**, the *** District Office was not able to collect any tax, service the public directly or by telephone, conduct payroll audit and delinquent programs or deal with taxpayers by mail. The audit activity was curtailed to less than one half of its normal size. In my opinion this has been directly caused by picket activity at the said (address of District Office).
10. That on each of the three days mentioned above non-striking employees of other bargaining units not lawfully on strike including the Programme Administration (PM) group, the Administrative Services (AS), group, the General Services (GS) group, the Auditor (AU) group, the Secretarial, Stenographic and Typing (ST) group, etc., were not permitted access to the premises. About (Number) employees were denied access to the premises because of picket activity.
11. That on (date), 19**, no persons were allowed into the building except security commissionaires, even managerial exclusions were not permitted entry. "Exclusions" are those being employed in managerial or confidential capacity pursuant to section 2 of the said Public Service Staff Relations Act and who are excluded from the collective bargaining process. On (date), 19**, the situation was the same until approximately 11:30 a.m. when thirteen (13) of our forty (40) exclusions were allowed entry. At 1:30 p.m. an additional twelve (12) were allowed entry and on (date), 19**, the number allowed in was expanded to twenty-seven (27). All others were denied entry.
12. On (date), 19**, the listed managerial exclusions were allowed into the building with all others being denied entrance. At 8:30 a.m. there were four members of the City Police on hand as well as a television camera. A person who spoke for the picketers

was introduced to me by the police as (name of Strike Captain).

13. At that time I approached the west front door with (Name), (Name), who are exclusions, and two others who are not, (Name) and (Name). I advised the picketers that I was escorting these employees into work and I was told that they would not let anyone in who was not on their list. After some shoulder-to-shoulder jostling I was allowed in. (Name of exclusion) was told he could enter but did not and I observed that Messrs. (Name) and (Name) were physically prevented entry when they attempted to move between the picketers.
14. I then approached the east door with two exclusions, (Name) and (Name), as well as two non-exclusions, (Name) and (Name). Similar to the procedure at the west door, I advised the picketers that I would escort these four into the building. After shoulder-to-shoulder contact, (Names of exclusions) and myself were allowed to enter. The two non-exclusions were physically prevented from moving between the picketers and entering the building.
15. That on each of the three days mentioned above those employees who were denied access to their place of work due to the activities of the picketers, believed to be members of the Public Service Alliance of Canada, were sent home by my order and will be paid for each day.
16. That now produced and shown to me and marked Exhibit "A" to this my Affidavit is a series of three photographs taken in front of (Street), (City), at about 8:30 a.m. (date), 19**. I was present when the photographs were taken and the scenes depicted in the photographs accurately present the situation I encountered at about 8:30 a.m. on both (date) and (date), 19** and as described in paragraph 11 herein.
17. That now produced and shown to me and marked Exhibit "B" to this my Affidavit is a photograph of the front entrance of the said (Street), (City). I am in the picture and the scene depicted therein accurately presents the situation I encountered at about 8:30 a.m. on (date), 19** and as described in paragraph 12 herein.

SWORN BEFORE ME

at the City of * *

Province of * *

this ** day ** 19**

A Commissioner for taking Affidavits for the Province of * * *

(Signature of Director)

(Full name typed)

2. EXAMPLE OF AN AFFIDAVIT PRESENTING EVIDENCE

IN SUPPORT OF AN APPLICATION FOR AN INTERLOCUTORY

INJUNCTION IN THE FEDERAL COURT

IN THE FEDERAL COURT OF CANADA

TRIAL DIVISION

BETWEEN:

HER MAJESTY THE QUEEN

Plaintiff

AND:

THE UNION

(name)

(name), (name)

(name), (name)

(name), (name)

(name), and (name)

Defendants

AFFIDAVIT OF _____ (name)

I, _____ (name) of the city of _____ in the Province of _____ Public Servant, make oath and say as follows:

1. I am Director General of _____ in the _____ Department and have personal knowledge of the matters hereinafter deposed, except for those depositions specifically made on information received from others, and services are being seriously interfered with all as more particularly described hereinafter.
2. Descriptions of picket activities that prevented employees from reporting to work, and effect on operations.
3. There is no doubt in my mind that if there continue to be strikes and disruptions of service in various offices, the operations will be very seriously interfered with and it may cease to be possible to operate any service at all, at a time when there is a collective agreement in force.

3. EXAMPLE OF AN INJUNCTION ORDER

IN A PROVINCIAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

AND:

(UNION), (INDIVIDUAL NAMES)

Defendants

BEFORE THE HONOURABLE MR. JUSTICE

(name)

THE APPLICATION OF THE PLAINTIFF

COMING ON FOR HEARING AT

(place) ON THE (date) and on hearing

(name), (name),

AND (name) FOR THE DEFENDANT

(union) ON (date):

AND UPON the undertaking of the Plaintiff by its counsel to abide by any Order this Court may make as to damage in the event that this Court shall hereafter be of the opinion that the Defendant shall have sustained damages as a result of the granting of this Order:

THIS COURT ORDERS that the Defendant Union (name of union), its officers, agents and employees and anyone acting under its instructions and anyone having knowledge of this Order are hereby restrained until trial of this action or until further Order from:

A. Interfering with any person entering or leaving the following premises

1. those premises known as

(Identification of Premises) and, without restricting the generality of the foregoing, from:

- i. physically striking, pushing, confining, obstructing or interfering with any persons who are entering or leaving or who are about to enter or leave the aforementioned premises, or who pass along or across the public streets surrounding any of the aforementioned premises or leading thereto;
- ii. intimidating or threatening by words, gestures or otherwise any of the said persons in order to prevent or interfere with their entering or leaving the said premises;
- iii. blocking a public road or highway so as to prevent the passage of persons on foot or in vehicles from entering or leaving the aforementioned premises;

2. Ordering, aiding, abetting, procuring or encouraging others to do any of the prohibited acts

AND THIS COURT FURTHER ORDERS that the Defendant Union, its officers, servants, agents and employees, any person acting under its instructions and those having knowledge of this Order are hereby restrained until the trial of this action or until further Order from watching, besetting or picketing or causing to be watched, beset or picketed any of the aforementioned premises except upon the following terms:

- a. At no time shall the total number of persons serving as pickets at any one road or entrance to the premises exceed six (6).

BY THE COURT,

(SIGNATURE)

APPROVED:

(name)

Counsel for the Plaintiff

(name)

Counsel for the Defendant,

(UNION)

4. EXAMPLE OF AN INSTRUMENT TO EFFECT THE DELEGATION
OF AUTHORITY TO COMMENCE LEGAL PROCEEDINGS OR
SEEK INJUNCTIONS IN RESPECT OF PICKETING

This delegation of authority is in accordance with the Treasury Board Policy on Strikes (TBM, Staff Relations Volume, Chapter 9).

I hereby delegate, to those persons occupying the positions named in the attached Schedule, the authority to formally request the Department of Justice to commence an action for damages or make an application for an injunction limiting picketing in the event that he or she is of the opinion that such steps are necessary as a result of strike-related activity.

(The Minister)

5. EXAMPLE OF LETTER FROM DELEGATED DEPARTMENTAL OFFICIALS
TO REQUEST THE ASSISTANCE OF JUSTICE CANADA
IN OBTAINING AN INJUNCTION LIMITING PICKETING AND
UNDERTAKING TO HAVE THE INJUNCTION ORDER ENFORCED

Justice Canada

Dear:

In accordance with the Treasury Board Policy on Strikes (Treasury Board Manual, Staff Relations Volume, Chapter 9), I hereby request Justice Canada to make an application for an injunction limiting picketing at the following work location(s):

The Department is prepared to have an injunction order enforced should a situation arise where it is not respected.

Sincerely,