

QUESTIONS & ANSWERS ABOUT THE STRIKE BY MUNACA MEMBERS

September 2011

Recently, MUNACA members gave their union representatives an 88% strike mandate in the context of the current collective negotiations. This collection of Questions & Answers serves to cover some of the most frequently questions asked by MUNASA members as to the potential impact of such a strike on their own work.

1- DO I HAVE THE RIGHT TO ABSTAIN FROM CROSSING A PICKET LINE?

Yes. The *Strike policy (Non-academic staff)* provides the following:

“If a member of staff believes as a matter of conscience that he/she cannot cross a picket line, this act of conscience will be respected and no penalty will be imposed other than non-payment for the period during which services were not rendered. Staff who take that position will be expected to so advise their supervisor, head, or chair, as the case may be, and arrangements will be made to deduct the appropriate amounts from their salaries.”

Should you elect not to cross a picket line, you should therefore inform your supervisor. You will not be paid for the corresponding hours. Should any contrary information or any threats be made to you by anyone in authority, we recommend that 1) you rely on the *Strike Policy* and 2) you immediately contact MUNASA for support and assistance.

2- CAN I BE OBLIGED TO, AS THE CASE MAY BE, IMPOSE DISCIPLINARY MEASURES TO MUNACA MEMBERS UNDER MY SUPERVISION FOR THE MERE FACT THAT THEY ARE ON STRIKE?

No. Generally speaking, employees are under an obligation to obey orders given by their supervisors. In labour law, this principle is often expressed as the rule “obey now, grieve later”. However, employees have not only the right but a legal obligation to disobey instructions or orders which are clearly unlawful. This would naturally be the case if one were ordered to commit a criminal offense. This would also be the case if one were ordered to impose a disciplinary measure on someone for the mere fact of having been on strike, provided that the strike was itself legally declared and is legally conducted.

3- MAY I BE INVOLVED IN IMPOSING DISCIPLINARY MEASURES ON MUNACA MEMBERS FOR CERTAIN ACTS COMMITTED WITHIN THE CONTEXT OF A POSSIBLE STRIKE?

Possibly. The right to go on strike does not entitle people to do just anything. Violence and aggression, for instance, remain absolutely prohibited. Your role with regards to members you supervise remains the same as when there is no strike. Therefore, if you exercise disciplinary powers, you may be required to do so within the context of the strike. It will be

necessary to exercise your best judgment to determine whether disciplinary action is justified in each particular case, for there can be no automatism in such matters.

4- WHAT TYPE OF WORK MAY BE ASKED OF ME IN THE CONTEXT OF THE STRIKE? CAN I BE ASKED TO DO THE WORK OF THOSE WHO ARE ON STRIKE?

Possibly. In principle, the employer can require that you perform all duties and functions listed in your job description. Unless there is a clear undertaking to the contrary, the employer can require that the employees performs any other tasks that naturally ensue or are an accessory to the work contract. This is part of “management rights” that are inherent to the work contract.

However, first and foremost, the law does not prohibit the employer from utilizing the work of employees who are not on strike to discharge the duties of those who are on strike **PROVIDED THAT:**

- 1- the persons required to discharge functions of those on strike were not hired after the beginning of the negotiations;
- 2- the persons required to discharge functions of those on strike are not “employees” within the meaning of the *Labour Code*. This essentially means a person who is employed as manager, superintendent, foreman or representative of the employer in his relations with his employees.

It is important to know that one is not a “manager” within the meaning of the *Labour Code* because his/her job title says so. In other words, not all “Ms” are necessarily managers for the purpose of the *Labour Code* and, therefore, may be entitled to discharge the duties of unionized employees who are on strike. For instance, the case law has determined that whether someone is a “manager” for the purpose of the *Labour Code* will be interpreted restrictively and will depend on the specific circumstances of each case. The case law also establishes that:

- The fact that one does not have the power to hire or fire an employee does not disqualify this person as a “manager”;
- The presence in the employee’s tasks of attributes normally within the employer’s prerogative, such as the authority to assign, monitor, assess and control the execution of work, would normally suffice to consider this persons a “manager”;
- Someone’s autonomy as a professional does not *per se* qualify this person as a “manager” within the meaning of the *Labour Code*;
- One is either a “manager” or an “employee” for the purpose of the *Labour Code*, there is no such thing as “middle management”;
- Even in the presence of attributes of management prerogatives, the answer may vary depending on the degree of autonomy that the person enjoys, as well as the intensity and frequency with which those attributes of management prerogatives are exercised.

Put simply, you are not necessarily a “manager” within the meaning of the *Labour Code* because you are designated as an “M” by McGill. Each case needs to be analyzed with care before a specific answer may be given. We recommend that you contact your MUNASA representative for any doubt or difficulty in this regard. If you are at all uncertain of your status, given the fact that it is McGill’s responsibility to apply the law, ask your manager in writing whether they consider you to be a manager within the meaning of the *Labour Code*.

Furthermore, regardless of what the employer may be entitled to require of you, the employer has a firm legal obligation not to utilize the services of a person to discharge the duties of an employee who is a member of the bargaining unit then on strike when such person was hired between the day the negotiation stage begins and the end of the strike. This is also spelled out in Quebec’s *Labour Code* and is binding upon McGill. Naturally, the employer is not prevented from taking, where such is the case, the necessary measures to avoid the destruction or serious deterioration of his property.

If you are indeed a real “manager” within the meaning of the *Labour Code*, nothing prevents the employer from asking you to perform functions otherwise attributed to a MUNACA member on strike. Refusing to do so may amount to insubordination, depending on the circumstances, and would certainly not be covered by the *Strike Policy*.

If you are not a manager within the meaning of the *Labour Code*, any order given by the employer to discharge duties normally performed by MUNACA members on strike would be unlawful and, as such, must be opposed and indicated as such in writing to the employer. **In such a case, immediately contact your MUNASA representative before refusing to obey an order.**

5- CAN THE EMPLOYER REQUIRE THAT I WORK BEYOND THE REGULAR WORKING HOURS ON A GIVEN DAY OR DURING A GIVEN WEEK IN ORDER TO COPE WITH ANY ADDITIONAL WORKLOAD POTENTIALLY GENERATED BY A STRIKE?

Yes and No. An employee cannot refuse to work beyond the regular working hours, unless “*his presence was required to fulfil obligations relating to the care, health or education of the employee’s child or the child of the employee’s spouse, or because of the state of health of the employee’s spouse, father, mother, brother, sister or one of the employee’s grandparents, even though he had taken the reasonable steps within his power to assume those obligations otherwise.*”

In addition, the *Labour Standards Act* provides that employees may refuse to work for more than four (4) hours beyond the regular daily hours or for more than fourteen (14) hours in a period of twenty-four (24) hours. One may also refuse to work for more than fifty (50) hours in a week.

However, the foregoing limitations do not apply where there is a danger to the life, health or safety of employees or the population, where there is a risk of destruction or serious deterioration of movable or immovable property or in any other case of superior force, or if the refusal is inconsistent with the employee's professional code of ethics.

Also, an employee may refuse to work additional hours if he or she has already worked six (6) days in a given week, for one is entitled to at least 32 consecutive hours of rest per week.

Furthermore, an employee may refuse to work beyond the regular working hours if the employer refuses to pay him overtime (150%) for all hours in excess of 40 hours per week.

An employee who refuses to work beyond the regular working hours (daily or weekly) outside the scope of the limitations outlined above is subject to disciplinary measures by McGill.

Finally, it is important to note that the foregoing does not apply to “senior managerial personnel” within the meaning of the *Labour Standards Act*. If you are uncertain as to whether you qualify as “senior managerial personnel”, we recommend that you ask your supervisor in writing to clarify this question and, in any case, contact your MUNASA representative.

6- If I am required to work beyond the regular working hours, am I entitled to additional remuneration for the extra hours?

Possibly. Employees who are allowed to work shall be paid in accordance with the *Hours of Work Policy* and the *Salary Administration Policy*, that is being paid overtime over 40 hours per week. However, if you are required to work above your regular weekly or daily hours, you should keep a log and ask that you be compensated. Failing which, please contact MUNASA.

It is important to note that this only applies to “staff in Excluded positions and managerial staff in role profile levels 1 and 2, as per the *Salary Administration Policy*. Other MUNASA members are not covered by this obligation of the employer, and may contact MUNASA for further information.

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