

PUBLIC SERVICES DISPUTE – 30 NOVEMBER 2011

PICKETING & SECONDARY ACTION

You will be aware that many Unite members employed across our public services have successfully balloted for industrial action in connection with the ongoing dispute over imposed changes to their pension schemes.

Following this vote, Unite is calling on all members employed by an employer where we have secured a YES vote and notified the employer of our intention to take strike action, to join with their colleagues from other public sector trade unions in sending a very clear message in support of your pensions on 30 November 2011.

- **Industrial action will commence on Wednesday 30 November and will run from 00.01 concluding at midnight.**

This is an official dispute. It is supported by the Trades Union Congress (TUC) and we are working with their regional organisation and other unions taking action on various protests, actions and other events in towns and cities across the United Kingdom on the day.

1. Picketing – General

The law in relation to picketing can be summarised as follows:

Where can pickets picket?

- ✓ At or near the worker's **own** place of work i.e. no secondary picketing.
- ✓ A mobile worker with two or more workplaces or no workplace can picket any premises from which he/she works or work is administered - this does not mean any premises of the employer.

Who can picket?

- ✓ Union officials can picket with workers whom they represent. Union officials include; shop stewards and workplace representatives as well as paid officials.

How many can picket?

- ✓ Try to get anywhere from 8 to 12 on a picket.

- ✓ **The Code of Practice: Picketing 1992** (the Code) allows for a maximum of six pickets. However post Gate Gourmet we would argue that the Code must be compatible with the Human Rights Act (HRA) and further, that the Code is guidance only. Unite think it breaches the HRA and are raising this with our solicitors. While the Code allows for 6 pickets officials should try to agree and argue for 12 but do not risk arrest over the issue (for workers this could lead to dismissal also).
- ✓ Peaceful demonstrations near to the picket line, which do not obstruct the highway, or access to the employer's premises are allowed.

Note: any plans to organise a demonstration outside an office and/or a protest march will need to be agreed with the police in advance. The Public Order Act 1986 provides the police with power to impose conditions on public assemblies of 20 or more people.

Who can be picketed and who can we try to persuade when we picket?

- ✓ Unites members included in the ballot (provided they are still employed by an employer in the dispute).
- ✓ New members who (1) joined before the ballot closed and who were included in the ballot; or (2) joined before the ballot closed but who it was not reasonably practicable to include in the ballot (due to timescales); or (3) joined after the ballot closed.
- ✓ Workers of the employer in dispute who are not a member of any union.
- ✓ Workers of the employer in dispute who are members of another union, regardless of whether that other union held a (valid) ballot and where it did, regardless of the result of that ballot.

Note: We advise caution if the other union did not hold a valid ballot securing a "yes" vote – in particular, ensure the other union is not linked to your inducement (and note that members of that other union are likely not to be able to claim unfair dismissal in the event that they are dismissed).

- ✓ Workers employed by other employers not a party to the dispute, whether or not they are members of the balloting union. This is because of the s.220 TULRCA distinction between inducing a breach of contract and inducing participation in industrial action – the "gateway" to secondary action. **An example of this would be a lorry drivers delivering goods to the employer in dispute provided the picket is carried out by a member who is in dispute and an employee or a Unite Official.**
- ✓ If the entrance is used by workers who are employed by another employer not involved in the dispute we must not picket so as to prevent those workers gaining access (again see below)

2. Picketing and "Secondary" Action

Secondary action is generally unlawful under UK industrial action law.

The Code reads as follows on this issue:

"Secondary" action

12. The "statutory immunities" do not apply to protect a threat of, or a call for or other inducement of "secondary" industrial action. The law defines "secondary" action - which is sometimes referred to as "sympathy" or "solidarity" action - as that by workers whose employer is not a party to the trade dispute to which the action relates.

13. However, a worker employed by a party to a trade dispute, picketing at his own place of work may try to persuade another worker, not employed by that employer to break, or interfere with the performance of, the second worker's contract of employment, and/or to interfere with the performance of a commercial contract. This could happen, for example, if a picket persuaded a lorry driver employed by another employer not to cross the picket line and deliver goods to be supplied, under a commercial contract, to the employer in dispute. Such an act by a picket would be an unlawful inducement to take secondary action unless provision was made to the contrary.

14. Accordingly, the law contains provisions which make it lawful for a peaceful picket, at the picket's own place of work, to seek to persuade workers other than those employed by the picket's own employer not to work, or not to work normally. To have such protection, the peaceful picketing must be done:

- a. by a worker employed by the employer who is party to the dispute¹ ; or
- b. by a trade union official whose attendance is lawful (see paragraphs 22 – 23 below).

15. Where an entrance or exit is used jointly by the workers of more than one employer, the workers who are not involved in the dispute to which a picket relates should not be interfered with by picketing activities. Particular care should be taken to ensure that picketing does not involve calls for a breach, or interference with the performance, of contracts by employees of the other employer(s) who are not involved in the dispute. Observing the principle will help avoid consequences which might otherwise be damaging and disruptive to good industrial relations.

Trade union officials

22. For the reasons described in Section F of this Code, it may be helpful to the orderly organisation and conduct of picketing for a trade union official² to be present on a picket line where his members are picketing. The law provides that it is lawful for a trade union official to picket at any place of work provided that:

- (i) he is accompanying members of his trade union who are picketing lawfully at or near their own place of work; and
- (ii) he personally represents those members.

¹ However, the peaceful picketing may be done by a worker who is not in employment but was last employed by the employer in dispute in certain circumstances – see paragraph 20

² The law defines an "official of the union" as a person who is an officer of the union (or of a branch or section of the union), or who, not being such an officer, is a person elected or appointed in accordance with the rules of the union to be representative of its members (or some of them), including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members, whom he is elected to represent. This could include, for example, a shop steward.

If we picket those employed by other employers not party to a dispute could they face disciplinary action?

Those we persuade not to cross picket lines who are not employed by the employer we have a dispute with could face disciplinary action:

1. Such workers may subsequently be subjected to lawful disciplinary action by their own employer if they fail to carry out their normal duties. Such action is unlikely to amount to unlawful action for taking part in trade union activities at an appropriate time under S.146 TULRCA 1992.
2. Disciplinary action may be taken for example because of a failure to carry out a lawful instruction; or because the failure to cross the picket line caused financial loss to the employer; and/or to a negligence claim or claim for breach of contract against the worker's employer.
3. Certain groups of workers may also be in breach of their professional duties and therefore liable to action against them by their professional bodies, if they fail to carry out their duties as a result of their failure to cross a picket line. This could include for example, solicitors, barristers, or legal executives refusing to cross a picket line at a court, leaving their client unrepresented at their hearing, and leading to the case being struck out or a wasted costs order being made against their employer; or paramedics who refuse to cross a picket line to go into a workplace in which an individual needs urgent medical attention.

In all of these circumstances we must of course be mindful of the problems others may face when they express support for us. However the more who express support the less vulnerable they are to being isolated by their employer.

Ends