



**Law Enforcement Officer's Guide to
*LABOR DISPUTES AND PROTESTS***

Updated August 16, 2021



LAW ENFORCEMENT OFFICER'S GUIDE TO LABOR DISPUTES AND PROTESTS

Introduction & Overview

Labor laws are those which apply to employees, unions, and their employers. The police do not have the duty or authority to enforce civil labor laws, but do have a duty to avoid interfering with the laws that protect workers' rights during a labor dispute.

Labor "disputes" typically arise when employees attempt to get employers to recognize the existence of a union, when employers and unions are undergoing contract negotiations, and/or when employees collectively assert other rights to their employer, even where no union is involved.

Labor disputes and protests may include actions such as:

- Striking
- Boycotting
- Picketing
- Ambulatory Picketing
- Leafleting (also known as "handbilling")
- Bannering
- Displaying an inflatable rat, cat, or other character associated with labor disputes

These activities are legally protected under the Constitution's First Amendment and other federal and state laws discussed below. Most labor activity is peaceful and police presence is not required under most circumstances. Nonetheless, police departments may be called to the scene.

Police officers must be aware that employees and employers are *legally equal entities*. **Officers at the scene of labor disputes must remain neutral** regarding the entities involved. There is a balance between the rights of workers and the rights of employers that is not for the police to maintain. We encourage law enforcement leadership to consult labor counsel if there is any question about whether to intervene in a labor dispute within their municipality. Officers must not unlawfully infringe upon any individual's civil liberties, including the right to remain on public property for lawful purposes. Interfering with lawful labor activities could expose municipalities to litigation and liability.

This guide is intended to give a general, brief overview of some of the common issues involved in labor disputes, and is not exhaustive. It is designed to provide police officers with an overview

of the key federal and state labor laws and a general understanding of law enforcement's limited role in labor disputes.

LAWS GOVERNING LABOR DISPUTES

First Amendment

Police officers are bound by the limits of the United States Constitution. The First Amendment of the Constitution protects workers' rights to free speech and free assembly. Police officers may intervene only to prevent violence, trespassing, or the destruction of property.

National Labor Relations Act

The National Labor Relations Act (NLRA) is a federal law which governs labor management. This law gives private employees the right to form unions and engage in collective bargaining, including picketing and striking an employer, (or refrain from such activity). Police do not enforce the NLRA.

The National Labor Relations Board (NLRB) is a federal agency which enforces the NLRA.

Illinois Public Labor Relations Act

The Illinois Public Labor Relations Act (IPLRA, 5 ILCS 315) is a state law that governs labor relations between public employers and their employees, providing public employees many of the same rights as the NLRA, including the rights to strike and picket. Police do not enforce the IPLRA.

Illinois Labor Dispute Act

This Illinois Labor Dispute Act (ILDA, 820 ILCS 5) is a state law allowing lawful picketing on the "public rights-of-way," which is broadly defined to include sidewalks, portions of a street, or the area between the street and adjacent property lines. Picketers may: 1) erect temporary signs, including the use of inflatables that announce the existence of a labor dispute; 2) erect tents and shelters if there is sufficient space; and 3) park up to 10 vehicles on the sides of the road. However, picketers must still allow for a reasonable walkway for pedestrians and ensure that the protest does not block access to hydrants, water mains, sewers, or other utility lines or interfere with traffic signs or drivers' views of traffic.

The ILDA is sometimes in conflict with local ordinances, such as a municipal "no parking" ordinance or sign ordinance. A local ordinance which limits picketing, the display of a banner, or

parking on the right-of-way is void when the ILDA allows such activity. In other words, local “no parking” ordinances or sign ordinances cannot be enforced against labor protesters who are engaged in activity that is allowed under the ILDA.

TYPES OF LABOR DISPUTES AND PROTESTS

Labor disputes may arise from contract negotiations between unions and employers. However, labor disputes may also arise when non-union employees organize to complain about unfair labor practices, such as discrimination and nonpayment of wages, or to demand additional rights for their collective benefit. During labor disputes, both unions and employees may undertake other actions, such as picketing, leafleting, posting of signs, and even using large inflatable figures such as rats.

The First Amendment and other labor laws discussed above generally protect these activities. As such, these activities are typically legal, but their legality is ultimately determined by the NLRB and/or the courts – not the police. **Thus, police cannot act to stop or otherwise interfere with these activities without a court order.** Officers only may interfere when necessary to prevent violence, trespassing or the destruction of private property, or to enforce a specific order by an authorized court. Common labor disputes and protests take the following forms:

Strikes: An organized termination or slowdown of work by employees in an effort to compel the employer to meet the employees’ demands. Strikes can take several forms, including employees walking off the job and engaging in picketing activity.

Boycotts: An action designed to create public awareness of an issue and to encourage the public to withhold their support of an organization. Boycotts are generally a legally protected form of speech (meaning it is allowed under the First Amendment of the Constitution). Police officers should not interfere unless directly ordered by a court and in accordance with the court order.

Sympathy Strikes: When unions that are not involved in a particular labor dispute choose to strike to show support for the original striking union. The law treats these the same as any other strike.

Picketing: A demonstration by one or more persons outside a business or organization to protest that entity’s activities or policies. It is designed to pressure the entity to meet the protesters’ demands and often accompanies a strike. It may look like protestors walking with signs or

passing out leaflets (“leafleting” or “handbilling”) to people walking by. Picketing on non-private property is typically legal and an effective way for strikers and other persons to convey their message to the broadest audience possible. It is up to the NLRB and/or the courts to determine when picketing is unlawful and when it may be necessary to obtain police assistance in ending the picketing in accordance with a court order. While police officers may monitor picketers to prevent violence, they may not impede the picketers’ ability to gather at a location and present their message to the public.

Ambulatory Picketing: Ambulatory pickets are pickets that follow an employer’s vehicle to determine the location of a remote worksite, suppliers, etc. This is often the case with pickets of construction or trucking employers, and picketers may be found following behind employer vehicles with the intent of picketing at the destination of the employer vehicle. The NLRB has determined that unions are allowed to engage in this type of picketing.

Leafleting: It often involves individuals standing in a public place handing leaflets to the public, which contain information about a labor dispute.

Bannerling: It often involves the use of stationary signs announcing the existence and nature of a labor dispute to the public. Banners are often placed on the public sidewalk or right-of-way, facing toward the public, which is lawful, subject to the Illinois Labor Dispute Act.

Inflatables: They are frequently used by unions to symbolize the existence of a labor dispute. The most common inflatable is a rat, but other inflatables, such as a cat or cockroach, have also been used. Inflatables may be placed on the public sidewalk or right of way, subject to the Illinois Labor Dispute Act.

Lockout: When an employer prevents workers who are striking or threatening to strike from entering a place of business. The legality of a lockout is to be determined by the NLRB or the courts. Again, police should not interfere in a lockout, unless it is in accordance with an appropriate court order, or, if necessary, to prevent violence or the destruction of property.

COMMON SCENARIOS FOR RESPONDING OFFICERS

Law enforcement officers may be called to respond to complaints relating to labor disputes. Some of the more common labor scenarios that an officer may encounter are described here and usually involve uncertainty about whether picketing is allowed on certain types or areas of property, including private property and the property of unrelated employers. Federal and state labor laws set forth the conditions surrounding the rights and limitations of employees, employers, and labor organizations involved in labor disputes, and courts have generally held that state and local laws must yield to those federal protections. Therefore, in the absence of

violence, responding officers should consult with their superiors when assessing any response to a complaint relating to a labor dispute.

Trespassing: Pickets often raise questions about whether employees or non-employee organizers may be trespassing on private property. An employee's right to picket on their employer's property is protected by federal law, and trespass is usually a question of state law. Federal law trumps state law where the two conflict, but, because there are exceptions, these are complicated legal matters reserved for the labor boards and courts. The Illinois Labor Dispute Act also allows picketers to use the public rights of way, as described above. Non-employee organizers, however, may have only limited access to employers' property. Moreover, many collective bargaining agreements contain provisions, which permit the union to have access to facilities, jobsites, and other locations. Officers who are responding to complaints of labor trespassing should consult with their superiors before taking any action so as not to unlawfully infringe upon any individual's legal rights.

Secondary Employer Sites: Employees have the right to picket their primary employer, even if the primary employer's job site is on a secondary employer's premises. This is often the case with construction or trucking pickets. However, conduct that is directed at a secondary or neutral employer could be unlawful if the conduct is considered "coercive" under the NLRA. Whether conduct is unlawfully coercive is a legal question reserved for the labor boards.

It is important to note that this restriction does not apply to employees that are not unionized and are exercising their First Amendment right to protest an employer at a second site. For example, non-union employees may choose to protest at the client of an employer that engages in unfair labor practices. Officers who are responding to picketing complaints by a secondary or neutral employer should consult with their superiors before taking any action so as not to unlawfully infringe upon any individual's legal rights.

Reserved Gates: Secondary employers whose premises are being picketed by a primary employer's employees may choose to designate one gate for picketing and a "reserved gate(s)" for neutral and non-striking/non-picketing employees. Sometimes, there may only be one gate. Whether picketing at certain gates is lawful or not is a legal question reserved for the labor boards. Officers who are responding to complaints involving gate disputes should consult with their superiors before taking any action so as not to unlawfully infringe upon any individual's legal rights.

Ambulatory Picketing: As noted above, the NLRB has determined that ambulatory picketing, where picketers follow construction vehicles to determine their job sites, is typically allowed under the NLRA. Nonetheless, sometimes employers who are being followed by picketers may

call the police and claim they are being stalked. The Illinois Stalking No Contact Order Act (740 ILCS 21/5) states that an action is not stalking if it is “an exercise of the right to free speech or assembly that is otherwise lawful or picketing occurring at the workplace that is otherwise lawful and arises out of a bona fide labor dispute.” Questions regarding the lawfulness of ambulatory pickets are reserved for the federal and state labor boards. In the absence of violence, officers who are responding to complaints of stalking related to an ambulatory picket should consult with their superiors before taking any action so as not to unlawfully infringe upon any individual’s legal rights.

Residential Picketing: In most cases, Illinois law allows people to picket a private residence if that residence is used as a place of business. Officers responding to complaints of residential picketing may be able to confirm whether a residence is used as a place of business through public records, including Secretary of State business registrations, city licenses, or other public listings. Officers who are responding to complaints of residential picketing should consult with their superiors before taking any action so as not to unlawfully infringe upon any individual’s legal rights.

Car Parking: The Illinois Labor Dispute Act allows picketers to park up to 10 cars on the public right-of-way and this right exists regardless of any local ordinances or resolutions by units of local government (including home rule units), such as ordinances restricting parking on grass, two-hour parking, no parking zones, and permit parking only. These ordinances are unenforceable against individuals engaged in conduct authorized by the ILDA.

Videotaping: Videotaping by employers and employees during labor disputes and protests is generally allowed, so long as private conversation is not being secretly recorded.

APPROPRIATE POLICE BEHAVIOR

Police officers should not side with either party in a labor dispute. When police actions are perceived as favoring one party, negotiations can break down. Police must remain neutral, exercise restraint, and act cautiously when responding to a problem involving a labor dispute. Police officers may intervene only to prevent violence, trespassing, or the destruction of property.

Police Options

The options available to the police are limited. As noted above, the police are not responsible for enforcing the labor laws. The police are responsible for monitoring the potential for violence, assisting in stopping outbreaks of violence, preventing destruction of property, and protecting public safety, including the right of reasonable passage and the right to demonstrate peacefully.

Police Precautions

1. As always, do not allow yourself to be provoked or to act emotionally.
2. Obtain sufficient, reliable information before acting.
3. As a general rule, remain impartial and do not take directions from either employers or employees regarding whether or whom to arrest, whether to disperse employees, or how to enforce a court order. Officers at the scene should only take direction from police supervisors.
4. Be aware that arrest and incident reports are often subpoenaed by the NLRB to use in resolving unfair labor practice disputes. Reports must be accurate and impartial; the officer must avoid adopting the biases of the parties involved in the disputes.
5. Court orders often issued in labor disputes include temporary restraining orders (TROs), preliminary injunctions (PIs), and cease and desist orders. Police should not enforce a court order for the employer, the union, or the NLRB unless the order is specifically directed to the police. In most instances, if one party fails to comply with a court order, the other party must go back to court and seek a contempt of court order.

CONCLUSION

The primary purpose of police presence at labor disputes is to calm tensions and prevent violence or the destruction of property. When it does not appear that violence or property damage is imminent, officers should always confirm with their superiors before taking any action. Importantly, police departments should consult with legal counsel if there are any questions about whether to intervene in a labor dispute. Remember that most peaceful labor disputes are legal and will be resolved by the parties at the bargaining table or in court, not by the police.