

TUC GUIDES

(see paragraph 49 of the General Council's Report to the 1979 Congress)

NEGOTIATING AND DISPUTES PROCEDURES

1. This guide is concerned with procedures for avoiding disputes. A separate guide deals with the *Conduct of Industrial Disputes*.
2. There is a responsibility on unions and management to agree relevant and practical negotiating and disputes procedures. There is also a responsibility on unions and workers, as well as managements, to observe agreements and for both sides to refrain from taking action in contravention of those agreements, if industrial relations are to be conducted in an orderly fashion without interruptions. Some unofficial action may arise because of faulty communications within the union, and unions need to review periodically their internal machinery. Where unofficial action does take place unions should take energetic steps to get a return to normal working.
3. There is a responsibility on affiliated unions to observe the *TUC's Disputes Principles and Procedures* which are designed to minimise disputes between unions and which provide for conciliation and adjudication and binding awards by the TUC where trade unions cannot agree. It is especially important that no official strike should take place on an inter-union issue before the TUC has been able to examine the issue.

Negotiating Arrangements

4. It is important that trade unions and employers should periodically review their negotiating arrangements. At the present time, such reviews should pay particular attention to the following matters:
 - (a) whether the industry-wide agreement is relevant to current circumstances, particularly to the determination of wages and the development, where appropriate, of comprehensive and authoritative collective bargaining machinery at company or factory level;
 - (b) whether dispute procedures should terminate at establishment level or whether unresolved disputes can be usefully dealt with at industry level;
 - (c) whether the procedures for collective bargaining and for handling disputes and grievances at establishment level are satisfactory.
5. How best to answer these questions must be decided by those concerned in each case: circumstances vary too much to allow a universal formula to be prepared. The objective in all industries and services should be to establish arrangements whereby matters of common interest to employers and workpeople can be discussed and negotiated at the appropriate level. Some issues, such as basic wage rates and general terms and conditions of service, may be appropriate for industry-wide collective bargaining. Others, such as the general principles on which job evaluation, for example, is to be used, may be best carried out at company level, while a large number of issues (including the application of company and industry agreements) need effective collective bargaining at establishment level.

Disputes Procedures

6. Trade unions and managements in each industry (and companies outside the scope of industry-wide agreements) need to devise satisfactory procedures to resolve collective disputes and individual grievances.

7. The disputes procedure:

- (a) should be in a written form which can be easily understood by workers and management;
- (b) should specify the appropriate levels for raising and settling collective disputes on different issues, together with the manner in which an individual worker may raise a grievance. As circumstances vary widely between different industries, there is no ideal number of stages for a disputes procedure, but wherever possible every effort should be made to resolve disputes at the level at which they arise, and failing that at a higher level within the establishment. To prevent undue delay in resolving difficulties, the number of steps of procedure outside the establishment should be kept as low as possible. The inclusion of stages which fail to achieve settlements bring discredit on the whole procedure. There may in addition be particular issues such as individual piece-work prices which trade unions and management might usefully agree are not appropriate to go beyond more than one external stage of procedure;
- (c) may specify time limits within which issues should normally be settled or taken on to the next stage of procedure, but in any case should make clear that all issues should be resolved as quickly as possible;
- (d) should indicate issues on which the implementation of a managerial decision is deferred until either agreement is reached or the negotiating procedure has been exhausted. A clear statement of the principle of the "status quo" is contained for example in the following clause:
"It is agreed that in the event of any difference arising which cannot immediately be disposed of, then whatever practice or agreement existed prior to the difference shall continue to operate pending a settlement or until the agreed procedure has been exhausted."
- (e) may include a stage requiring conciliation by an outside person or body. There are considerable advantages in turning to a conciliator when negotiations appear to have reached an impasse. Officials of the Advisory, Conciliation and Arbitration Service are readily available as conciliators. The advice and assistance of the TUC is also available to unions;
- (f) may provide for arbitration as a final stage in the procedure. Such a provision might be particularly helpful if used to resolve disputes at local level on issues which are not regarded by the parties as appropriate to go beyond more than one external stage of procedure, or in the case of essential services and industries. However, it must be recognised that an excessive reliance on arbitration can weaken the effectiveness of the negotiating procedures in resolving disputes;
- (g) where an adequate "status quo" provision is incorporated, it should preclude a strike or any other form of industrial action by workers or a lock-out or any other pressure brought by management until all stages of procedure have been exhausted. Workers, however, can only be reasonably expected to observe such a procedure if it contains "status quo" provisions which are adhered to by management.

CONDUCT OF INDUSTRIAL DISPUTES

1. This guide provides advice to unions who may become engaged in industrial action including strikes and picketing. Advice on the need to avoid unofficial or unconstitutional action and to get a return to normal working where such action has occurred is contained in *Negotiating and Disputes Procedures*.
2. The right to strike and take other forms of industrial action is a fundamental one for trade unions and for working people. It provides a sanction to trade unions which compels employers to negotiate seriously on matters vital to the interests of trade union members.
3. The exercise of this right is regarded by the General Council as a measure of last resort and one which should be used responsibly. Industrial action causes interruptions to production or to the provision of services. It has to be recognised that these can damage the ability of the employing establishment to provide subsequent growth in earnings and to maintain employment. More immediately, industrial action, particularly strikes, cause loss of earnings and a sharp drop in workers' living standards. The earnings lost in a prolonged strike may take months, and even years, to recover even if the strike has been successful in achieving improved pay and conditions. Moreover, regard needs to be paid to the effects of the action on other workers, the Movement generally and the community at large. These are not arguments against industrial action but they do strongly indicate that decisions to instigate action or to support other trade unionists' action should be taken with care and with regard for other factors, not simply on an immediate issue about which there are strong feelings.

Calling and Ending Strikes and other Industrial Action

4. If a union considers, after careful examination, that industrial action is necessary to achieve its bargaining objectives, it needs to give consideration to the form of action to be taken and that what they have in mind is fully supported by the members concerned. There is a need for unions to have very clear procedures in this area.
5. The General Council strongly recommend the following principles to unions to incorporate in their rules as the basis for the procedures to be followed in disputes:

Strike Procedures

To state clearly the procedures to be followed, and which bodies have the authority to call or approve or terminate a strike.

Strike Ballots

- (a) to provide for ballots to be held where a strike is contemplated, or during the course of a strike — the decision to hold such ballots being at the discretion of the appropriate body of the union;
- (b) to specify the size of the majority required;
- (c) to lay down a strictly defined procedure for the conduct of strike ballots, and sanctions for any breach of such procedure;
- (d) to set out machinery for dealing with any complaints arising from the conduct of the ballot.

The Provision of Emergency or Essential Services and Maintenance of Plant and Equipment

6. Generally unions already recognise the need to provide emergency or essential services and to maintain plant and equipment during industrial disputes, and the TUC considers that such action is vitally necessary. It will be a matter for each union or unions to consider the action that is necessary in the light of the circumstances of the dispute. But the General Council advise that for the duration of an industrial dispute, the union(s) involved should, where necessary, make arrangements in advance and with due notice, in consultation and preferably by agreement with the employer, for the maintenance by their members of supplies and services essential to the health or safety of the community or otherwise required to avoid causing exceptional hardship or serious pollution.

7. Trade union members should also provide cover for the maintenance of plant and equipment essential to the functioning of the establishment and which also ensures, as far as possible, a smooth return to full production on a resumption of normal working.

8. Where livestock is involved, trade union members should also ensure that systems essential to their wellbeing continue to function and that supplies of foodstuffs are maintained.

Picketing

9. The purposes of picketing are to persuade other employees to join in the withdrawal of labour; to dissuade workers recruited by the employer during a strike from entering the strikebound premises; or to establish check points to ensure that no strikers return prematurely. Picketing may also be aimed at deflecting supplies or custom from the employer in dispute. The decision to mount a picket is for the union in dispute. Unions should in general, and save in exceptional circumstances, confine picketing to premises of the parties to the dispute or the premises of suppliers and customers of those parties.

10. The right of workers to demonstrate their dissatisfaction with an employer over the terms and conditions on offer is a fundamental one. There is, however, no legal right to picket as such. But it is lawful for persons acting in contemplation or furtherance of a trade dispute to picket at or near a workplace or any other place (except a person's home), provided they do no more than peacefully obtain or communicate information or peacefully persuade workers to abstain from work. The right to picket is subject to the following legal restrictions:

- (a) if pickets enter private property without permission and damage occurs, they are liable to be sued individually for trespass or collectively for conspiracy;
- (b) pickets may communicate or obtain information "peacefully" but may not "interfere" with persons entering or leaving premises. "Interference" includes unlawful obstruction of the highway or of other users of the highway, the use of such methods as lying down in the road, linking arms to prevent the entry of lorries to premises, jostling or detaining persons entering or leaving the premises and making threats of violence or engaging in acts of violence;
- (c) it is unlawful for any person to use or threaten violence to a person or his family or to injure his property or to deprive him of it. In addition

interference with passage on the highway may constitute a "nuisance" in the civil law;

- (d) *Hunt v. Broome* established that there is no right for a picket to stop a vehicle against the driver's will. Lawful methods of persuasion are limited to "oral or visual methods" and do not permit pickets to commit acts such as physical obstruction of a vehicle or person;
- (e) the law gives the police considerable discretionary powers to decide whether the methods used by pickets are lawful in particular circumstances. In 1960 the courts supported a police officer who decided that a picket of two persons was adequate and arrested a third man on the picket line. However, on other occasions larger numbers of pickets have been allowed without police intervention. In 1966 the courts ruled that where pickets walked in a continuous circle outside a factory and refused to obey a police officer's order for them to stop, the police officer had been obstructed in the course of his duty.

Support from Other Unions

11. It is important that any request for members of another union not to cross picket lines should be directed to the appropriate official or body of the other union, so that proper instructions can be issued to the members concerned. It is also important that if picketing is planned at any place other than the premises of the employer in dispute, it should only take place after the specific approval of a person authorised by the union in dispute who should take into account the interest of other affiliated unions and consult them accordingly.

Identification

12. Badges or armbands should be carried or worn by pickets so that they are clearly identifiable as authorised pickets. Where trade union members need to have access to the premises — for instance those engaged in essential safety or maintenance work — this should be made clear to the pickets.

Organisation

13. Pickets should be advised to act in a disciplined and peaceful manner even if they are provoked by non-unionists or others. It will help to ensure that picketing is peaceful if an experienced member, preferably a union official, is in charge of the picket line. He should have a letter of authority which he can if necessary show to police officers or to workers attempting to cross the picket line. He should ensure that the number of pickets is no larger than is necessary.

14. Advice should also be given on what can be said because it is an offence to use insulting words or behaviour.

15. It should be made clear to any person who joins a picket line that he or she must accept instructions from the person who is in charge of the picket line and undertake to behave in a lawful and disciplined manner, otherwise their offer of assistance should be refused.

16. Where a union member in accordance with the instructions of his union crosses a picket line, for example, to deliver essential supplies, he should not be subject to sanctions by any union.

Demonstrations

17. The effect of a large body of trade unionists outside a workplace

demonstrates the depth of feeling that exists among the strikers and also may constitute an effective appeal for solidarity. However, the police may regard a large body of workers as obstructing entry to premises or as intimidation towards those who wish to enter. And trade unions need to be aware that it can sometimes be difficult to control a large group of pickets.

18. In any situation where large numbers of people with strong feelings are involved, there is a danger that things can get out of control particularly in a confined area such as access to a factory. It is therefore particularly important for any such demonstrations to be conducted in a well organised and disciplined manner. It is also important that demonstrations of this kind do not convey the impression that the object is to blockade a workplace.

TRADE UNION ORGANISATION AND THE CLOSED SHOP

1. This guide deals with the issue of 100 per cent trade union organisation, and provides TUC guidance on the flexible operation of the closed shop.
2. The basis of trade unionism is organisation. The position of individual workers is normally weak relative to the employer. It is only by collective action through trade unions that individual workers can help determine their terms and conditions of employment through negotiating procedures and to generally make known their point of view on the operation of the workplace. This is the motive force behind trade unionism and trade union organisation. Therefore, the logical objective of a trade union in terms of organisation is clearly 100 per cent organisation, in other words to bring about a situation in which all workers in the relevant trade or unit of employment belong to the union. The closed shop is one means whereby the worker can ensure the continuity of collective strength and the freedom within an industrial enterprise to make his or her voice heard.
3. In certain circumstances membership of a trade union is a condition of employment. Of the 12 million trade unionists who are members of unions affiliated to the TUC, it is estimated that around 5 million work in closed shops.
4. Closed shops fall into two broad categories: pre-entry or post-entry. In the **post-entry** closed shop a person is obliged to join within a specified period from the time of beginning the job he or she has secured. This practice has been estimated to cover around 4 million workers.
5. In the **pre-entry** closed shop, a person has to be a member of a union before he can obtain the job he seeks. The pre-entry closed shop is less common than the other and it is estimated that it covers less than a million trade unionists.

The Reasons for the Closed Shop

6. Historically the closed shop has been used as a means to defend hard won terms and conditions and security of employment from being undermined by persons willing to work for worse terms and conditions. In other industries the closed shop's origins are traceable to the channelling of entry to crafts through apprenticeships in order to maintain standards and employment opportunities.
7. There are other reasons for the existence of closed shops. The one most frequently put forward by trade unionists is that the benefits of agreements negotiated with employers apply to employees irrespective of whether they are union members. People who object to trade union membership on "principle" are not known to refuse to accept the gains made by trade union negotiation and settlements and indeed many trade unionists strongly resent working alongside non-unionists because the non-unionist, or "free-rider", receives the benefits of trade unionism without paying for them.