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*Canadian Federal Pilots Association  
Association des Pilotes Fédéraux du Canada*

## **STRIKE HANDBOOK FOR MEMBERS**

**November 2001**

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## **CFPA STRIKE HANDBOOK FOR MEMBERS**

### **Preamble**

We all feel very deeply committed to the importance of the work that we do. We are committed to the defence of the safety of the public and the long-developed and hard fought standards of aviation safety. We all share in this responsibility. Being a professional and being guided by sound principles means that at some point you must stand up for what you believe in.

We know that dealing with this decision is uncomfortable for some of us. We did not choose this path, in fact we have tried in vain to move in a more positive direction. Management has demonstrated that they are convinced that you do not have the fortitude and resolve to carry though in this endeavour and they are committed to challenging us as a group to prove that they are correct. We must however, be resolute in our collective commitment to meet these challenges in a cohesive and effective manner.

This manual is written for the use of Members of the Canadian Federal Pilots Association (CFPA). It is an overview of Members' responsibilities and rights while engaged in job action against the employer, and contains information intended to guide and assist Members during the conduct of various forms of job action that may be requested by the CFPA Executive Board.

Please take the time to read through the enclosed information. If you have any concerns or questions, contact your representative or the national office and get an answer.

## **Strike**

The Public Service Staff Relations Act defines strike as:

"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 slowdown of work or other concerted activity on the part of employees that is designed to restrict or limit output."

In real terms that means that a strike is anything from a minor work slow-down or "work-to-rule" up to and including a complete walk out and/or picketing of the workplace or other location. Before any work action, of any degree, can be taken against the employer, the Association must have the authorization from its membership, in the form of a majority vote, and be in a legal position to strike. The legal position to strike will occur seven days after the conciliation board has filed its public report.

## **Types of Job Actions**

### **Intermittent Withdrawal of Services (Rotating Strikes)**

In this type of job action, members of the bargaining unit withdraw their services for short periods of time, normally in one region at a time. The principal advantage of this type of action is that it is very difficult for the employer to plan effectively for it.

### **Partial Withdrawal of Services (Work to Rule)**

An example of this type of job action would be a refusal by non-designated bargaining unit members to perform non-essential duties and duties that are not specifically designated in their job descriptions. Another example would be a refusal by bargaining unit members to work overtime. With broad support and assertive action by employees, this type of job action can exert considerable pressure on management. The main advantage of this type of job action is that the members continue to receive their normal pay.

### **Withdrawal of Services by all but Designated employees**

In this type of job action, all but Designated employees withdraw their services. The disadvantage of this type of job action is that it usually lasts longer because the Designated employees continue to provide services.

### **Lockout**

This type of job action cannot occur for public service employees. It occurs in the private sector where the employer locks the employees out of the workplace,

preventing them from working and receiving pay. Under the Public Service Staff Relations Action, our employer does not have the right to lock us out.

### **Strike - Our Intentions**

Our current plans are to activate specific items designed to slow down or disrupt the normal activities of the employer within appropriate and legal guidelines. There may be opportunities where sporadic informational picketing or a withdrawal of services of short duration will take place with potential escalation over time.

Just as we respected the job actions taken by other unions you can expect that they will most dutifully honour yours. We recognize that there will be Transport Canada and Transportation Safety Board policies in place to deal with strike actions at their work sites and when properly applied our members will not unduly interfere.

We need to understand that the solidarity of the membership is critical to the effectiveness of these initiatives. At various times you will be advised what you can do as an individual to help bring pressure to bear so that we can get a reasonable settlement out of these negotiations. The maximum participation of the membership will be the deciding factor in making any actions that are requested have the desired effect in bringing the impasse to a prompt and satisfactory resolution.

### **Strike Votes**

#### **1. When are Strike Votes Held?**

The National Executive, in consultation with the Regional Executive and the negotiating team, determines the dates on which the strike votes are to be held. The strike vote will normally be taken before the Conciliation Board meets.

#### **2. Why Take a Strike Vote?**

When a strike a vote is called it means that the negotiating team is unable to make progress in bargaining with the government. The members of the CFPA executive are calling upon the membership to support them in their endeavour to achieve a new contract.

#### **3. What Happens With a Successful Strike Vote?**

A strong mandate from the membership sends a strong message to management. The National Executive, in consultation with the Regional Executive and the negotiating team, must then decide which of the types of job action best suits our situation. During our last round of negotiations, the

Executive successfully used a combination of short, rotating strikes, picketing, and withdrawal of overtime to encourage the employer to return to the bargaining table which eventually resulted in a new contract.

#### **4. How is the Strike Vote Conducted?**

The strike vote is conducted by secret ballot. The ballots are sent with self addressed, stamped envelopes. All votes are anonymous, and all members are urged to vote. All members, including members occupying designated positions, must vote. A strong indication of the membership's decision is needed and all members have a vested interest in the outcome.

#### **5. Why is a strike vote important?**

A strike vote is important for two main reasons. It provides authorization to the Association executive board to initiate labour action, of any type, against the employer, should the board conclude that such action is necessary to encourage the employer to recognize and accommodate the proposals tabled on behalf of the employees. Secondly, it provides an indication to the employer of the level of resolve amongst the employees in support of those proposals. As was indicated in the recent email update to you, the employer will be watching very closely for the results of the strike vote and will view the results as an indication of your support for your negotiating team. The employer will also view the results of the strike vote as an indication of how much they need to compromise during the negotiations.

#### **6. Who has control?**

First of all, you do. The membership indicates to their representatives, by way of the strike vote, whether they are willing to take any action against their employer to get their bargaining proposals recognized. The membership may also advise their representatives of ways in which they feel action may be taken to be most effective in furthering their position. If the vote is in favor of labour action, the executive board is then responsible to make the decision to institute such action. They then rely on the membership to carry that action out.

### **Strike - Other Questions and Answers**

*Why a strike, aren't there any other options?*

Canada's labour laws have been drafted with the entrenched right to protect employees and allow them to take action to reinforce their position should they be faced with an employer who is unreasonable and uncompromising. We are governed by the PSSRA, which outlines the two options that are available to public service employees. Arbitration or Conciliation/Strike. In our case the

government legislated away our right to choose arbitration and consequently we do not have a choice; we are left with only the Conciliation/Strike route.

The principle of Conciliation/Strike is that the parties are to negotiate in an attempt to reach a new collective agreement. If that process becomes deadlocked, then a Conciliator can be appointed to help facilitate an agreement. Should that fail, a three-person Conciliation Board may be convened, and after meeting with the parties the Board will produce a report, usually recommending a settlement. Should the parties not reach a settlement, or choose not to accept the Board's recommendation, seven days after the publication of the Board's report, the employees are in a legal position to strike.

A strike vote that results in the ability to take action against the employer is simply the legal and logical consequence of disagreeable actions that the employer has already taken against its employees. While we hope that we will not have to exercise the authority to initiate action against the employer, a strike is the only legal method that we have to bring pressure to bear on an overbearing employer who is unwilling to consider the employee's perspective and reach an agreement at the bargaining table in a timely manner.

*Can the employer lock us out?*

No, they can't. Under the PSSRA, the employer does not have the right to lock employees out of the workplace.

*What if I have vacation scheduled during a strike?*

The employer's own policy states that "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. See Chapter Nine (Strikes) of the Treasury Board Manual - Staff Relations. If a request for vacation leave has been approved, the employer is free to cancel such approval."

*The employer has begun to ask for doctor's certificates for any sick leave and they want the doctor to write that they are advised that I am in a legal strike position. Can they do this?*

Yes, they can.

*What if I am on authorized sick leave or in receipt of disability benefits prior to the commencement of the strike?*

The employer has no legal obligation to approve any type of leave to an employee belonging to a striking bargaining unit, whether they have a medical

certificate or not. However, the employer's own manual states that "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." See Chapter Nine (Strikes) of the Treasury Board Manual-Staff Relations.

*I am presently on maternity and/or parental leave. Am I still entitled to this leave? What will happen to my top-up?*

Your entitlement to maternity or parental leave is established by legislation and therefore continues during the period of a strike. Your entitlement to the salary top-up is established under the collective agreement and we would refer you to the employer's policy which states that employees on leave without pay prior to the start of the strike should be permitted to continue on leave.

*I am scheduled to attend a training course. What do I do if strike action should occur while I am on course?*

As a member of the bargaining unit, you should join the strike activity that may occur at your location.

*I am close to retiring and if I strike, will I be taken off strength and will my best five years of salary for pension calculations be backtracked to before the strike?*

You will not be taken off strength. Should you miss any days due to strike activity, your date to retire with the same benefits will simply be extended by the appropriate number of days.

*If a person is in an acting position, do they go on strike?*

This depends upon where the acting position is located. If someone is acting in a position in a bargaining unit that is on strike, they are expected to be on strike as well. The only exception is if the position has been designated.

*Is this a mandatory strike or is it voluntary?*

The strike is mandatory for all members of the CFPA that are not designated.

*How do I deal with a fellow member who refuses to participate in any job action?*

There may be some individuals who are reluctant to participate in actions against the employer for fear of financial loss or retribution by the employer. It is most likely that they are not involved because they are misinformed. If members are not being supportive, do not threaten or intimidate them. You must attempt to educate them, try to explain to them the long-term ramifications to the group as a

whole. Reassure them that actions are being carried forward in a professional manner, but we must do our utmost to maintain solidarity. If questions remain, refer them to a CFPA representative.

*Won't our actions have a negative effect on the aviation industry?*

We recognize our responsibility to the safety of the system along with the potential of financial loss that could occur to our peers, colleagues and operators in the aviation industry. Our job actions will be designed to maximize inconvenience to the employer but minimize inconvenience to the members and to the public. Our dispute is with the Employer, not with the aviation industry. It is our intention to bring significant action against the employer in an effort to encourage them to negotiate an equitable settlement. Such activities may eventually impact upon the industry and at the appropriate time we will advise them accordingly. To the utmost of our ability, we will attempt to minimize any direct action that would adversely affect those who we oversee and assist.

## **Designations**

A Designated Employee is an employee who has been advised that he or she is occupying a position that has been "designated" following consultation and agreement between the employer and the CFPA. The list of Designated positions must be agreed to before a Conciliation Board can be appointed. An employee, who is properly advised that she/he is occupying a designated position, cannot participate in the strike action during their normal working hours because their duties have been deemed to be necessary for the safety and security of the public. Designated employees must carry out duties as assigned by their manager but they can participate in strike activities when off duty.

There are three types of Designated Positions:

Status 1 - Fully Designated - These are Designated Employees who cannot take part in any form of job action during normal working hours.

Status 2 - Alternate – These are employees tied to a particular Status 1- Fully Designated position. These employees are not designated until they have been activated, and can participate fully in all job actions.

Status 3 - Conditionally Designated – These employees are Designated under specific conditions. They are not designated and are only activated for on occasion for the period required to perform duties as specified in their conditions, otherwise they can participate fully in all job actions.

## **Designations - Questions and Answers**

*What triggers the designation process?*

The process is triggered when either party requests the establishment of a conciliation board. The CFPA filed a request for the establishment of a Conciliation Board, which was received by the PSSRB on October 29, 2001. An agreement has been reached with the Treasury Board to allow 30 days from the date of the request for a Conciliation Board for the employer to issue notices to employees occupying a designated position. Therefore the employer has until November 28, 2001 to complete the advisory process in accordance with PSSRB regulations and procedures.

*Who issues the designation forms?*

The Public Service Staff Relations Board issues the designation forms. The Treasury Board will receive from the PSSRB all the Form 13s - Notice of Designation – for each designated position.

*How do you know if you are occupying a designated position?*

Employees occupying a designated position will be advised of their status by a manager (Employer representative) and provided with their official Form 13. If a condition is attached to the designation, the employee should be informed at this time.

*Is the union involved when these Notices are handed out?*

Yes, a union representative should accompany the manager and all three should initial the registry form. Once the form is completed a copy is to be provided to the union representative.

*Is the notice valid if there is not a union representative in attendance?*

Yes, as long as it is the official Form 13. Copies are available on the PSSRB website under 'Forms.'

*Who should receive a copy of Form 13 when the union representative is not available?*

The union representative's copy of the form should be sent to the CFPA National office.

*Do they deliver original copies or can they be a duplicate copy?*

The Form 13, Notice of Designation, must be the original from the Public Service Staff Relations Board. It contains the signature of a PSSRB official and has the insignia of the PSSRB in blue in the middle of the Form. The Form must contain the position number and geographical location of the position.

*What if the employee named on the form is not in that position?*

A line must be drawn through the original name and the new name written beside it. You must be able to read the previous name.

*Can the position number be changed?*

No, once the position is designated that number must stay the same. Only the name of the employee can change.

*Why do we have Status 2 alternates?*

By having alternates it helps us minimize the number of people we have fully designated.

*I received a designation letter after November 28th. What should I do now?*

November 28, 2001, is the cut off date for delivery of notices. Designation notices delivered to members after November 28, 2001 or prior to October 29, 2001 are not valid. You should advise your regional CFPA representative and have the notice returned to the issuer.

*Can members of the Local Executive be designated?*

Yes; if a member of the Local Executive does receive a Form 13, they have to respect the notice.

*If there is strike action, what terms and conditions of employment apply to designated employees?*

The current collective agreement is still in effect for all designated employees. Their current terms and conditions apply.

*How can designated members participate in strike action?*

Designated members should attend regular membership meetings where it will be explained how they can support the strike. This could include monitoring management's activities.

*I am in a designated position and have received my letter. I have heard rumours that I will be moved if there is a strike and do work elsewhere. Can the Employer do this with designated positions?*

No; positions are designated for a reason. The employer has satisfied the Public Service Staff Relations Board that the position you occupy is essential for the safety and security of the country. The tasks assigned to the position are considered essential which is why the position, rather than the individual, is designated. To remove someone from their designated duties to perform other tasks is contrary to all agreements and understandings involved in the process.

So, the short answer is no, it should not happen. If your manager attempts to do this, record your objection and notify the CFPA immediately.

### **Managerial Exclusions**

A Managerial Exclusion is an employee who is excluded from the bargaining unit (the CFPA) in keeping with the Public Service Staff Relations Act because of the type of work she/he does (ie most CAI5s). This person is not a member of the CFPA and does not pay union dues.

## **Communication and Control**

In order to maintain appropriate control over the various job actions throughout the country, there will be regional coordinators across the country who will ensure their local members are aware of what is expected of them and what activities are taking place. Don't make up anything on your own – while we're all used to independent action as pilots, please resist this temptation. If you have a good idea – send it to the CFPA National office directly, or through your regional chairperson, or local representative, and we'll review it and see what can be done to bring maximum pressure to bear against the employer.

Each Regional Executive will be responsible for contacting their members to advise of upcoming job actions. We will establish phone call fan-out lists and also will provide updates via our web site and email.

## **Media**

*What do I do if a reporter approaches me for comments?*

You should refer any media inquiries to your local CFPA Representative or your Regional Strike Coordinator. If none is available you should contact the National CFPA office.

If for some reason you get caught up in a conversation with someone from the media remember the following:

- Your primary goal is to refer the inquiry to your CFPA Representative or the CFPA National Office. However, if you are really stuck with someone, be courteous, stick to the facts and explain why you can't answer a question.
- Know what our key messages are beforehand but don't give the reporter any information that you don't want published either. That particular bit of information could be the hook that the reporter uses to create a story.
- Remember: Nothing is off the record.

## **Picketing**

Picketing, in itself, does not fall within the definition of a strike; however, it is typically associated with a total withdrawal of services. The law protects right to peaceful picketing by employees on strike or on their own free time for the purpose of obtaining or communicating information (See Chapter Nine (Strikes) of the Treasury Board Manual- Staff Relations).

Where government business or operations are carried out in locations that are traditionally considered "public places", peaceful and lawful picketing is allowed. Unlawful picketing that is obstructionist or violent in nature is not permitted.

Some guidelines regarding picketing:

1. The picket line is a means of informing the public and others of the conflict at the workplace by using placards that carry the information regarding the strike.
  2. Keep picket lines orderly, peaceful and moving at all times. Do not block a street or entrance way.
  3. Picket signs should be large, easy to read and in good taste.
  4. Information leaflets may also be used to provide information about the situation and the issues involved.
  5. Be organized and dress professionally on the day of the picketing, wear shirt and tie and TC/TSB jacket if available.
  6. Records will be kept of all members who perform picket duty. Designated members may be called upon to picket outside of normal working hours.
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## **Right of Designated Employees to Refuse Overtime**

*During the last round of contract negotiations the Association obtained a legal opinion from Nelligan Power regarding the right of designated employees to refuse overtime. Since that time, we have changed to our current name of the CFPA; however, it was felt that quoting the opinion here would be informative.*

"You have asked whether members who have been "designated" (i.e. whose right to strike has been removed) can nonetheless refuse to work overtime.

Under your collective agreement, overtime is normally involuntary, for all employees. However, the employer has issued a *Strike Handbook for Managers* setting out the rights of employees when AOGA members are in a legal strike position. That document states that "employees in a legal strike position...may refuse overtime work without fear of reprisal". It then goes on to deal with designated employees as a separate category of employee, and says that they "must report to work and perform all of their duties".

In my opinion, a literal interpretation of this handbook leads to the conclusion that designated employees must continue to work involuntary overtime, which is part of their normal duties. Only employees with a right to strike are promised that they can refuse overtime without fear of discipline.

As I mentioned in our meeting, the PSSRB would treat any concerted refusal of designated employees to work overtime as an illegal strike, even if an employer policy or your collective agreement purported to allow such refusal. The statutory definition of "strike" includes an "concerted activity on the part of employees that is designed to restrict or limit output". Several labour boards have ruled that a mass refusal of overtime, even voluntary overtime, can qualify as an illegal strike.

Thus if your designated members were to refuse overtime *en masse*, they could be found to be engaged in an illegal strike. They could also be disciplined by the employer."

Steven Waller, Nelligan Power LLP, October 7, 1999.

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