



Town of Lexington

Police Department

Subject: Strikes and Labor Disputes

Reference: none

Effective Date:
12-1-2011

Review Date:
Annually

By Order of: Mark J. Corr, Chief of Police

**Policy &
Procedure**

46D

The Municipal Police Institute, Inc. (MPI) is a private, nonprofit charitable affiliate of the Massachusetts Chief's of Police Association. MPI provides training and model policies and procedures for police agencies. This policy is an edited version of MPI Policy 7.03, "Strikes and labor Disputes."

GENERAL CONSIDERATIONS AND GUIDELINES

The police role at the scene of any labor-management conflict is to enforce the law and to protect life and property. The key to effective police action in these circumstances is for the officers to be completely fair and objective in the performance of their duties. It is not the function of the police to determine which side is right or wrong or to take any personal or official position either way. Police officers should never permit themselves to be placed in any position that might have the appearance of favoring one side or the other.

It should be noted that both sides in a labor dispute have definite rights and responsibilities. The strikers have a right to assemble and to picket peacefully to publicize and dramatize their cause. They do not have the right to intimidate non-strikers or to impede persons or vehicles from entering or leaving the employer's property. The employer has a right to keep his business open and to have his property safeguarded from damage or destruction.

Arrests at strike scenes should be avoided except for flagrant violations requiring immediate action. Only sufficient force shall be used to affect such arrests and remove the offenders from the scene as quickly as possible to avoid an emotional reaction of their fellow strikers. Whenever possible, it is preferable to obtain sufficient information to be presented later to the court for the issuance of criminal process against the persons concerned. An important factor in avoiding disorder and the subsequent necessity for making arrests is to establish an early contact with the strike leaders and company officials to seek their cooperation and to

46-D Strikes and Labor Disputes

point out both the police responsibility in the controversy and their obligation to maintain public safety and good order.

It is the policy of the Lexington Police Department to: fairly, and without bias, preserve the peace and protect life and property when working at strike locations; and; have officers working at a strike zone conduct themselves according to applicable law, these guidelines, department policies and procedures, departmental orders, and the lawful orders of their superior officers.

DEFINITIONS

Strike: For the purposes of this policy the term strike will refer to any labor dispute, job action, protest or picket. Strikers may or may not be affiliated with the company or organization, which is the object of such action.

PROCEDURES

A. Operational and Supervisory Authority

1. The Chief of Police exercises operational control of all officers assigned to a strike location. Supervisory responsibility for such details is delegated to shift commanders, patrol supervisors, or the strike detail supervisor.
2. Officers assigned to strike locations, whether as part of a paid private detail or as assigned by the Department, serve as police officers of the Lexington Police Department and not as special employees of the company or organization paying for their services.
3. No employee of any company or organization, whether paying for police services or not, is authorized to direct the activities of officers assigned to the detail or to issue any order to police officers.
4. Any employee of such company, organization or member of the strike group who seeks to direct or order a police officer should be directed to the Strike Detail Supervisor.

B. Assignment of Officers to Strike Details

1. Authorized personnel include:
 - a. Full time permanent police officers; or
 - b. Special Police Officers who have maintained their status and training.

46-D Strikes and Labor Disputes

2. Personnel **not permitted** to work strike details include:
 - a. Members of the Lexington Police Department Traffic Unit.
 - b. Auxiliary police;ⁱ and
 - c. Massachusetts State Police Officers (unless violence has actually occurred and then only by order of the Governor).ⁱⁱ
 3. In the event that the Department is unable to provide the number of officers required to fill a paid strike detail, full-time officers from other communities may be utilized through mutual aid when authorized by the Chief or his designee.
- C. Uniform Attire and Required Gear
1. Officers will wear their regularly assigned uniform.
 2. Officers will wear their full duty belt with radio.
 3. Officers will wear soft body armor.
 4. Officers will have their traffic vest and white gloves immediately available.
 5. Officers will have their protective helmet immediately available.
 6. The officer in charge and/or prior written plan will dictate what gear may be required including whether a traffic vest and gloves will be worn and/or protective helmet.
- D. General Public Safety and Law Enforcement Considerations
1. Objectives: The mission of officers assigned to strike locations includes, in order of importance, the following:
 - a. The protection of life and the prevention of physical injury to persons;
 - b. The protection of the statutory and Constitutional rights of all persons;
 - c. The protection of personal and public property; and
 - d. The maintenance of the public peace.

46-D Strikes and Labor Disputes

2. Upon learning of a strike
 - a. Whenever the Department is notified of the existence of a strike or labor dispute, the following information will be obtained and documented for departmental purposes:
 - i. The name, business address and telephone number of the employer;
 - ii. The name, address and telephone number of the union concerned;
 - iii. The kind of business involved;
 - iv. The reason for the dispute;
 - v. The date the strike was declared;
 - vi. The approximate number of employees involved;
 - vii. Any trouble that might be anticipated; and
 - viii. Any additional information that could be of assistance to the police department in carrying out its responsibilities.
 - b. As soon as possible, the Chief or his/her representative will contact both the employer and the union officials to elicit their cooperation in maintaining a peaceful strike and to avoid unlawful activity by any of the contending parties. Both sides in the dispute will be notified:
 - i. That the use of force or violence will not be permitted;
 - ii. That the law will be enforced fairly and impartially;
 - iii. That any unlawful or disorderly act or acts that might provoke violence will be prevented;
 - iv. That the rights of the general public to use the public streets and sidewalks will be maintained;
 - v. That the rights of the striking employees to conduct orderly picketing in public areas will be protected;
 - vi. That the striking employees will be permitted to:
 - (a) Peacefully persuade those still employed to join the strike;
 - (b) Peacefully persuade those considering employment not to do so; and
 - (c) Inform potential customers and the general public about the labor dispute and the reasons for their action.
3. Picket Line
 - a. When a strike develops and a picket line is established, it shall be the obligation of the Officer-in-Charge at the scene to make contact with the union leader supervising the picketing and seek

46-D Strikes and Labor Disputes

the individual's cooperation. Picket leaders are usually responsible persons selected for their leadership ability. Good relations between the police and the strikers can ease the problems of law enforcement. This should be done at the beginning of a picket display in an attempt to establish ground rules that both sides may agree upon.

- b. If an incident arises, or it is apparent that a potentially dangerous situation is arising, it should be immediately called to the attention of the picket leader, who should be encouraged to handle the problem immediately, if at all possible. In many cases, this will eliminate the need for intervention by the police.

4. Impartiality

- a. Police officers shall avoid any fraternization with:
 - i. Pickets;
 - ii. Union leaders or management officials;
 - iii. Company security; or
 - iv. Non-striking personnel.
- b. Police officers shall avoid any unnecessary conversation with friends or acquaintances that may be in the picket line or associated with management.
- c. Police officers shall not enter company property except to perform a proper police purpose.
 - i. Officers shall not park Department or personal vehicles on company property or use any company facilities or telephones, nor those of the union, unless absolutely necessary.
 - ii. Police officers shall not use any company cafeteria and shall not accept invitations to eat either with union or management personnel.

E. Rights of Picketers and Persons Crossing Picket Lines

1. Generally

- a. Persons engaged in lawful and peaceful picketing are in the exercise of a right granted to them by both Massachusetts and federal law. Police officers have an obligation to protect that right and to protect those persons who are exercising that right.

46-D Strikes and Labor Disputes

- b. Similarly, non-striking employees, customers, and members of the public have a lawful right to enter or leave the site of a strike. Police officers have an obligation to protect those rights and to protect those persons who are exercising those rights.
- c. The police officer's role is one of balancing what may appear to be conflicting rights or interests and of providing a buffer to ensure that all parties can peacefully exercise their rights without being exposed to physical danger, property damage, or breaches of the public peace.

2. Picketers

- a. Picketers are allowed to walk on public sidewalks and streets, as long as their activities do not prevent the use of those public ways by others.
 - i. Most picketers/strikers walk or march in a loop or circle in the area of interest for the strike (i.e. specific business).
 - ii. Picketers should be allowed to exercise their right to picket/strike for an understood or agree amount of time amount of time (for example two to three loops depending on how urgent the need is to clear the driveway or area the picket is happening). *See in this policy section D.3.a.*
 - iii. While picketers/strikers are blocking an active area i.e. a driveway or access to a business, they will be advised to keep moving, and not to stand stationary.
- b. While picketing, persons are allowed to verbally or by sign attempt to persuade others to their point of view, provided that such persuasion is not accompanied by injury or threat of injury.
- c. Picketers who refuse to desist in blocking sidewalks, streets, or driveways, so as to allow others to pass, are subject to arrest for violating town by-laws and or other statutes. However, prior to making such an arrest, officers should:
 - i. Determine if the picketing is, in fact, blocking the sidewalk, street, or driveway in such a way that a person actually attempting to use it is prevented from doing so;
 - ii. Verbally or by clear physical direction indicate that the picketers should desist in their activity; and
 - iii. Permit a reasonable time for compliance.

46-D Strikes and Labor Disputes

3. Entering and Leaving a Site of a Strike
 - a. Persons entering or leaving the site of the strike should anticipate that their passage may be subject to a reasonable delay. Such delays are related to ensuring their safety, the safety of persons on the picket line, and the right of picketers to engage in peaceful persuasion.
 - b. If such persons crossing the line ignore or fail to follow reasonable and lawful directions of police officers, and, thereby, create a hazardous situation or a breach of the peace, their conduct could be considered disorderly in character.

E. Providing Safe Passage through Picket Lines

1. PEDESTRIANS: Under normal circumstances, if deemed necessary, persons on foot should be escorted, by at least one officer, through the picket line and to a reasonable distance from the line.
2. Vehicles
 - a. Generally, when cars are waiting in line to pass through the picket line, the line should be stopped and vehicles permitted to pass. Thereafter, the line should be allowed, briefly, to resume movement before being stopped to permit the passage of more vehicles. The number of vehicles allowed to pass should be discussed with the Officer-in-Charge. It is recommended that a fixed number be set and this fixed number of vehicles be permitted to pass in each case. This is likely to be 3-10 vehicles.
 - i. Permitting cars to pass hopefully ensures that prolonged waiting does not become a source of problems, and that vehicles are not operated at excessive speeds as they pass through the line. Additionally, that level of passage permits the officers to remain in control of both the picketers and the motorists.
 - ii. If the volume of picketers, their conduct, or other factors such as weather or lighting conditions makes passage of cars unsafe, officers shall reduce the flow of vehicles through the line or, in extreme cases, stop the passage of vehicles until sufficient officers are present to ensure safe passage.
 - iii. If the volume of picketers is minimal or the situation dictates the passage of several cars at a time, this should be done, unless safety concerns arise.

46-D Strikes and Labor Disputes

- b. Motorists should be directed not to play the vehicle's radio while passing through the line, so that they may hear emergency directions from the officer.
 - c. Because differing opinions exist as to the relative safety of opening or closing windows as vehicles pass through the line, officers shall not, except in exigent circumstances, direct motorists to raise or lower their windows while passing through the line.
 - d. Persons driving motor vehicles through the line must exercise due care and caution and must obey the directions of police officers.
 - i. Officers observing minor vehicle violations that do not represent an immediate threat to safety should not stop the vehicle, but should record the registration number for later follow-up.
 - ii. When it becomes necessary to stop a vehicle, the officer should direct the vehicle to stop at a safe distance from the picket line.
 - iii. Any person who intentionally, negligently, or recklessly endangers picketers, the public, or the police by their manner of operation should be charged with the appropriate motor vehicle or criminal offense.
 - e. Operators of vehicles observed entering or leaving through uncontrolled driveways should be directed to use controlled points of passage.
 - f. The use of video or photographic equipment is a useful tool in the identification of subjects at a congested location in which violations of law may occur.
3. Identification Checks: Unless specific orders to the contrary are issued by the Officer-in-Charge, officers will not check the identification of persons crossing the picket line.
- F. Reports: Officers working strike locations shall prepare a written report after making an arrest or taking another criminal enforcement action while working a strike scene.

G. Union Organizing Efforts

1. Workplace Access

- a. Unions may want to go onto private property in order to gain access to employees for the purpose of attempting to organize them. The National Labor Relations Act (NLRA) confers rights only on employees, not on unions or their non-employee organizers. Thus, as a rule, an employer need not allow non-employee organizers onto the employer's property for the purpose of either speaking with employees or distributing union literature.ⁱⁱⁱ
- b. In unusual situations, a union may convince the National Labor Relations Board (NLRB) or a court that a certain group of employees are so inaccessible that an exception should be made to the general rule.^{iv} In the absence of an order from the NLRB or a court, union organizers have no more rights than other private citizens and may be barred from private property by the owner or person in charge of such property.

2. Publicizing Displeasure with Employer

- a. As part of their organizing efforts, unions may also want to publicize their displeasure with an employer. This may take the form of hand billing members of the public in and about an employer's place of business.
- b. Such activities do not ordinarily come within the scope of the NLRA. In such situations, union organizers must conform to all applicable statutes.

3. Enforcement of Statutes

- a. Union organizers must comply with the same statutes as other private citizens in attempting to gain access to employees. Should the person who owns or is in lawful control of private property restrict solicitation, union organizers may be denied entry. Organizers must confine their efforts to public property.
- b. Union organizers are to be warned that their actions in violation of statutes such as trespassing, disturbing the peace or disorderly conduct will not be tolerated.
- c. Should a violation persist after the aforementioned warning has been given, officers shall consult with the Officer-in-Charge to determine what enforcement action is most appropriate under

46-D Strikes and Labor Disputes

the circumstances. This may include arrest of some or all of the organizers, applying for process on complaints or advising the complainant of his/her right to file a complaint in the appropriate District Court department.

- d. Officers should maintain neutrality on the labor relations aspect of any dispute between organizers and property owners.
- e. As with many types of disputes, if officers discover that some reasonable accommodation is possible which satisfies both the property owner and the union organizers, there is no need for enforcement action.

ⁱM.G.L. c. 149, §23B.

ⁱⁱM.G.L. c. 22, §9A.

ⁱⁱⁱSee *Lechmere v. NLRB*, 502 U.S. 527, 112 S. Ct. 841 (1992).

^{iv}*N.L.R.B. v. Babcock & Wilcox Co.*, 351 U.S. 105, 76 S. Ct. 679 (1956).