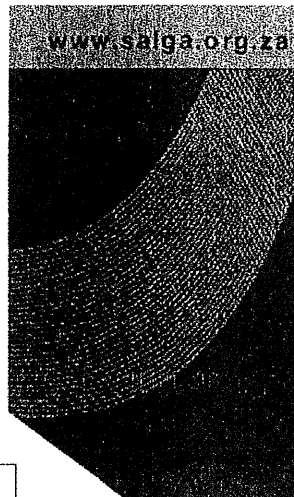


**SALGA**  
South African Local Government Association

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Cir: 39/13 ( LABOUR PROVINCIAL)  
Date: 16 September 2013



**NOTICE**  
**PROVINCIAL OFFICE: KWAZULU NATAL**

**FROM : PROGRAM MANAGER HR/LR/CB**  
**TO : ALL CORPORATE AND HUMAN RESOURCES MANAGERS, HR AND LR PRACTITIONERS/OFFICERS, HUMAN RESOURCES PORT FOLIO COUNCILLORS**  
**CC : ALL MUNICIPAL MANAGERS**

**STRIKE GUIDELINE DOCUMENT :SALGA**

In the last decade the Local Government experience several strike actions by the trade unions SAMWU and IMATU.

It is unfortunate that strike actions in Local Government were clouded with damages and violence in several instances in the past.

SALGA issued a strike management booklet in 2005 to assist Municipalities to effectively manage strikes and to put contingencies in place during strike actions by trade unions.

Kwanaloga conducted a strike assessment workshop in 2009 after the municipal strike and invited municipalities to share their experiences in planning and managing strikes at their respective municipalities .This resulted in a more comprehensive document from the one developed in 2005 by SALGA.

Despite the guidelines provided to municipalities, strikes resulted in damages and violence with unacceptable behaviour by strike participants, which cannot be tolerable.

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**North West**  
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Cnr O R Tambo &  
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**Northern Cape**  
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Fax: 053 833 3528

**Western Cape**  
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- The applicant can shown good cause why a shorter period should be permitted

The possibility exists that employees engaged in essential services may also embark on industrial action.

An interdict from the labour Court must be obtained should these employees participate in an industrial action (strike).

## 6. THE REQUIREMENTS FOR FAIRNESS OF A DISMISSAL IN THE CONTEXT OF A STRIKE

Dismissal of any striking employees must be procedurally and substantively fair.

Where a number of essential services employees participated in strike action or where the strike was not protected then the following procedures be adhered to by municipality should the municipality which to take disciplinary action against the employees once the strike is concluded.

### 6.1 Procedural Fairness

- 6.1.1 Each municipality must prepare a list of the names of those employees in essential services who participated in the strike action.
- 6.1.2 The municipality must notify each of those employees individually that their names appear on the list and that they are therefore being subjected to collective disciplinary action. The municipality must also provide a copy of the list of names to the local branch of each trade union that has members on the list.
- 6.1.3 The trade unions must then be given an opportunity within 3 days of the date of the list being issued to raise in writing any individual circumstances which they believe demonstrate that individuals whose names appear on the list should not be treated as part of the collective for the purpose of taking disciplinary action.
- 6.1.4 The municipality must then make a decision as to which employees on the list should be found guilty of collective misconduct and rule accordingly.
- 6.1.5 Letters to be submitted to individual employees if found guilty with the appropriate sanction.

Should the municipality wish to take action whilst the strike is taking place then the following procedure be adhered to :

#### 1. Notification

Notify the trade union provincial or national office that employees have embarked on an unprotected strike and request the union official to speak to the striking employees in an attempt to persuade them to return to work. Such an official must be asked to advise the striking employees that the strike is an unprotected one, and that their continued participation in the strike renders them liable to dismissal.

## 2. The Ultimatum

If the union intervention has no effect or if the trade union is unhelpful and unwilling to co-operate, the employer should issue an ultimatum.

Such an ultimatum in effect is a warning to the union and employees that unless, the strike is abandoned within a clearly stated time period, certain consequences, which need to be clearly spelt out, will ensue. In essence, the ultimatum serves as a prior warning, in anticipation of dismissal. It is recommended that 48hour notice be given to employees engaging in an unprotected Strike.

In determining the fairness of strike dismissals 2 enquiries are relevant. The first is to establish whether the ultimatum given was fair, and the second is to establish whether the dismissals which took place after the ultimatum, were fair.

### Requirements for a Fair Ultimatum:

- the ultimatum must be communicated the clear and immediate terms in a language understood by the striking employees<sup>4</sup>;
- the ultimatum must clearly state the terms of the demand to the striking employees, when and how there are required to comply with it and what will happen if they fail to comply<sup>5</sup>;
- enough time must be given for all the striking employees to be informed of the to make them and its contents, and to enable them to consider its contents and respond to it by either complying with it or not<sup>6</sup>;

The ultimatum must be a genuine attempt to induce the striking employees to return to work and not only a mere precursor to their dismissal.

## 3. Pre-Dismissal Hearings

It is clear from our case law that any dismissal, even in the context of the strike, must be preceded by some type of hearing.<sup>7</sup>

The Labour Appeal Court held in the *Steve's Spar* case<sup>8</sup> that the *audi alteram partem* rule applied also in the context of strike dismissals.

<sup>4</sup> The purpose of an ultimatum is to inform employees that they are breaching their contracts of employment and that they face dismissal if they continue to do so. Reasonable attempts must thus be made to ensure the ultimatum reaches all the striking employees or at least their representatives: *Performing Arts Council (Transvaal) v Paper Printing Wood & Allied employees Union* (1992) 13 ILJ 149 (LAC)

<sup>5</sup> The instruction to the employees (to return to work) must not only be clear, it must also be reasonable. An ultimatum threatening summary dismissal for failure to return to work and to also accept the employer's final wage to offer was held both illegal and unfair because it was not based on a ground recognised as justifying summary dismissal in law: *Chemical Employees Union v Plascon Ink and Packaging Coatings (Pty) Ltd* (1991) 12 ILJ 353 (IC). The imposition of a condition that striking employees should give an assurance that they would not strike again after their return to work was also held to be unfair as there was no basis in law for such a requirement: *National Union of Metal employees of SA v Wubbeling Engineering (Pty) Ltd and Another* (1995) 16 ILJ 1489 (LAC)

<sup>6</sup> Factors such as earlier attempts to convince the striking employees of the illegality of their actions and the extent of the losses suffered by the employer play a role in determining what a reasonable time is: *Black Allied employees Union & Others v Edward Hotel* (1989) 10 ILJ 357 (IC).

<sup>7</sup> *Modise & Others v Steve's Spar Blackheath* (2000) 21 ILJ 519 (LAC)

<sup>8</sup> See footnote 12 above

The requirement that a hearing be held before dismissals take place has its own problems. A question which is not yet entirely settled in our law is what form such a hearing should take, and whether such a hearing should take place before or after an ultimatum has been issued.

The form which the hearing takes is largely dictated by the facts. It is generally accepted that where a significant number of employees are involved it is not expected that the employer hold a formal hearing. In such circumstances a written invitation to the union to make written representations at a given time, why the striking employees should not be dismissed for participating in any legal strike may suffice. In other cases a collective hearing may be called for, with elected workers or union representatives making representations on behalf of the striking employees.<sup>9</sup>

The next question is whether the hearing should take place before or after the ultimatum has been issued. In *National Union of Metal employees & Others v Billard Contractors CC*<sup>10</sup> the assumption was made that a hearing before and after the ultimatum is required because each serves a different purpose: the first determines whether there is a reason to issue an ultimatum and the second is to establish whether the employees who did not comply with the ultimatum, had any valid reason for not doing so.

The approach in *Billard* differs somewhat from that in *Steve's Spar* and *Mzeku & Others v Volkswagen SA (Pty) Ltd*<sup>11</sup>. The latter two cases suggest that the only purpose of by a pre-dismissal hearing is to allow the striking employees to attempt to persuade the employer that the ultimatum should not be issued because of strike is protected all legitimate. If the employee is not so persuaded, the employer is free to issue an ultimatum and to dismiss the employees on strike who fail to comply with the ultimatum.

In summary, it would appear from the case law the following guidelines apply to the dismissal of employees participating in an unprotected strike:

- before the ultimatum is issued, the employer must notify the employees or the union of its intention to issue the ultimatum and invite representations as to why this should be done
- such representations as are received must be considered in good faith and if the employer is not persuaded by such representations to refrain from issuing the ultimatum, the union and the striking employees should again be informed of its intention to issue the ultimatum;
- the ultimatum, once issued, should give the employee a reasonable period to consider their response (and, of course, the ultimatum must meet the requirements discussed above);
- no worker who complies with the ultimatum may be dismissed for participating in the strike;
- employees who do not comply with the ultimatum may be dismissed;

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<sup>9</sup> *Steve's Spar*, above

<sup>10</sup> [2006] 12 BLLR 1191 (LC)

<sup>11</sup> (2001) 22 ILJ 1575 (LAC)

- after dismissal, the employee should consider any representations which individuals may wish to make regarding why their dismissal should be reversed.

As stated above, there are no hard and fast rules with regard to the dismissal of striking employees, particularly in relation to the fairness of the dismissal, and best advice in this regard is for an employer to be very cautious in dismissing striking employees.

#### 4. Substantive Fairness

The Code of Good Practice on Dismissal<sup>12</sup> provides that participation in a strike which does not comply with the prerequisites of the LRA or a relevant collective agreement is misconduct. It provides that the substantive fairness of a dismissal in the course of an unprotected strike must be determined in the light of the facts, and in the light of the following specific factors.

- the seriousness of the contravention of the LRA or Collective Agreement<sup>13</sup>;
- attempts made by the striking employees and the union to comply with the LRA and/or an applicable collective agreement<sup>14</sup>; and
- whether or not to strike was a response to unjustified conduct by the employer<sup>15</sup>.

A number of other factors not mentioned in the Code can be gleaned from the decided cases dealing with substantive fairness of striking employees, which play a significant role in determining whether the dismissal of striking employees has been substantively fair:

#### 5. Duration of the Strike

The courts are likely to have far less sympathy with striking employees if the unprotected strike lasts for a significant period of time. It also follows that the longer the strike lasts, the more easy it will be for an employer to persuade the court that the ultimate dismissal of the striking employees, was an action of last resort, and therefore justifiable.

<sup>12</sup> Item 6 (1)

<sup>13</sup>The "seriousness" of the contravention of the LRA or collective agreement is of course a question of fact. It is suggested that flagrant disregard for the prerequisites for a protected strike will not engender much sympathy with the courts. Employees who breach a collective agreement by downing tools, without having followed any procedure and without any warning to the employer, were held to have been fairly dismissed in *Transport & General employees Union & Others v De La Rey's Transport (Pty) Ltd* (1999) 20 ILJ 2731 (LC). So, too, the dismissals were upheld of employees who had struck to force the employer to withdraw disciplinary charges against a shop steward: *Steel Mining & Commercial employees and Others v Brano Industries (Pty) Ltd & Others* (2000) 21 ILJ 666 (LC).

<sup>14</sup> The reference in the Code to "attempts made to comply" indicate the court may well condone minor technical errors, such as the miscalculation of time limits or the incorrect completion of the necessary documentation. This however does not mean that ignorance of the legality of the strike due to technical non-compliance will be condoned if the union was fully aware that the strike was unprotected: *Coin Security Group (Pty) Ltd v Adams & Others* (2000) 21 ILJ 95 (LAC)

<sup>15</sup> "Unjustified" conduct on the part of the employer must not be understood as referring necessarily to conduct which is unlawful. Any unfair conduct by the employer, provided of course that it is serious enough, may excuse employees from complying with the LRA and/or the relevant collective agreement. *Food & Allied Employees Union v Mnandi Meat Products & Wholesalers* (1995) 16 ILJ 151 (IC) provides a good illustration. Here the court held that the employer bore the larger part of the blame for the escalation of the dispute into an unlawful strike by manhandling the union representative and then calling the police.

## 6. The Harm Suffered by the Employer

It is an undeniable fact that a strike, as part of the power-play between employer and employee, aims at inflicting economic harm or loss on the employer with a view to bringing the employer around to conceding the employees' demands.

That notwithstanding, the harm caused to an employer by an unprotected strike is relevant to establishing the gravity or seriousness of the employees' misconduct, since if they are participating in an unprotected strike and causing serious financial loss thereby, the employer may be able to demonstrate that the dismissal was an act of last resort.

## 7. The Nature of the Demand

If the objective which the striking employees seek to achieve is one which would have been legitimate had it been the objective of a protected strike, the courts are likely to have more sympathy towards the striking employees than where the object which the striking employees seek to achieve is one which they could not in any event achieve through a protected strike.

Hence, an unprotected strike over, for example, the dismissal of a shop steward would receive less sympathy than one over wages, especially where as a matter of objective fact, the employees have good cause for complaint with respect of the wages being paid. In the latter case the courts are more likely to examine in greater detail the substantive fairness of a dismissal than in the former case.

## 8. Timing of the Strike

An unprotected strike called without notice at a time calculated to cause maximum harm to the employer is likely to meet with a far more strict approach from the courts than one in which notice has been given, and the dispute has been under discussion for a lengthy period of time.

In *Food & Beverage Employees Union v Hercules Cold Storage (Pty) Ltd*<sup>16</sup> a legal strike was commenced immediately after orders for and loading of perishable goods into trucks for delivery had been completed. They were refused reinstatement in the light of their misconduct, because they need not have waited for the perishable goods to be moved from cold storage into the trucks before commencing the strike.

## 9. The Conduct of the Striking employees

The courts regularly take the conduct of striking employees into account when evaluating the substantive fairness of their dismissals. Violence and intimidation during the course of a strike are unacceptable and if established, will usually render justifiable, any dismissal a result thereof.

There is a difference between situations where all employees are dismissed after a violent strike, and those where only some striking employees are singled out for disciplinary action because of their misconduct during the strike. In the case of the former, the court may take the collective misconduct of the striking employees into account when assessing the substantive fairness of the collective dismissal while in the latter case, the employee is being

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<sup>16</sup> (1989) 10 ILJ 457 (IC)

disciplined for the alleged misconduct, not for the act of striking *per se*. The usual disciplinary procedures must be followed in the latter case.

The courts will also come to the assistance of dismissed striking employees who can establish that the participation in the unprotected strike was under duress.

## A. PICKETING

During strikes especially national strikes trade unions may authorise a picket. The Labour Relations Act in terms of Section 69, provides that a registered trade union may authorise a picket by its members and supporters for purposes of peacefully demonstrating -

- In support of a protected strike.
- In opposition of any lock-out
- See attached Picket Rules (Annexure A)

A picket may be held

- where public has access but outside the employer's premises; or
- may take place in the premises only with permission

Picket rules should apply and should be established by agreement by the parties or by CCMA.

Pickets must be peaceful and in compliance with the Gatherings Act 1996.

The organizers (trade unions) can be held accountable for a claim of any damages occurring during a strike. To that effect, the Supreme Court of Appeal as confirmed by the Constitutional Court confirmed this responsibility in SATAWU V GARVIS AND OTHERS, based on section 11 (2) of the Regulation of Public Gatherings Act 1996.

*Municipalities must ensure that they keep the local South African Police Service and the closest Public Order Police Office informed and involved during any pickets to avoid violence or damage to municipal property.*

The SAPS can also be helpful for purposes of obtaining video footage during a picket. The latter is essential for proving an employer's case during the litigation process for damages.

## B. COMMUNICATION STRATEGY

### COMMUNICATION PRIOR TO STRIKE

#### 1. Internally to all staff

Once notice is received from the unions that they will be embarking on strike action then it is necessary to immediately communicate to employees the rules that will apply during the strike.

The communication should be sent by the office of the Municipal Manager and should cover the following issues.

- The principle of "No work, No pay" will apply to all striking employees.
- The "No work, No pay" will also affect the municipalities contributions towards medical aid, pension, housing subsidy and group life insurance.
- All deductions will be taken off at once and no negotiations will be entertained after the strike to deduct the amounts over a period of time.
- No annual leave will be approved during and one week prior to strike.
- No retrospective leave should be granted covering the period of the strike.
- Any employees who applied for leave well in advance of the strike will be allowed to go on leave.
- All Sec 57 employees to be at work during the strike and not be allowed to attend meetings away from the office.
- Any intimidation and violence or assault of non strikers by striking employees will lead to disciplinary action which will be treated as very serious and can lead to termination of the employees' services.

This notice must also be reflected on the general notice boards of the municipality or any place to which employees would generally have access.

#### 2. Internally to all Essential Services employees

All essential services employees must be informed by memorandum or by individual letters that they are regarded as essential services in terms of government gazette and may not strike.

The letters received must be signed by employees to acknowledge that they have been informed not to strike.



Should employees refuse to sign acknowledgment of letter then a witness should be called to witness that letter was given but employee refused to accept the letter.

The employees should be informed that should they strike then they may be dismissed for striking.

This notice should also be reflected on the notice boards to which employees generally have access.

**3. Internally to Council/EXCO**

A meeting of EXCO or COUNCIL be convened to inform the councillors of the steps taken by management to deal with the strike.

**4. To the public**

The public be informed by possible notices in their accounts about the pending strike. They could also be informed where they could pay their accounts during the strike.

In some instances it may be necessary to inform the public by way of notice in local newspapers of the strike and ensure them of service delivery during the strike and inform them of alternative contact numbers should it not be possible to get hold of the offices during the strike.

**5. To the union**

The union also be called to demonstrate that they have communicated with the essential services employees that they may not strike.

This is especially necessary where the union calls upon all its members to embark on strike action and not only on non essential services employees.

Should the unions refuse then an application can be made for an interdict to prevent essential services employees embarking on strike action.

**6. To the SAP**

A meeting be held with the local SAP to inform them of the pending strike action and to clarify actions to be taken especially where damage to property or littering of the streets will take place.

This is of the utmost importance as the SAP in most instances are spectators to the littering and does very little to prevent such action taking place or arresting striking employees whilst these actions are criminal in nature.

Any general strike in the municipal sector should be co-ordinated first at national level but also most importantly at provincial level to ensure a consistent approach to the handling of the strike.

In the case of a National Strike, the strike should under all circumstances be co-ordinated at national level to ensure a consistent approach to the handling of the strike

The SALGA Programme Manager in the province will be the provincial coordinator to monitor, advise and report on a daily basis to the SALGA National office.

A provincial Strike Management Committee will be established to ensure that municipalities communicate with SALGA office in regard to strike action in the specific province on a daily basis covering all information or data that will be outlined in a template.

All media Strike related queries should be handled through the SALGA Executive Director to ensure effective communication with the media and public domain.

### C. THE CONTINGENCY PLAN

- The principle of **NO WORK, NO PAY and NO REMUNERATION** shall apply.

Deductions must be made once off in the first pay run after the conclusion of the Strike and no agreements should be entered into allowing deductions over a period.

- No employee should be allowed to take leave one week prior or during the strike.
- All incidents of violence and intimidation must be reported and employees who engage in such conduct must be dealt with in terms of the disciplinary code and procedures.
- Municipalities must ensure SAPS involvement to avoid violence and damages to property.
- All employees engaged in essential services should be informed of their obligations with regard to essential services.
- Section 57 employees to ensure that proper attendance registers be kept during strike. Attendance registers be kept in the morning and afternoon to avoid employees clocking in and then immediately joining the strike.
- All municipal vehicles used for service delivery must be secured during the strike whilst council vehicles may not be used to transport striking employees. (Service delivery vehicles may have to be parked at a different venue so as to

avoid striking employees preventing the vehicles leaving the workstation to perform services).

- In the event of Striking employees locking gates to prevent service delivery it is advisable to report this action to the Police
- Municipalities must under no circumstances whatsoever, engage in negotiations with the trade unions or any substantive matters that are matters for negotiations at the Central Council or Divisional level of the SALGBC.
- Municipalities to have a list of full names, designations, ID numbers and details of Union affiliation of all employees engaged in essential services.
- Municipalities must ensure that all employees who are able and willing to work during the strike are in a position to do so. (do not send employees home during the strike)
- Contractors be engaged to render services possibly at night as opposed to during normal working hours.
- Electricity and water depots be secured by hiring security firms to protect these hotspots
- Automated answering service at the offices in the eventuality that none of the employees are able to answer the switchboard.
- The keys to the general buildings be secured to avoid shop stewards or striking employees locking offices to avoid employees to work.
- Replacement labour may be employed during the strike in respect of all services.
- Municipalities must not act in isolation in respect of any action to be taken against employees striking in essential services during a national strike but should contact the SALGA provincial office for the necessary assistance and advice.
- The unions must be requested to demonstrate that they communicated with members to advise that employees engaged in essential services may not strike.
- Municipalities must contact SALGA office immediately upon receiving the notice to embark on a strike action by the employees for urgent advice and guidance.

To that effect, SALGA had to review its strike management guidelines to ensure more effective strike management and a limitation to unlawful action by strike participants.

The Attached Strike guideline document incorporates comment provided by SALGA KZN.(Annexure A)

Your municipality is requested to use the document as a reference during strike action.

SALGA KZN will also be conducting workshops to familiarise municipalities with the document.

Should you need any further clarity then please do not hesitate to contact our offices

Yours Sincerely



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**GERARD GREVELING**  
**PROGRAM MANAGER HR/LR/CB**

## **D. STRUCTURES TO BE ESTABLISHED TO DEAL WITH THE STRIKE**

The establishment of these structures is not compulsory but each municipality in terms of size should evaluate what could best work for the municipality.

### **Strike Coordinator**

The appointment of a strike coordinator from amongst management is strongly recommended.

The duties of this person to be as follows :

- Co ordinate all activities in respect to strike internally and externally
- Ensure that contingency plan is in place to render service.
- All information requested by Municipal Manager and SALGA is submitted
- Arrange for the structures established within municipality to meet as and when necessary
- Arrange for acceptance of memorandums by unions
- Liaise with attorneys to take legal action as and when necessary

### **Management Strike Committee**

A strike committee be appointed consisting of only management or alternatively a combination of Management and Councillors.

This committee to meet daily early in the morning to assess the strike in respect to the duties allocated to the committee.

The committee to oversee the following :

- Service delivery monitoring as per contingency plan
- Misconduct reports and investigations
- Security of Buildings
- Security of vehicles
- Marches
- Picketing
- Attendance of employees

### **Management /Union Strike Committee**

The appointment of a Strike Management Committee inclusive of management and the unions could also be considered.

This Committee will be the same representation from management but could also be a lesser but equal representation between management and the unions is necessary. (A Committee of 4 per side is possibly ideal - 4 management/4 trade unions)

This Committee could meet once per day in the afternoon and could deal with the following:

- Assessment of Strike
- Any reports of damages to property
- Any claims of violence and intimidation
- Essential services employees striking

This committee will ensure that the unions take responsibility for members where members resort to illegal or criminal acts during the strike.

This committee could also prevent legal action by the municipality where the municipality is contemplating obtaining an interdict against striking employees as it may be possible to discuss any illegal action or criminal action by members and for the union to be given opportunity to interact with members to try and stop such action prior to the municipality resorting to legal action.

# PICKETING RULES

## **SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION**

(hereinafter referred to as "the employer")

and

## **SOUTH AFRICAN MUNICIPAL WORKERS UNION**

(hereinafter referred to as "the union")

and

## **INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION**

(hereinafter referred to as "the union")

### **1. PREAMBLE**

The objective of this agreement is to regulate the relationship between the employer and its employees and the unions during the course of the protected strike announced in respect of the dispute concerning an improvement of salaries for the year commencing 1 July 2009. They are to be adhered to without exception by all the parties. Any indulgence or departure from these rules, which may be granted from time to time, shall be reduced to writing and shall in no way constitute a permanent waiver of any of these rules specifically agreed to.

### **2. PURPOSE OF PICKETING**

- 2.1 The purpose of the picket is to peacefully demonstrate in support of the strike in relation to the salary and wage demand of the unions and to encourage non-striking employees and members of the public to support the strikers engaged in a protected strike.

### **3. ACCESS AND FACILITIES**

- 3.1 Striking employees shall restrict themselves to areas demarcated in this agreement hereinafter referred to as demarcated areas.
- 3.2 A number of picketers shall be allowed not less than 20 meters away from each of the entrances to the municipal offices/ premises, which number shall be determined at a local level; provided that subject to local circumstances a different distance can be agreed at a local level.
- 3.3 The picketers shall have access to toilets and fresh water from municipal premises. However, any entrance to buildings will be by request and permission granted but not more than 5 persons at a time will be allowed access; provided that subject to local circumstances a different number can be agreed at a local level.

- 3.4 The unions are entitled to those facilities in the Organisational Rights provisions of the Main Collective Agreement – a copy of which are attached hereto marked “A”.

#### 4. PICKETING

Picketing in support of any protected strike or in opposition to any lock out shall take place subject to the following conditions:-

- 4.1 It may take place outside the premises of the employer or by agreement at local level inside the premises (for this purpose “premises” excludes buildings or depots but includes the grounds of the municipality) of the employer in any place to which the public has access and shall not disrupt access to the premises of the employer or the conduct of its business. If any picketing or any action associated therewith is to be taken inside the premises, the number of persons who may participate shall be limited to no more than **30 persons at any one time.**
- 4.2 The parties may agree to the place where the balance of the picketing employees may assemble and this may include municipal premises.
- 4.3 Although the picket may be held in any place to which the public has access the picket may not interfere with the constitutional rights of other persons.
- 4.4 The picketers/marchers/strikers shall conduct themselves in a peaceful, unarmed and lawful manner. They may carry placards, chant slogans and toyi toyi but may not trash streets, damage property, including but not limited to emptying dustbins etc.
- 4.5 Picketers may not physically prevent members of the public, including other employees, tenants, suppliers, securities and service providers from gaining access to or leaving the premises nor may they commit any action which may be unlawful, including but not limited to any action which is, or may be perceived to be violent.
- 4.6 The unions shall inform the employer within a reasonable time of the time, period and place when picketing will take place.
- 4.7 Essential services employees are not allowed to picket during working hours.

#### 5. CODE OF CONDUCT

The parties agree to abide by the following Code of Conduct given the nature of the importance of relationship between them as well the nature of the public service that the employer is obliged to render.

- 5.1 The parties recognise the right of an employee to choose to participate or not to participate in any form of industrial action which complies with the provisions of the Labour Relations Act.
- 5.2 Employees who elect not to strike or cease such like action shall be entitled to do so at their free will and free from threat or bodily harm.
- 5.3 Picketers shall not disrupt or attempt to disrupt the ongoing operations of the employer, nor hinder, harm or intimidate those doing business with the employer, non-striking employees, other employees or person associated with the employer, and



management undertakes not to interfere, victimise or harass in any way those who are participating in a strike.

- 5.4 Striking employees shall not hinder, harm, damage or destroy any property, vehicle or machinery or that of the suppliers or customers or in any way prevent them from conducting the lawful business of the employer.
- 5.5 The employer, security services and managers shall not disrupt or attempt to disrupt the ongoing industrial action, nor hinder, harm or intimidate striking employees.

## **6. COMMUNICATION CHANNELS**

- 6.1 A Liaison Committee comprising of 3 employer and 3 employee representatives is to be appointed at each municipality and the appointed persons are to meet as often as it is deemed necessary by the parties to address and endeavour to resolve any issue that may arise out of the strike or picket.
- 6.2 Communication channels between the employer and the marshals, shop stewards and or union officials is to be preserved; all important notices, decisions and proposals are to be reduced to writing and communicated to an agreed telefax number or by hand to the Convenor.
- 6.3 Union officials and office bearers shall be granted reasonable access to their members in terms of the Organisational Rights provisions in the Main Collective Agreement.
- 6.4 Marshals shall be appointed for each of the points of assembly or picketing and are to be visible at all the demarcated areas. The marshals shall wear identifiable armbands as a means of identification. Their role is to ensure that employees adhere to the rules of this agreement at the sites of assembly.
- 6.5 At each municipality a Convenor (for each party) is to be appointed who is to be entrusted with the task of acting as a point of first contact between the striking employees and the management and in general to facilitate communication between the parties.

## **7. POLICING THE AGREEMENT**

- 7.1 The representatives of the employees and employers (shop stewards, marshals, Convenor, union officials, management etc) collectively will be responsible for ensuring that the employees do not breach this agreement
- 7.2 For the purposes of this agreement it is recorded that where any individual employee(s) misconducts him or herself during picketing, the provisions of the normal disciplinary procedures will apply.

## **8. DISPUTE RESOLUTION PROCEDURE**

- 8.1 The parties to this agreement agree to on-ongoing dialogue and negotiation as well as third party intervention in an attempt to break the deadlock at a national level and thereby resolving the dispute that gives rise to the strike. This shall include but not be limited to conciliation and mediation under the auspices of the Bargaining Council.

8.2 Should any dispute arise concerning the interpretation of this agreement, such dispute shall be resolved by referring the matter to the CCMA in terms of Section 69 (8) of the Labour Relations Act.

## 9. CONVENOR

The national Convenor of the strike on behalf of SAMU is Dale Forbes, on behalf of IMATU is Craig Adams and the National Employer representative is Zwe Ndlala

The contact numbers of Convenors per Municipality shall be exchanged among the parties.

### Note:

The above rules are in the opinion of the Commission fair and a true reflection of the requirements of the situation. Accordingly the Commission recommends that the parties accept them. In the event of there being no agreement these rules shall be imposed by the Commission.

**EXAMPLES OF PRO FORMA LETTERS:**

**TO : ALL ESSENTIAL SERVICES EMPLOYEES**

**STRIKE ACTION**

The municipality has been informed that the Union SAMWU have called on all employees to embark on Strike action.

Your post is however part of Essential Services and you *may not* strike but can refer any dispute regarding salary increases to arbitration by your union.

Should you ignore this letter and participate in the strike then it could lead to the municipality approaching the Labour Court for an Interdict to compel you to return to work but could also lead to the termination of your services.

Your adherence to this instruction not to participate is of the utmost importance.

Yours faithfully

**MUNICIPAL MANAGER**

---

**SIGNED : EMPLOYEE**

---

**WITNESS (IF EMPLOYEE REFUSE TO SIGN)**

## ULTIMATUM LETTER TO EMPLOYEES ON STRIKE

You are hereby informed that your strike action is in contravention of the provisions of S64 and/or S65 of the LRA, 1995 and hence constitutes an unprotected strike. Furthermore your action also constitutes a material breach of your contract of employment.

As this is an unprotected strike, you are instructed to stop your unprotected strike action by no later than *[fill in .....time and date.....]*, and report to your workplace to commence your duties. Failing to adhere to this instruction on the prescribed date and time, may lead to you being dismissed.

We urge you to immediately cease the unprotected strike action, seek advice of your union and adhere to the ultimatum letter.

Yours faithfully

MUNICIPAL MANAGER

COPIES :     Union  
              All Strikers / representatives

Date ..... time ..... Ultimatum was distributed to the striking employees.

**SUMMARY INFORMATION OF EMPLOYEES ATTENDANCE – STRIKE**

**NAME OF MUNICIPALITY** \_\_\_\_\_

Date of Strike \_\_\_\_\_

Total Number of Employees

Total Number of Employees on Strike

Total Number of SAMWU Members on Strike

Total Number of IMATU Members on Strike

Total Number of Employees on Annual Leave

Total Number of Employees on Sick Leave

Total Number of Essential Services Employees

Total Number of Essential Services Employees on Strike

Signed on this ..... day of ..... 2010.

\_\_\_\_\_  
**MUNICIPAL MANAGER OR NOMINEE**

**DRAFT LETTER**

25 July 2005

**TO: LOCAL BRANCH OF UNION (If you have name and address include such)**

**COLLECTIVE DISCIPLINARY ACTION ESSENTIAL SERVICES EMPLOYEES: 12 JULY 05**

The above matter refers.

We hereby attach a list of essential services employees from your union who participated in the strike on the 12 July 2005(annexure )

The participation in the strike of these essential services employees constitutes misconduct of a serious nature.

Your union is requested to verify the list and to provide us in writing with reasons why circumstances exist in regard to any of the individual employees why they should not be treated as part of collective action.

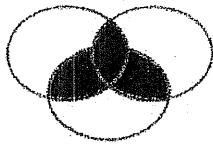
Your written submissions in regard to above should reach us by no later than July 2005 at 17:00 (Allow a period of three days from submission of letter to unions. This should be done before commencement of strike on 27 July 05)

We will assess any representations made by your trade union on this issue when we make a decision as to which employees should be found guilty of collective misconduct.

Should you not respond by the July 2005 at 17:00 then we will continue to find employees on list guilty of serious misconduct and issue a sanction in respect of individual employees.

Yours Faithfully

**MUNICIPAL MANAGER**



**SALGA**  
South African Local Government Association

# **STRIKE MANAGEMENT GUIDELINES 2013**

**QUESTIONNAIRE : STRIKE ACTION LOSS OF INCOME**

**NAME OF MUNICIPALITY** \_\_\_\_\_

**NUMBER OF DAYS ON STRIKE**

**NUMBER OF EMPLOYEES INVOLVED IN STRIKE**

**TOTAL AMOUNT OF INCOME LOST BY EMPLOYEES IN TERMS OF THE STRIKE**

**ANY DAMAGE CAUSED TO MUNICIPAL PROPERTY DURING THE STRIKE**

<b>YES</b>	<b>NO</b>
------------	-----------

**PLEASE INDICATE THE PROPERTY DAMAGED AND THE AMOUNT OF THE CLAIM**

<b>PROPERTY DAMAGED</b>	<b>AMOUNT OF CLAIM</b>

Signed on this ..... day of August 2009.

\_\_\_\_\_  
**MUNICIPAL MANAGER OR NOMINEE**



13 April 2010

TO : ALL STRIKING EMPLOYEES

### LOSS OF INCOME

The above matter refers.

We note that you are striking due to the non implementation of the wage curves which in turn result in job evaluation not able to be implemented.

It is important to note that the finalization of the wage curves at either the 50<sup>th</sup> percentile of the market as per SALGA proposal and or the 60<sup>th</sup> percentile of the market as per SAMWU will not result in all employees receiving an increase when the job evaluation is implemented.

Some employees may benefit but others may not benefit from the implementation of job evaluation and wage curves even if updated information is used for the implementation as requested by SAMWU.

An employee who therefore strike will not receive any salary for the days that he/she will not be at work but will not necessary receive any increase once job evaluation and the new wage curves are implemented.

You would then have sacrificed your salary during the strike but may not receive any benefit from the process of job evaluation and wage curves implementation.

We hereby demonstrate the loss of income per day should you strike as per different salaries for a maximum period of 5 days :

The following formula is used to determine the daily salary of employees :

- Monthly salary = annual salary divided by 12months
- Weekly salary = annual salary divided by 52 weeks
- Daily salary = annual salary divided 250 working days

Daily salary is calculated to determine the loss of income per day of employees.

Salary p/a	Daily salary	1 day loss	2 days	3 days	4days	5 days
R41543	166.17	166.17	332.34	498.51	664.63	830.85
R47296	189.18	189.18	378.36	567.54	756.72	945.90
R51637	206.54	206.54	413.09	619.63	826.17	1032.71
R55979	223.91	223.91	447.83	671.74	895.65	1119.56
R61599	246.39	246.39	492.79	739.18	985.57	1231.96
R72520	290.08	290.08	580.16	870.24	1160.32	1450.40

You are therefore requested to seriously consider your further participation in the strike as the monies for the strike will be recovered all at once from your monthly salary to be paid whilst you may not receive any benefit from implementation of job evaluation even if the SAMWU request is implemented.

Should you need any further clarity please do not hesitate to contact our offices.

Yours faithfully

**MUNICIPAL MANAGER**

12 JUNE 2007

Dear Mr / Mrs / Miss \_\_\_\_\_

Pay Number: \_\_\_\_\_

Department: \_\_\_\_\_

Re: **LETTER TO NON ESSENTIAL SERVICES EMPLOYEE**

Please be advised that should you participate in the secondary strike intended to take place tomorrow the principle of "NO WORK NO PAY" shall apply and other corrective measures may be instituted.

Kindly acknowledge receipt of this letter by signing on the space provided below.

Yours faithfully

.....  
SW MKHIZE  
Municipal Manager

NAME & SURNAME

DATE RECEIVED

\_\_\_\_\_  
SIGNATURE

12 JUNE 2007

Dear Mr / Mrs / Miss \_\_\_\_\_

Pay Number: \_\_\_\_\_

Department: \_\_\_\_\_

Re: **LETTER TO ESSENTIAL SERVICES EMPLOYEES**

Please be advised that in terms of section 74 of the Labour Relations Act 66 of 1995 employees engaged in essential services are precluded from participating in a strike.

We wish to draw your attention to the provisions of Section 65 (1) (d) (i) and (ii) of the Labour Relations Act, which provides that no person may participate in a strike or in any conduct in contemplation or furtherance thereof if they are engaged in essential or maintenance services.

Therefore your participation in tomorrow's secondary strike action would be on a no work no pay principle.

As we have not as yet concluded an agreement on a minimum services agreement, we also wish to draw your attention that in the absence of the minimum services agreement all employees classified as essential services employees shall not participate in the strike.

Should you participate in the unprocedural and unprotected strike the principle of "**NO WORK NO PAY**" shall apply and other corrective measures may be instituted. Please note also that the work attendance register shall be marked by departments

Kindly acknowledge receipt of this letter by signing on the space provided below.

Yours faithfully

.....  
SW MKHIZE  
Municipal Manager

NAME & SURNAME

DATE RECEIVED

\_\_\_\_\_  
SIGNATURE

CONTINGENCY PLAN OR LOOMING STRIKE ACTION - Protected Strike

BEFORE THE STRIKE	DURING THE STRIKE	AFTER THE STRIKE
<ul style="list-style-type: none"> <li>• Dispute lodged with Bargaining Council</li> <li>• 48 Hours Notice from Unions</li> <li>• Report to the Employer</li> <li>• Advise SALGA</li> <li>• Co-ordinate Urgent meeting with Heads of Departments</li> <li>• TASK Team to be formed</li> <li>• Deployment of authorised representatives to monitor the build-up to the strike</li> <li>• Frequent feedback to Councillors, SALGA and the TASK Team</li> <li>• Warning letters indicating <b>“No Work no Pay”</b></li> <li>• Obtain legal opinion from Attorneys or advise from SALGA</li> <li>• Protection Services and SAPS to be alerted</li> <li>• Arrange Independent Contractors to be on standby</li> <li>• Arrange replacement labour</li> <li>• Be vigilant</li> <li>• Use of Council Vehicles prohibited</li> <li>• Frequent meetings with Unions</li> <li>• No Intimidation</li> </ul>	<ul style="list-style-type: none"> <li>○ Absenteeism</li> <li>○ Late coming</li> <li>○ Replacement of Labour</li> <li>○ Full details of organisations identified to provide services</li> <li>○ Be vigilant</li> <li>○ Use of Council Vehicles prohibited</li> <li>○ Frequent meetings with Unions</li> <li>○ <b>Video</b> <ul style="list-style-type: none"> <li>○ Vandalism</li> <li>○ Destruction of Property</li> <li>○ Intimidation</li> <li>○ Littering</li> <li>○ Picketing</li> <li>○ Sit-in</li> </ul> </li> <li>○ Marches on unauthorised routes</li> <li>○ Number on strike – estimation</li> <li>○ Attendance register</li> <li>○ Essential Services employees</li> <li>○ Vacation Leave</li> <li>○ Application for Court Interdict</li> </ul>	<ul style="list-style-type: none"> <li>➤ Costs incurred</li> <li>➤ Number on Strike</li> <li>➤ Attendance register</li> <li>➤ Essential Services employees</li> <li>➤ Vacation Leave</li> </ul>

## CONTINGENCY PLAN FOR LOOMING STRIKE ACTION – Unprotected & Unprocedural Strike

BEFORE THE STRIKE	DURING THE STRIKE	AFTER THE STRIKE
<ul style="list-style-type: none"> <li>• Internal Dispute</li> <li>• No notice</li> <li>• Report to Employer</li> <li>• Advice SALGA</li> <li>• Co-ordinate urgent meeting with all Heads of Departments</li> <li>• TASK TEAM to be formed</li> <li>• Deployment of authorised representatives to monitor the build-up of the strike</li> <li>• Frequent feedback to Councillors, SALGA and the TASK Team</li> <li>• Warning letters indicating</li> </ul> <p style="text-align: center;"><b>“No Work no Pay”</b></p> <ul style="list-style-type: none"> <li>• Obtain legal opinion from an attorney and advise from SALGA</li> <li>• Protection Services and SAPS to be alerted</li> <li>• Arrange Independent Contractors to be on standby</li> <li>• Arrange replacement labour</li> <li>• Be vigilant</li> <li>• Use of Council Vehicles</li> </ul>	<ul style="list-style-type: none"> <li>○ Application for Court Interdict</li> <li>○ Withdraw all Council Vehicles</li> <li>○ Lockout</li> <li>○ In case of damage to Council Property request SAP intervention</li> </ul>	<ul style="list-style-type: none"> <li>➤ Costs incurred</li> <li>➤ Number on Strike</li> <li>➤ Attendance register</li> <li>➤ Essential Services employees</li> <li>➤ Vacational Leave</li> </ul>

GOVERNMENT NOTICE  
GOEWERMENTSKENNISGEWING

DEPARTMENT OF LABOUR  
DEPARTEMENT VAN ARBEID

No. 1216

12 SEPTEMBER 1997

## NOTICE PUBLISHED BY THE ESSENTIAL SERVICES COMMITTEE

Under section 71[8] of the Labour Relations Act, 1995 [Act No. 66 of 1995], the essential services committee hereby gives notice that:

1. It has designated the following services as essential services:

- [a] Municipal traffic services and policing;
- [b] Municipal Health;
- [c] Municipal Security;
- [d] The supply and distribution of water;
- [e] The security services of the Department of Water Affairs and Forestry;
- [f] The generation, transmission and distribution of power;
- [g] Fire fighting;
- [h] The payment of social pensions one month after they fall due;
- [i] The services required for the functioning of courts;
- [j] Correctional services; and
- [k] Blood transfusion services provided by the South African Blood transfusion Service.

2. It has designated the following parts of sanitation services as essential services:

3.

- [a] The maintenance and operations of water-borne sewerage systems, including pumping stations and the control of discharge of industrial effluent into the system;
- [b] The maintenance and operation of sewage purification works;
- [c] The collection of refuse of an organic nature;
- [d] The collection of infectious refuse from medical and veterinary hospitals or practices;
- [e] The collection and disposal of refuse at a disposal site; and
- [f] The collection of refuse left uncollected for 14 [fourteen] days or longer; including domestic refuse and refuse on public roads and open spaces.

4. It has designated as essential services until 31 March 1998 the following services provided by the public sector;
- [a] Emergency health services and the provision of emergency health facilities to the community or part thereof;
  - [b] Nursing; and
  - [c] Medical and paramedical services.
5. It has designated as essential services until 31 March 1998 the following services in support of the services referred to in paragraph 3:
- [a] Catering;
  - [b] Medical records;
  - [c] Security;
  - [d] Porter and Reception;
  - [e] Pharmaceutical and dispensary;
  - [f] Medicine quality control laboratory;
  - [g] Forensics;
  - [h] Laundry;
  - [i] Clinical engineering;
  - [j] Hospital engineering;
  - [k] Waste removal
  - [l] Mortuary; and
  - [m] Pest control
6. It has designated as essential services the following services provided by the private sector which are funded by the public sector:
- [a] Emergency health services and the provision of emergency health facilities to the community of part thereof;
  - [b] Nursing; and
  - [c] Medical and paramedical services

- [f] The military intelligence functionaries of the South African Army;
- [g] The store men in the South African Navy;
- [h] The provisioning officers and clerks in the South African Navy;
- [i] The technical personnel in the South African Navy;
- [j] The tugboat personnel in the South African Navy;
- [k] The surveyors in the South African Navy;
- [l] The South African Medical Service;
- [m] Those serving in military posts in the South African National Defence Force;
- [n] The cryptographers in the South African National Defence Force; and
- [o] The drivers who provide maintenance services to the South African National Defence Force.



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## 1. INTRODUCTION

The dispensation of the new labour laws that were ushered after 1994 came with the whole notion of advancement of economic development, social justice, labour peace and the democratization of the workplace. These are achieved through the interaction of the employees (individually and/or collectively) with their employers (individually and collectively).

This interaction does, however, as it is anticipated in the Labour Relations Act and other labour laws, often and regrettably culminate in industrial action initiated by organized labour against their employers. Local Government as a sector has had its own fair share of this power play with organized labour, particularly emanating from salary and wage negotiations.

In the past decade, the local government sector was faced with severe strike actions. These protests and strike actions have been accompanied with damage to public and private property and with impunity, in many, if not all instances. There are important lessons that have been learnt during this period which have been incorporated in this contingency plan. It is important that municipalities are familiar with this plan as the success thereof depends largely on meticulous implementation by municipalities. This guide contains information on the SALGA Strike Management Plan, Picketing rules and Government notice on essential services (no: 1216 of 12 September 1997)

SALGA hopes that this guide will not only enhance its members' capacities but ensure uniformity of response to issues of power play for the optimal benefit of the sector.

## 2. THE LEGISLATIVE AND PROCEDURAL REQUIREMENTS

Should strike action take place, such will be regulated by the Labour Relations Act of 1995 with specific reference to section 64.

### 2.1 DEFINITION OF STRIKE

The Labour Relations Act, 1995 ("LRA") defines a strike as follows<sup>1</sup>:

*"The partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to "work" in this definition includes overtime work, whether it is voluntary or compulsory."*

As is clear from the above, the definition covers not only a refusal to work (a stoppage), but also a retardation or obstruction of work. Any reference to a work stoppage must be understood as including a reference to retardation or obstruction

---

<sup>1</sup> Section 213 of the LRA

of work. It also includes the refusal to work overtime whether it is voluntary or compulsory.

Many definitions of a strike couple the concept of a demand to the stoppage or retardation of work, so that only a work stoppage which is coupled to demand qualifies as a strike. As is apparent from the above definition, this is not the case in South Africa where any work stoppage aimed at remedying a grievance or resolving a dispute, qualifies as a strike. This is so even when no specific demand is articulated, provided there is evidence which establishes that the work stoppage is related to remedying a grievance or resolving a dispute.

Such a grievance or dispute must be one "*of mutual interest*". This means that the dispute must concern an issue relating to the employment relationship -- usually an improvement of terms and conditions of employment to which the employees, at the time of the dispute, have no legal entitlement. This is referred to as a dispute of interest which is resolved by the power-play between the parties (i.e. by way of a strike or a lockout) while other disputes which arise from contractual entitlement are generally dealt with through conciliation and ultimately arbitration. Indeed, the LRA prohibits strikes in respect of the disputes which, in terms of the LRA, are designated for resolution by conciliation and/or arbitration<sup>2</sup>.

## 2.2 PROTECTED STRIKE

The Act stipulates that employees can **strike procedurally** (protected strike) if they comply with the following requirements:

- 2.2.1 The dispute must be referred to the Bargaining Council or CCMA for conciliation.
- 2.2.2 A certificate stating that the dispute is not resolved must be issued by the Bargaining Council or CCMA or a period of 30 days, or an extension of that period agreed to between the parties to the dispute had lapsed since the referral was received by the Bargaining Council or the CCMA.
- 2.2.3 The Union must give **48 hours' notice** in writing of commencement of strike to the employer/ employers' organisation (SALGA).
- 2.2.4 The notice must specify the exact time of the commencement of the strike since the courts have held that the employer is entitled to advance warning to prepare for the "power-play" that will follow, and that purpose is defeated if the employee is not given notice of the exact time when the strike is due to commence<sup>3</sup>.
- 2.2.5 The notice to strike must also specifically call on non essential services employees to embark on strike action. Where the notice call on all employees to strike then the unions must be requested to show that they have communicated with essential services employees' not to strike and if they fail to do so then the Labour Court must be approached prior to the commencement of strike to prevent essential services employees' from striking.
- 2.2.6 It is important to note that the 48hour notice is normally served on a Friday close to the end of the work day or thereafter.

<sup>2</sup> Section 65 (1)(c) of the LRA

<sup>3</sup> *Ceramic Industries Ltd t/a Betta Sanitary Ware v National Construction Building & Allied Workers' Union (2)* (1997) 18 ILJ 671 (LAC)

2.2.7 Management must monitor the receipt of the Strike notification round about the end of the work day or after hours to prevent commencing without knowledge of such notification.

A protected strike could possibly commence 48 hours after such notification.

An employer may not dismiss an employee for participating in a protected strike or for any conduct in contemplation of furtherance of a protected strike.

This, however, does not preclude an employer from fairly dismissing an employee for a reason related to the employee's conduct such as **intimidation, violence, assault, etc. during the strike.**

In the following circumstances, neither the requirements prescribed in the LRA nor those which may be prescribed in any collective agreement need to be complied with before employees can embark on a protected strike:

- If employees strike in response to a lock-out by their employer that does not comply with the provisions of the LRA or, if applicable, a collective agreement;

and

- If the employer locks out the employees in response to their taking part in a strike that does not comply with the provisions of the LRA.

If a dispute relating to an alleged unilateral change to terms and conditions is referred to the CCMA, or if a collective agreement so provides, such a referral may simultaneously call on the employer to not unilaterally implement the alleged unilateral changes or, if it has already done so, to revert to the terms and conditions which previously applied. If the employer does not comply with such a referral within 48 hours, the strike relating to the dispute on which the employees may embark will not be considered unprotected, notwithstanding that the prescribed requirements, whether under the LRA or in terms of an applicable collective agreement, have not been complied with.

## 2.3 UNPROTECTED STRIKE

Employees cannot participate in a strike if the provisions of **Section 64** had not been adhered to.

**Section 65** of the Labour Relations Act further provides that employees may not take part in a strike if:

1. They are bound by a collective agreement that prohibits a strike
2. They are bound by an agreement that requires the issue in dispute to be referred to arbitration
3. The issue in dispute is one that a party has the right to refer to arbitration or the Labour Court in terms of the Act
4. The employees are engaged in essential services or maintenance services

Employees may also not participate in a strike if they are bound by:

- Any arbitration award or collective agreement that regulates the issue in dispute; or
- Any determination made in terms of **Section 44** by the Minister that regulates the issue in dispute.

### 3. THE ESSENTIAL SERVICES CONTEXT

**Section 65** of the Labour Relations Act places a limitation on the right to strike in that an employee engaged in essential services may not strike.

Government Notice No1216 dated 12 September 1997 designates the following services as being essential:

- Municipal Traffic services
- Municipal Health
- Municipal Security( Traffic , Law Enforcement & Metro Police)
- The supply and distribution of water
- The generation, transmission and distribution of electricity
- Fire fighting

The Essential Services Committee also designated the following parts of sanitation services as essential services:

- Maintenance and operation of water borne sewerage incl. pumping stations
- Maintenance and operation of sewerage purification works
- Collection of refuse of organic nature
- Collection and disposal of refuse at disposal site
- Collection of refuse left uncollected for 14 days or longer, including domestic refuse and refuse on public roads and open spaces.

The refuse removal employees can therefore strike for 14 days but after the 14 days the service is regarded as essential and employees cannot further participate in the strike.

The SALGBC parties, through the provisions of the Main Collective Agreement, have delegated the Local Labour Forum (LLF) to negotiate and finalize the Minimum Service Agreements that will be accommodative of the municipality specific matters.

### 4. MINIMUM SERVICES CONTEXT

The Labour Relations Act, with specific reference to **Section 72**, provides that the Essential Services Committee may ratify any collective agreement that provides for the maintenance of minimum services in a service designated as an essential service.

The agreement in regard to a minimum service is therefore only legally enforceable once the Essential Services Committee has ratified such minimum service agreement.

In the absence of such ratification, the whole service is still regarded as essential and no employee engaged in essential services may go on strike.

Municipalities have to start identifying employees who fall within the category of essential services and provide a list in the following manner:

- Full names
- ID numbers
- Departments
- Designations; and
- Union affiliation.
- On receipt of Strike notification employers must notify all employees in Essential Services that they are Essential Services staff and therefore cannot participate in Strike activity. Any Essential Service employee who participates in Strike activities will be subject to Disciplinary Action.

This will enable proper management of a process of applying for an interdict and the subsequent enforcement of an order.

## 5. THE INTERDICT

Municipalities can apply for an interdict where a strike is not in compliance with Section 64(1) of the Act and therefore not protected.

Where a strike does not comply with the requirements of a protected strike as contemplated above, the **Labour Court** has exclusive jurisdiction to:

- Grant an interdict or order to restrain a person from participating in a strike
- Order payment of just and equitable compensation for any loss attributable to the strike

An order for payment must have regard to whether:

- Attempts were made to comply with the requirements of S64 and the extend thereof
- The strike was pre-meditated
- There was compliance with an order granted
- The interest of orderly collective bargaining
- The duration of the strike
- The financial position of the employer and trade union

The Labour Court will not grant an interdict or order unless 48 hours notice of the application has been given to the respondent.

Shorter notice (urgent application) may be permitted if:

- The applicant has given written notice to the respondent of the intention to apply for granting an order
- The respondent was given a reasonable opportunity to be heard