

STRIKE MANAGEMENT

A. DOCUMENTING THE STRIKE

1. STRIKE MANAGEMENT TEAM

1.1 It is advisable, prior to the commencement of the strike, to form a strike management team. This team should consist of individuals who can perform the following functions:

- (a) **Team Leader:** a senior employee or manager who has been designated the authority to make decisions and liaise with the trade union/striking employees, as well as to obtain instructions from Head Office/CEO as the case may be (this is often the head of Human Resources)
- (b) **Author of Strike Diary:** a detailed diary must be kept of all events and occurrences which take place.
- (c) **Identification of participating employees:** a detailed list should be maintained of persons participating in the strike
- (d) **Minute taker:** all meetings with the strikers/trade unions must be carefully documented.
- (e) **Document management:** all correspondence, documents, notices, forms relating to the strike need to be filed
- (f) **Supervise video footage:** a person should be designated to ensure that there is video footage captured of the strike
- (g) **Supervise photographs:** similarly, there needs to be somebody designated to take photographs of the strike

1.2 Note that depending on the size of the company as well as the size and nature of the strike, the above functions may be performed by the same person or there may be a different person allocated to each function. The main priority is that all events are carefully logged and that information is orderly collated and readily available on short notice.

1.3 A strike file containing sub-folders with the meeting minutes, the strike diary, photographs, employee lists, statements, correspondence with the trade union and all documentation relating to the strike should be compiled from the start of the strike. The strike file should ideally be managed by the team leader.

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1.4 All of the above functions are related. For example, the strike diary should correspond with the photographs and video footage. In compiling a list of employees participating in the strike, video footage and photographs are likely to be relied upon.

2. TEAM LEADER

2.1. The team leader is the decision maker of the strike management team and is responsible for and should authorise all communications with the trade union and the striking employees. Should attorneys be appointed to obtain an interdict, the team leader is also the person who will provide the attorneys with instructions from the company.

2.2. It is advisable that correspondence to the trade union and strikers be addressed from the team leader, after consulting with your attorneys and/or NEASA officials.

2.3. The team leader will be the deponent of an affidavit which is placed before the court in order to substantiate why any interdictory relief should be ordered by the court. It is therefore imperative that this person is aware of all events that are taking place in respect of the strike.

2.4. A company resolution must be prepared which duly authorises the team leader to do all things necessary (sign all and any documents/affidavits/take ancillary actions) on behalf of the company in relation to the strike and for purposes of obtaining an interdict. Your attorneys and/or NEASA officials can assist herewith.

3. STRIKE DIARY

3.1 A strike diary is crucial from the moment the strike commences (or even in the build up to the strike) to completion of the strike. The author should keep an accurate and detailed chronological record of the sequence of events.

3.2 Any acts of misconduct committed by the strikers must be carefully documented in the strike diary, noting who is involved, when and where incidents happened, any harm caused and who witnessed the incidents of misconduct.

3.3 All twenty-four hours of each day of the strike should be accounted for. For example:

- 04h00 – 08h05: no sign of the striking employees
- 08h00: telephone call from Jeffrey Makhube (NUMSA trade union official) to Rebecca Chauke. Makhube told Chauke that he would address the blockading of the main entrance today with the strikers.

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- 08h05 – 08h25: strikers gathered outside the gate
- 08h25 – 09h20: meeting held between union officials and company. The barricading of entrances was discussed (refer to minutes of meeting). During meeting, strikers gathered peacefully outside the main gate.
- 09h20 – 10h00: Jeffrey Makhube addressed the striking employees
- 10h00: one of the striking employees assaulted a member of the security team. Mary Chauke, a non-striking employee, witnessed this and informed Rebecca Chauke, the team leader

4. LISTING OF EMPLOYEES

- 4.1 It is critical to know which employees are participating in the strike and which trade union they are affiliated to. This list will be attached to any application for an interdict.
- 4.2 A list must be drawn up with the name, surname, ID number and trade union affiliation of each employee participating in the strike. This list must be maintained throughout the strike.
- 4.3 A separate list should be compiled of employees who have filled out leave application forms, have provided sick notes or any other reason as to why they are not at work if they are not participating in the strike. Copies of leave application forms, sick notes or similar documents should be placed in the strike file.
- 4.4 A list should also be kept of those striking employees who are identified as having committed acts of misconduct.
- 4.5 In order to accurately record employee participation, video footage and photographs should be considered to identify the employees.

5. MEETING MINUTES

- 5.1 A minute must be prepared in respect of all meetings between the company and the strikers/trade union officials. The minute should reflect the following:
 - Who the author of the minute is
 - Date, time and duration of meeting
 - Where meeting took place
 - All persons present at the meeting and their designation
 - What was discussed at the meeting
 - What actions were undertaken at the meeting

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6. DOCUMENT MANAGEMENT

- 6.1 A copy (and where possible the original) of every written communication, notice issued, letter addressed to or received from the employees or trade union in respect of the strike should be filed in chronological order.
- 6.2 Faxes sent should include fax confirmation receipts. Emails, if possible, should have a proof of delivery attached. Letters delivered by hand should be signed for, where possible. Similarly the registered slip of any correspondence sent via registered post should be retained and filed.

7. VIDEO FOOTAGE

- 7.1. For purposes of the video footage being admissible as evidence, it is important for someone to be able to attest that the video surveillance is a true representation and has not been altered in any manner.
- 7.2. Video footage can play a crucial role in identifying employees participating in the strike and in substantiating claims that there is misconduct and who is responsible for such misconduct.
- 7.3. Where CCTV cameras are used, the cameras should be checked to ensure that the relevant areas are being captured and can be seen clearly on the footage.
- 7.4. It is important to ensure that the date and time can be seen on the video footage.

8. PHOTOGRAPHS

- 8.1 It is important to take photographs in addition to the video footage. Photographs are often clearer than snapshots from video footage and can be taken from closer up. A note should be made of the date and time of each photograph taken and who took the photograph.

9. ADDITIONAL INFORMATION

- 9.1 The trade union must be notified, in writing, as soon as the acts of misconduct take place.
- 9.2 Ensure that management/security/non-striking employees do not provoke the striking employees.
- 9.3 Where telephone calls are exchanged with striking employees/trade union officials, a note should be made of the details of the phone call and filed.

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- 9.4 Where SMS's are sent to employees, the content of the SMS and proof of delivery should be documented (eg. bulk SMS message reports).
- 9.5 Notices and letters should be dated and clearly indicate to and from whom the communication is addressed. Correspondence, particularly notices, should be sent to the trade union as well as provided to the shop stewards and placed on notice boards for the striking employees to see. Copies should also be made available for each striking employee.
- 9.6 Note that the SAPS may not be willing to become involved until there is an interdict from the court. Even so, you should make a detailed note of your request to the SAPS for assistance and their refusal to intervene, should this be the case.
- 9.7 You can obtain an interdict where there is violence, intimidation, blockading or similar conduct. To obtain an interdict, it needs to be shown that (1) the employer has a right to the relief being sought; (2) irreparable harm will be suffered by the employer if an interdict is not obtained; (3) there is no alternative satisfactory remedy; and (4) the balance of convenience leans in favour of the employer.
- 9.8 As soon as a decision is made that the violence has escalated to the point that action is required, the appointed attorneys must be notified and provided with all the required information as soon as possible. If time has been wasted without good reason, then there is a risk that the court may decide that the matter is not urgent.
- 9.9 It is preferable to have all documents in electronic format so that they can easily be emailed on short notice.
- 9.10 Written and detailed statements should be obtained from any victims or witnesses of misconduct. All statements must be legible, dated and signed. The person's name must be clearly spelt. These statements do not necessarily need to be made under oath (ie. an affidavit), however this is preferable if possible under the circumstances. It is important to note that an affidavit is binding on the conscience of the deponent (signatory) and inaccuracy could result in claims of perjury against the deponent. Persons making statements must therefore ensure that the statement is an accurate and a true reflection of how they perceived an incident.

B. INTERDICT PROCESS

10. URGENT APPLICATION

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10.1 In order to obtain an interdict from the court to prevent the strikers from continuing with acts of misconduct, an urgent application will need to be prepared. NEASA's attorneys, Anton Bakker Inc., are kept on stand-by to assist NEASA members herewith.

10.2 This application will consist of the following documents:

(a) Notice of Motion

- This is a notice which provides the trade union/striking employees and the court with the details of when we wish to apply for the order, that the matter is urgent, the relief sought, the contact details of all relevant parties and informing the trade union/striking employees how they can oppose our application.

(b) Founding Affidavit

- This affidavit sets out, in short, the details of the strike and the misconduct which is taking place, the harm that has been caused and efforts that have been made so far to prevent further violence and harm

(c) Annexures to the Founding Affidavit, typically consisting of the following:

- a resolution authorising the deponent of the Founding Affidavit to act on behalf of the company
- a list of the employees participating in the strike
- any relevant referral forms of a dispute referred to the CCMA/Bargaining Council (for example, where there has been a breach of a Picketing Agreement)
- relevant correspondence, warnings, notices issued, communications exchanged with employees and/or the trade union
- statements regarding incidents of misconduct (from victims and witnesses)
- photographs showing the misconduct.

(d) Confirmatory Affidavits

- if the deponent of the Founding Affidavit refers to an experiencing of an incident or actions taken by someone other than himself/herself, then a confirmatory affidavit is required from such person confirming that the portions of the allegations in the Founding Affidavit are true and correct as it relates to him or her.

10.3 The above documents will be prepared by the attorneys appointed by the company.

10.4 In order to prepare the application, the following must be submitted (preferably via email) to the attorneys as soon as possible:

(a) Resolution for deponent of Founding Affidavit

(b) Strike Information Sheet (attached hereto)

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- (c) Strike Diary
- (d) List of employees participating in strike
- (e) Minutes of meetings with trade union/striking employees
- (f) Notices, letters, warnings, written communications issued/exchanged with trade union and/or striking employees
- (g) Statements by persons victims of or witness to misconduct
- (h) Colour photographs
- (i) Video footage in an easily accessible format
- (j) Any CCMA/bargaining council referral forms, if applicable
- (k) Picketing Agreement, if applicable
- (l) Any other relevant information such as telephone notes or proof of SMS's sent to employees.

10.5 The affidavits will need to be signed in front of a Commissioner of Oaths. Each page must be initialled by the deponent and the Commissioner of Oaths and dated and signed in full where indicated. Once they are signed, the affidavits must either be faxed or emailed immediately to the attorneys. The original affidavits must be kept safely and handed to the attorneys as soon as possible so that they can be placed on the court file.

❖ **Should you require any assistance with strike related issues, you may contact Jaco Swart, NEASA's National Collective Bargaining co-ordinator, at (012) 622 8971 or jaco@neasa.co.za.**

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