

MNU NURSE PROTOCOL:

Working during job action or strike by the Manitoba Association of Health Care Professionals (MAHCP)



In taking the necessary precautionary steps in the event of a strike by allied health professionals, MNU has sought a legal opinion in order to provide nurses better clarity if asked to perform patient care duties that are usually performed by allied health professionals (i.e. “struck work”).

Firstly nurses must report to work and perform their normal duties, should this require crossing a picket line, nurses are obligated to cross.

However, under section 16 of the Labour Relations Act (LRA) nurses have a right to refuse to do tasks that they would not be asked to do but for the strike. The Employer can ask, but if nurses are disciplined (etc.) for refusing, that would be an unfair labour practice. Whether or not to refuse is up to each individual nurse. Section 16 specifically states:

16 Every employer and every person acting on behalf of an employer who discharges or refuses to continue to employ or refuses to re-employ or lays off or transfers or suspends or alters the status of an employee who has refused to perform all or any of the duties or responsibilities of an employee who is lawfully on strike or locked out, unless he satisfies the board that the decision

- (a) to discharge; or
- (b) to refuse to continue to employ; or
- (c) to refuse to re-employ; or
- (d) to lay off; or
- (e) to transfer; or
- (f) to suspend; or
- (g) to alter the status of;

the employee was not in any way affected by the employee's refusal to perform the duties and functions of an employee who is lawfully on strike or locked out, commits an unfair labour practice.

With respect to “shared duties” (i.e., duties that can be performed by allied health professionals and/or nurses), the Labour Board would consider whether

nurses are being asked to do a greater proportion of those duties than usual. That may be sometimes difficult to assess in a given situation, which creates some risk for nurses. For that reason, **MNU recommends nurses adopt an “obey now” approach, but contact their Local/Worksite President or LRO where they have concerns, so the matter can be assessed before refusal.**

In the case of tasks normally shared between MNU and members on strike, nurses will not be permitted to refuse to do the task outright. However, they can refuse an increase in volume of these types of shared tasks, if the increase is caused by the strike.

Nurses must additionally be mindful in regard to discipline by their regulatory college if the refusal puts a patient's care at risk. This could put the individual nurse in a precarious position, and they would need to be prepared to respond to their regulatory body explaining why their refusal has not negatively impacted patient care.

It should be kept in mind however, that **there are essential services agreements in place between the Employers and MAHCP.** Those require the continued provision of essential services – including those necessary to prevent serious harm to the health of a person.

If nurses are being requested to do many more allied health professional-related duties than normal, this may mean the numbers negotiated in the ESA are inadequate. This would be a basis for the nurse to consider refusal, and for MNU to raise a concern with the employer on their behalf.

That may mean that the Employer will seek more essential workers and increase the numbers of MAHCP members required to work. While this is not desirable for MAHCP's strike action, it may be something that is necessary to ensure nurses can provide safe patient care and meet their College-based requirements.

In summary, the safest course of action for nurses is to perform their usual duties, and assess any additional

duties, requested by the Employer, in context of an imminent risk to the patient. Concerns about an increase of allied health professional-type duties should be brought to the Local/Worksite Presidents or LRO.

Nurses of course will want to avoid being disciplined by their regulatory body based on allegations that they are not providing safe patient care due to a job action. ●

The MNU handbook states the following:

13. OBLIGATIONS AND RIGHTS OF MNU MEMBERS WHERE STRIKE ACTION HAS BEEN TAKEN BY ANOTHER UNION OF THE SAME EMPLOYER

- (a) The Labour Relations Act, Section 89(2), forbids “sympathy strikes”, i.e., while their collective agreement is in force, MNU members are required to cross the picket line and perform their USUAL work.
- (b) The Labour Relations Act, Section 16, gives the right to refuse to perform the work of the striking employees and also forbids any disciplinary action against employees for exercising this right.
- (c) It is recommended that MNU members fully exercise their rights under the Labour Relations Act. (To perform the work of striking employees serves only to lengthen the strike, which is not in the best interests of anyone concerned).

Questions? Please contact your Local/Worksite President or LRO for assistance.

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MANITOBA NURSES UNION