



SUBJECT PROPOSED AMENDMENT OF POLICY #64 – CROSSING OF PICKET LINES

MEETING DATE FEBRUARY 14, 2017

Forwarded to the Board of Governors on the Recommendation of the President

APPROVED FOR SUBMISSION

Santa J. Ono, President and Vice-Chancellor

DECISION REQUESTED IT IS HEREBY REQUESTED that *the UBC Board of Governors approve the proposed amendments to Policy #64 (Crossing of Picket Lines)*

Report Date January 10, 2017

Presented By Hubert Lai, Q.C., University Counsel
Lisa Castle, Vice-President, Human Resources

EXECUTIVE SUMMARY

The University employs over 15,000 faculty and staff comprised of both unionized and non-unionized employees. Arising out of labour negotiations, there is the possibility that one or more of the University’s unions may engage in legal strike activity. The proposed amendment of Policy #64 modernizes the language while maintaining flexibility to accommodate differences in campus-specific operations. It recognizes that UBC’s employees may, subject to limited exceptions, choose not to cross picket lines during a labour dispute and establishes a process for doing so. The proposed amendment of Policy #64 provides guidance for the continuation of operations in academic and administrative units and clearly articulates the University’s expectations of employees in the event of a legal strike.

<i>If this item was previously presented to the Board, please provide a brief description of any major changes since that time.</i>	The proposed amendment of Policy #64 was presented to the Board of Governors at its September 2016 meeting. The Policy Review Committee received five comments in response to its Call for Comment. No major changes were made; however, the Committee did add some clarification language based on community feedback.
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INSTITUTIONAL STRATEGIC PRIORITIES SUPPORTED

- Learning
 - Research
 - Innovation
 - Engagement
 - International
- or Operational
- (Internal / External)

DESCRIPTION & RATIONALE

Policy #64 Crossing of Picket Lines was approved in 1980 and has not been amended since.

A large portion of the University's faculty and staff are members of unions employed through collective agreements which include provisions that specifically protect members from disciplinary actions if they refuse to cross a picket line. In addition, the University employs non-unionized employees who are subject to employment terms and conditions contained in an agreement with AAPS and various employment handbooks (for Executive Administrative Staff, Technicians and Research Assistants) which all refer to Policy #64 as being applicable to their members. In striving for the equitable treatment of all its employees, UBC, through Policy #64, has historically extended the same right to refuse to cross a picket line to its non-unionized employees.

Accordingly, the proposed amendment of Policy #64 clearly articulates the general principle that UBC employees may, subject to limited exceptions, choose not to cross picket lines during a labour dispute.

The primary proposed amendment of Policy #64 is that it now identifies the exceptional circumstances in which the University may instruct members of AAPS and excluded Management and Professional employees to cross picket lines and attend work. Labour disputes take many forms, last for varying periods, and result in differing impacts. The current Policy #64 provides no flexibility for the University to respond to a particular set of circumstances that would merit instructing Management and Professional employees to cross a picket line. The proposed amendment of Policy #64 seeks to create a degree of flexibility without undermining the general principle.

The flexibility is based on three limited exceptions:

1. in compliance with an Essential Services Order issued by the Labour Relations Board which requires certain employees to provide essential services;
2. in facilities or departments where an Essential Services Order requires the University to utilize managers prior to utilizing unionized employees to perform the essential services; and
3. to the extent necessary to maintain minimal operations or core services as described in the Policy.

The following are examples of minimal operations or core services:

1. maintaining minimal service to ensure research work isn't lost due to equipment failure or inadequate monitoring;
2. maintaining core health and safety services that are important but do not reach essential services standards;
3. maintaining facilities in minimal operational manner (e.g. maintaining sanitary conditions in student residences); and
4. maintaining living collections (e.g. animal care services).

The other key amendments to Policy #64 are:

1. It renames the Policy "Non-Performance of Work during a Legal Strike".
2. It articulates the expectation of respectful interactions during a strike.

3. It includes a cross-reference to the University Senates' Strike Policies and Guidelines which address the academic consequences on students in the event of a strike.
4. It clarifies that the Policy is subject to collective agreements, handbooks and terms and conditions of employment but omits outdated references to specific collective agreements.

BENEFITS Learning, Research, Financial, Sustainability & Reputational

The proposed amendment of Policy #64 establishes the University's expectations for employees during a labour dispute and provides a process by which employees who choose not to cross a picket line may do so. It also clearly identifies the limited circumstances under which certain employees may be instructed to cross picket lines and attend work.

The proposed amendment of Policy #64 also reinforces the application of UBC's Respectful Environment Statement in all communications and interactions between UBC community members, including during labour disputes.

SCHEDULE Implementation Timeline

If approved, the proposed amendments to Policy #64 would take effect immediately.

CONSULTATION Relevant Units, Internal & External Constituencies

The Office of the University Counsel conducted a review of comparable policies at UBC's peer institutions. It then constituted a Policy Review Committee comprised of the following members, to consider and advise on the review of Policy #64:

- Karen Szeto, External Legal Counsel (Chair)
- Aaron Bailey/Kathleen Simpson, AMS
- Pauline Brandes, Director, Human Resources, UBC Okanagan
- Jan Cioe, Psychology Head, Irving K. Barber School of Arts and Sciences, UBC Okanagan
- Rob Einarson, Associate Vice-President, Finance and Operations, UBC Okanagan
- Paul Harrison, Associate Dean, Faculty of Science, UBC Vancouver
- Debbie Harvie, Managing Director, University Community Services, UBC Vancouver
- Tom Macauley/Blake Edwards, UBCSUO
- Allison Matacheskie, Director, Faculty Relations, UBC Vancouver
- Mike Vizsolyi, Employee Relations Manager, Human Resources, UBC Vancouver

The proposed amendment of Policy #64 was presented to the Board of Governors at its meeting on September 22, 2016. The proposed amendment was then published for public comment on the Office of the University Counsel website and an email was sent to the "Heads Up" email list regarding the Call for Comments. The "Heads Up" email list includes members of the groups from all campuses: student groups, union groups, UBC Executive, Associate Vice-Presidents, Deans and Principals, Associate Deans, all Directors and Heads of Units, Departmental Directors and Heads of Units.

The Policy Review Committee received five responses to the Call for Comments and met to discuss the responses. The Committee reviewed all of the responses in detail, and made a number of changes to address the concerns raised by the UBC community and during committee discussion. The comments

span 11 issues and have been summarized into a table together with the Committee's comments on each issue.

The proposed amendments to Policy #64 are unanimously recommended by the Policy Review Committee.

Additional Materials

The following materials are attached:

1. summary table of responses received and Committee's comments;
 2. comparison of the pre- and the post-consultation versions of the proposed amendments to Policy #64; and
 3. a copy of current Policy #64 is available at <http://universitycounsel.ubc.ca/files/2010/08/policy64.pdf>.
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Proposed Amendments to Policy #64

Description of Response to Call for Comments and Committee Recommendations

Comment	Description of Comments	Applicable Section	Committee Comment
1	Removal of references to “as a matter of conscience”: One respondent questioned why the University removed all references to “as a matter of conscience” in relation to a non-striking employee’s choice to not cross a picket line.	-	<p>No change recommended.</p> <p>Currently, Policy #64 provides that employees may choose not to cross a picket line “as a matter of conscience” (Please see sections 1.1, 2.2 and 2.3.).</p> <p>The phrase “as a matter of conscience” was removed in the proposed amendment as the University does not in practice require a non-striking employee to provide an explanation for choosing not to cross a picket line. The Committee notes that this proposed amendment in fact broadens the scope of policy as non-striking employees may have other reasons for choosing not to cross a picket line.</p>
2	Reference professional employee association: One respondent requested the addition of language to identify that there are non-unionized employees on campus represented by a professional association.	Background & Purpose	<p>Committee revised the proposed policy by amending the Background & Purpose section.</p> <p>Language modified to:</p> <p><i>“In addition, the University employs many non-unionized employees including those represented by a professional employee association.”</i></p>
3	Prior written notice: Two respondents raised concerns regarding proposed Section 3.2 which requires prior written notice of a non-striking employee’s choice not to cross a picket line. The respondents	3.2	<p>Committee revised the proposed policy by deleting proposed Section 3.2.</p> <p>The Committee reviewed proposed Section 3.2 and agrees that it could be articulated more clearly. In fact, as one respondent pointed out, it is somewhat redundant with Section 3.4. The Committee has amended the proposal to delete Section 3.2.</p>

Proposed Amendments to Policy #64

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	<p>identified confusion with respect to timing and consequences of choosing not to cross a picket line and asked what would happen if a non-striking employee arrives on campus and at that moment chooses not to cross the picket line.</p> <p>One of those respondents further requested clarification as to the grievance process in the event of a dispute between UBC and non-striking employees with respect to the provision of “prior” notice.</p>	<p>1.2</p>	<p>Section 3.4 addresses the question with respect to the timing by providing guidance on the expectation that the Department Head or Supervisor should <i>normally</i> be informed within 48 hours after a union provides strike notice to the University. However, this also allows some flexibility for situations where a non-striking employee arrives on campus and then chooses not to cross the picket line.</p> <p>Section 3.5 sets out the consequence (i.e. no pay for non-performance of work duties) for those non-striking employees who choose not to cross a picket line. In addition, all of the University’s unionized collective agreements contain language protecting those employees from discrimination or discipline for not crossing the picket line of another union.</p> <p>Finally, the grievance process for a specific employee would follow the same grievance process for the employee group.</p> <p>Section 1.2 has been added to the proposed policy for additional clarification: <i>“This policy is subject to applicable employment agreements between UBC and an individual employee or a group of employees, represented or not represented by a bargaining unit, that establishes terms and conditions of employment. For greater clarity, an employment agreement includes a collective agreement, a framework agreement, or an employee handbook issued on behalf of the Director of Faculty Relations or Human Resources Advisory Services for UBC Vancouver or the Director of Human Resources for UBC Okanagan.”</i></p>

Proposed Amendments to Policy #64

Description of Response to Call for Comments and Committee Recommendations

4	<p>Department Heads and Supervisors: One respondent identified that the proposed amendments do not address what a Head might do if they decide not to cross a picket line. The respondent suggested the policy explicitly recognize the right of Heads not to cross a picket line and provide guidance on what would happen in the event a Head chose not cross a picket line.</p>	3.6	<p>Committee revised the proposed policy by amending Section 3.6.</p> <p>The intent of Section 3.6 is to provide guidance to Department Heads and Supervisors for their managerial roles. The language has been modified to clarify that the provision applies to Department Heads and Supervisors <i>“who choose to cross picket lines...”</i></p>
5	<p>No ability for University to compel striking staff back to work: One respondent expressed her opinion that the University should not have the power to compel striking employees back to work. She further commented that staff should have the right to decide for themselves whether their work is essential.</p>	4.2	<p>No change recommended.</p> <p>The only situation in which the University would compel a striking employee back to work is in compliance with an Essential Services Order issued by the Labour Relations Board pursuant to the <i>Labour Relations Code</i>.</p> <p>The designation of essential services is made by the Labour Relations Board and involves identifying the facilities and levels of service needed to prevent immediate and serious danger to the public or to prevent immediate and serious disruption to educational programs. UBC as the employer is required to provide those services and the union is required to allow its members to perform those services identified in the order.</p>

Proposed Amendments to Policy #64

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6	<p>Requirement of AAPS member to cross picket lines and perform duties they are not trained to carry out, creating unsafe work environment: AAPS raised concern for the health, safety and well-being of its members. It requested that the policy include language that emphasizes the importance of health, safety, ability, and qualifications to do the duties the University may assign during a legal strike. AAPS further requests insertion of language to emphasize an employee’s right to say no and protection against repercussions for saying no.</p> <p>AAPS also suggests that the proposed amendment of Policy #64 is inconsistent with the language in the agreement between AAPS and UBC and the <i>Labour Relations Code</i>. Specifically, the respondent asked: “Why does the University</p>	4.3	<p>No change recommended.</p> <p>AAPS is not a certified union and accordingly does not have a right to strike. Its members would be “non-striking employees” for the purposes of Policy #64.</p> <p>Proposed Section 4.3.1 provides for the University’s compliance with an Essential Services Order issued by the Labour Relations Board pursuant to the <i>Labour Relations Code</i>. A typical Essential Services Order requires managers capable of performing work that is either struck or behind picket lines to do so for 60 hours per week prior to compelling a unionized employee to perform struck work or cross a picket line. As a necessity, the exemption in proposed Section 4.3.1. is necessary to allow UBC to comply with a legally binding Essential Services Order. Furthermore, proposed Section 4.3.1 explicitly states that UBC will instruct those M&P employees qualified to perform the essential service and only to the extent ordered by the Labour Relations Board. UBC would still be bound by all applicable health and safety legislation. Policy #64 specifically references members of AAPS and excluded Management and Professional employees as these are the employees who would be affected by an Essential Services Order.</p>
		1.2	<p>Section 1.2 has been added to the proposed policy for additional clarification: <i>“This policy is subject to applicable employment agreements between UBC and an individual employee or a group of employees, represented or not represented by a bargaining unit, that establishes terms and conditions of employment. For greater clarity, an employment agreement includes a collective agreement, a framework agreement, or an employee handbook issued on behalf of the Director of Faculty Relations or Human Resources</i></p>

Proposed Amendments to Policy #64


Description of Response to Call for Comments and Committee Recommendations

	single out M&P employees? What about clinical faculty members and non-union research technicians?"		<i>Advisory Services for UBC Vancouver or the Director of Human Resources for UBC Okanagan."</i>
7	Clarify language: One Committee member suggested a clarification in the language used in section 4.3 to more accurately reflect the Committee's intention.	4.3	<p>Committee revised the proposed policy by amending Section 4.3.</p> <p>The Committee recommends replacing the words "<i>all members</i>" with the words "<i>any member</i>" as follows:</p> <p align="center">"4.3 Notwithstanding sections 3.1 and 3.6 of this Policy, the University reserves the right to instruct all members <i>any member</i> of AAPS and or excluded Management and Professional employees..."</p>
8	Clarify terminology: The respondent requested clarification of the language in the policy such as "basic student services", "core services", "essential services", "adequate essential services" and "minimal services".	4.3.2	<p>No change recommended.</p> <p>The terms "basic student services" or "adequate essential services" do not appear in the proposed amendment of the Policy.</p> <p>Proposed Section 4.3.2 ties the terms "minimal operations" and "core services" to the descriptions in Section 2.2 of the Policy. The designation of "essential services" will be made by the Labour Relations Board.</p>

Proposed Amendments to Policy #64

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<p>9</p>	<p>Removal of provision permitting the University to instruct M&P employees to backfill work carried out by those providing essential services: One respondent raised the concern that this creates a loophole whereby AAPS members can be instructed by the University to perform jobs that are not needed to maintain core/basic/essential/minimal services.</p>	<p>4.3.2.2</p>	<p>No change recommended.</p> <p>The ability of the University to instruct M&P employees in proposed Section 4.3.2.2 is limited by Section 4.3.2 <i>“to the extent it is necessary to maintain minimal operations or core services as described in Section 2.2 of this Policy...”</i>.</p>
<p>10</p>	<p>Non-UBC locations. A respondent requested clarification for employees who work at non-UBC locations in situations where non-UBC employees could legally strike.</p>	<p>-</p>	<p>No change recommended.</p> <p>UBC policies would not apply to legal strikes on other employers.</p> <p>Procedures at non-UBC controlled work sites are outside the scope of this Policy and the Committee recommends against including details in Policy #64 as there are many variables outside the control of the University.</p>
<p>11</p>	<p>Payroll Processing: One respondent asked whether payroll processing would be considered as an example of minimal operations or core services.</p>	<p>-</p>	<p>No change recommended.</p> <p>Payroll processing would not be considered an essential service by the Labour Relations Board. It is not described in Section 2.2 and as such would fall outside of minimal operations or core services.</p>

 <p>The University of British Columbia Board of Governors</p>	<p>Policy No.: 64</p>	<p>Approval Date: March 1980</p> <p>Last Revision: February 2017 [anticipated]</p>
	<p>Responsible Executive: Vice-President, Human Resources</p>	
<p>Title: Non-Performance of Work during a Legal Strike</p>		
<p>Background & Purposes:</p> <p>The majority of the University’s faculty and staff are members of unions. In addition, the University employs many non-unionized employees <u>including those represented by a professional employee association</u>. Arising out of labour negotiations, there is the possibility that one or more of the University’s unions may engage in legal strike activity, including picketing.</p> <p>This policy is intended to provide guidance for the continuation of operations in academic and administrative units in the event of a legal strike by a union. Subject to limited exceptions, the University recognizes that its employees may choose not to cross picket lines during a labour dispute and this policy establishes a process for doing so.</p> <p>This policy should be read in conjunction with the University Senates’ Strike Policies and Guidelines.</p>		

1. Scope

1.1 This policy applies to all employees who are not members of the union which has issued strike notice to the University (the “Non-Striking Employees”) and to employees who are members of the union which has issued strike notice to the University (the “Striking Employees”).

1.2 This policy is subject to applicable employment agreements between UBC and an individual employee or a group of employees, represented or not represented by a bargaining unit, that establishes terms and conditions of employment. For greater clarity, an employment agreement includes a collective agreement, a framework agreement, or an employee handbook issued on behalf of the Director of Faculty Relations or Human Resources Advisory Services for UBC Vancouver or the Director of Human Resources for UBC Okanagan.

2. General

- 2.1. The University respects the right of its unions and its members to engage in lawful strike activity. It expects all members of the University community to uphold the UBC Respectful Environment Statement and to conduct themselves in accordance with those principles in all communications and interactions with fellow UBC community members in all University-related settings.
- 2.2. In the event of a legal strike, the University will take every reasonable measure to remain open. It will endeavor to maintain instruction in all courses, provide access to core library services and internet connectivity, oversee examinations as scheduled, provide core student health and safety services and core services to student residents, and maintain minimal operational facilities to preserve research. The University will remain open unless there is an official announcement to the contrary. Information relating

to a strike or potential strike will be available at www.ubc.ca and employees should check this site for additional information.

3. Crossing Picket Lines

3.1. Subject to the limited exceptions set out in Section 4 of this Policy, Non-Striking Employees may choose not to cross picket lines during a labour dispute.

~~3.2. Non-Striking Employees are expected to perform all their duties and responsibilities in their normal work places and at the normal times unless they have provided prior written notice otherwise.~~

3.32. Unions are required to provide 72 hours strike notice to the University. However, the University may not be able to advise beforehand which areas or buildings may be picketed. It is possible for pickets to move around and access to buildings may vary throughout the day.

3.43. A Non-Striking Employee who intends not to cross a picket line during a labour dispute should inform his or her Department Head or Supervisor as soon as possible, normally within 48 hours after a union provides strike notice to the University.

3.54. Non-Striking Employees who choose not to cross picket lines and thus choose not to perform all their duties and responsibilities will not be paid for the period of non-performance.

3.65. Department Heads and Supervisors who choose to cross picket lines should endeavor to maintain normal operations within their academic and administrative units.

3.76. Subject to the limited exceptions set out in Section 4 of this Policy, Non-Striking Employees who choose to cross picket lines will not be required to perform work which would normally be carried out by Striking Employees.

4. Exceptions

4.1. Pursuant to the British Columbia *Labour Relations Code*, the Labour Relations Board may designate through an Essential Services Order that certain facilities, departments, and services are necessary or essential to prevent immediate and serious danger to the health, safety, or welfare of the residents of British Columbia.

4.2. Notwithstanding Section 3.1 of this Policy, all Striking and Non-Striking Employees designated as providing an essential service pursuant to an Essential Services Order will be expected to fulfil all normal duties and responsibilities within the scope of their employment as may be reasonably assigned.

4.3. Notwithstanding Sections 3.1 and 3.76 of this Policy, the University reserves the right to instruct all any members of AAPS and-or excluded Management and Professional employees (together, “M&P Employees”) to cross picket lines and attend work in the following circumstances:

4.3.1. In facilities or departments where an Essential Services Order requires the University to utilize managers prior to utilizing unionized employees, the University will instruct those M&P Employees qualified to perform the essential services to do so to the extent ordered by the Labour Relations Board; and

4.3.2. To the extent it is necessary to maintain minimal operations or core services as described in Section 2.2 of this Policy:

4.3.2.1. the University may instruct qualified M&P Employees to attend as directed and perform duties as assigned; and

4.3.2.2. where M&P Employees are required to perform essential services as described in Section 4.3.1 of this Policy, the University may instruct other M&P Employees to backfill the work carried out by the M&P Employees who are occupied providing essential services.