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**Guidelines on
Essential
Services
During Labour
Conflict**



GUIDELINES ON ESSENTIAL SERVICES DURING LABOUR CONFLICT

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3, place Jean-Marteau, 1201 Geneva, Switzerland

ISBN: 978-92-95094-27-7

Printing: Imprimerie Fornara, Geneva

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PREFACE

Nurses' work is critical to the health and well being of individuals, families and communities. Yet, in many countries, poor working conditions and low salaries do not reflect the real value of their services. Undervalued and unable to provide quality care, nurses are uniting to improve not only the health status of those they care for, but also the conditions imposed in the workplace. Where necessary they are taking strike action.

The professional nurses association, whether directly or indirectly involved in collective bargaining, must play a role in ensuring that essential nursing services are provided to people in need.

It is hoped that these guidelines will stimulate debate concerning the issues presented and support national nurses associations in developing policies related to industrial action.

David Benton
Chief Executive Officer
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INTRODUCTION

The International Council of Nurses (ICN) and national nurses associations (NNAs) advocate a workplace that allows for excellence in nursing practice. The work of nurses and its importance for the life, personal safety and health of persons in their care demand measures that encourage and promote the full development of negotiating mechanisms between employers, nurses and their representatives. ICN's Position Statement on the Socio-Economic Welfare of Nurses recognises the responsibility of NNAs to:

- establish, promote and maintain programmes to enable nurses to achieve a level of economic and social recognition commensurate with their contribution to society;
- develop and maintain mechanisms which support the negotiating rights of nurses, provide protection from exploitation, and balance equity and employment issues;
- develop training programmes which adequately prepare association representatives, nursing leadership and nurse employees in the practice of the various negotiation methods for resolving employment concerns as appropriate in each country.

Labour relations are often determined by legislation, at the national and/or state level. Keeping in mind that NNAs must conform to the legal conditions existing in their countries, they have an important role in safeguarding and promoting nurses' rights while advocating for optimal patient care.

The fundamental responsibility of the nurse is fourfold: to promote health, to prevent illness, to restore health and to alleviate suffering. In certain cases, nurses may find themselves in situations where industrial action* is necessary to ensure the future delivery of quality care by qualified personnel.

* Workplace-related demonstration, manifestation or strike.

While social dialogue is widely recognised as the principal and most effective means of resolving professional and workplace-related problems, frustrated employees may take industrial action in cases where the option of employer/employee negotiation has been unsatisfactory, unsuccessful or refused.

Where deficiencies in the quality of working life and economic rewards of nurses have become so serious as to affect the long-range prospects for maintaining high standards of nursing care, nurses may choose to take industrial action to bring about needed changes. In extreme situations, strikes have occurred and on occasion have resulted in wide public and intra-professional debate.

ICN STRIKE POLICY¹

Effective industrial action is compatible with being a health professional so long as essential services are provided. Total abandonment of ill patients is inconsistent with the purpose and philosophy of professional nurses and their professional organisations as reflected in *ICN's Code of Ethics for Nurses*.

ICN expects nurses to have equitable remuneration and acceptable working conditions, including a safe and positive work environment. As employees, nurses have the right to organise, to bargain collectively, and to take strike action.* Strike action is considered the measure of last resort; to be taken only after all other possible means to conclude an agreement have been fully explored and utilised.

During a strike, the principles to be upheld include:

- the minimum level of disruption to the general public;
- the delivery of essential nursing services to a reduced patient population;
- crisis intervention by nurses for the preservation of life;
- ongoing nursing care to assure the survival of those unable to care for themselves;
- nursing care required for therapeutic services without which life would be jeopardised;
- nursing involvement necessary for urgent diagnostic procedures required to obtain information on potentially life-threatening conditions;
- compliance with national/regional legislation as to procedure for implementation of strike action.

Strike action maintaining essential services has been used successfully by professional trade unions in the past to initiate social dialogue, improve the quality of care provided as well as the working conditions of nurses/health workers. ICN and NNAs oppose the deliberate use of strike breakers,** a practice that weakens the pressure for credible social dialogue.

* A strike is defined as employees' cessation of work or a refusal to work or to continue to work for the purpose of compelling an employer to agree to conditions of work that could not be achieved through negotiation.

** Individuals hired specifically to replace striking employees with a view to weakening the strike action.

INDUSTRIAL ACTION

Industrial action can take various forms; but for the purposes of these guidelines, focus will be centred on the most extreme: the strike. As demonstrated in the past, taking effective job action is not necessarily incompatible with being a health professional if the principles mentioned above are guaranteed.

If an NNA is recognised as both a professional organisation and a bargaining agent, the association needs to determine a policy that takes full account of both its professional commitment and its socio-economic welfare (SEW) responsibilities. Where an association does not have or wish to have the required status to operate in labour negotiations, it should nevertheless formulate relevant policies. In this case, the professional association's role is to seek to influence employed nurses (whether within or outside NNA membership) and the union leadership that is to represent the employment interests of nurses.

If any employee takes part in an industrial action, she or he could personally face four arenas of accountability for this action: disciplinary proceedings before the employer; criminal proceedings; civil proceedings for negligence; and professional conduct proceedings.¹ The decision to go on strike should never be taken lightly. If sanctions imposed on the individuals and organisations involved are to be avoided, the process undertaken should strictly follow the legal requirements set out by law, the decree or the collective agreement.

The moment of crisis is an inappropriate time for wide discussion, consensus taking and policy development. Association members and leaders should address the issues during a relatively calm period so that sound decisions can be taken that win the support of the vast majority. Once adopted, these policies must be widely communicated, to make the association's views known

¹ Individuals hired specifically to replace striking employees with a view to weakening the strike action.

by all relevant parties, i.e. government, employers, health-service administration and labour organisation officials. Open channels of communication should be established with these social partners as well as the membership to foster on-going discussion and exchange.

Generally, workers go on strike only after they have explored and utilized all other possible means to conclude an agreement. *Selective strikes* have frequently advanced negotiations while generating less disruption to patient care. These are characterised by nurses stopping work from a determined number of hospitals/health services or departments within health care facilities. While a selective strike may sometimes provide enough impact to realise the negotiation objectives, the length of such a strike tends to be longer and the action less effective as relatively small numbers of nurses are withdrawn from providing services.

In certain cases, *token strikes* (e.g. one hour demonstrations) may generate the impetus to initiate social dialogue. As an initial or complementary measure, strike action may include the cancellation of all elective interventions, a work-to-rule policy and/or the withdrawal of services involving non-nursing duties, e.g. domestic, clerical, portering, catering.

ESSENTIAL NURSING SERVICES

In considering a total strike, concern for patients' safety and well being during the action will invariably be raised by employers, health-service administration, the general public and the nurses themselves. Effective strategy preceding strike action will include a publicity campaign so that the issues are understood as much as possible, thus ensuring a wide range of support (including the public, which is a particularly significant source of influence). Awareness of the issues and knowledge of the NNA's strategies will minimise some of the concerns that the public may have when action does occur. There may nevertheless be a measure of apprehension, which can be addressed in two ways:

1. inform the public to seek alternative health care at a facility unaffected by the strike; and/or
2. establish a plan to provide essential services during the period of industrial action.

Whether strike action is taken by the NNA or nurses belonging to an independent labour organisation, the professional association has the responsibility to ensure that patients have access to essential services.

ESSENTIAL SERVICES LEGISLATION

In some countries certain categories of personnel are legally bound by 'essential service' legislation enacted to ensure public safety, and which includes the maintenance of supplies and services necessary for the normal life of the community. Health care workers, teachers, firefighters, police and other occupations involved in the provision of water, energy, transport, post, telecommunications, etc. are often within this category.

Essential services legislation usually represents a limitation of the right to strike. Where this legislation is in effect, a strike may be prohibited (and the case then referred to a mediation or arbitration body) or allowed

under 'controlled' or more restricted conditions. Often this means that some employees or a skeletal staff must remain at work. In addition, there may be a requirement for a longer notice period announcing an impending strike action so that contingency plans are able to be put in place. Infringing such legal requirements may lead to severe sanctions (e.g. fines, imprisonment). Therefore, sound legal advice is critical should the NNA plan to take strike action.

The minimum number of personnel needed to guarantee service is perhaps one of the most difficult issues in health-sector bargaining. Often, the employer tries to broaden the definition of 'essential nursing services', while the negotiating body attempts to minimize the number of nurses required to work during a strike. It is then that the professional body, if independent from the union, can help in determining staffing ratios. As mentioned earlier, when the professional organisation is recognized as a trade union, the NNA will take its professional commitment and SEW responsibilities into consideration from the outset.

The employer and worker representatives usually negotiate the minimum number of personnel. There are countries however that establish a neutral commission whose major function is to assess the adequacy of the minimum staff levels that have been defined in the collective agreement with a view to protect the consumer. In other countries, government authorities set minimum staffing levels. Still other models exist. For example, in one European country different rules apply to the public and private sectors. The employer sets minimum levels in the public sector while the union has this responsibility in the private sector.

Employers' option of hiring replacement workers is also often specified in Essential Services Legislation or the collective agreement. As mentioned, ICN and its members oppose the deliberate use of strike breakers (see position statement on ICN Strike Policy).

DETERMINATION OF ESSENTIAL COVERAGE

What is actually meant by 'minimum number of personnel' in this context? National statistics in one country showed that during June, July and August only some 55% of the employed personnel actually work in a hospital at any one time; the remainder being on vacation, sick leave, maternity leave or leave without pay.

During strike action, employers have sometimes set the minimum number at 75% of total nurses employed, whereas the unions have considered the number to be around 10-15%. Some employers have even asked for more employees than they, in fact, had working in their hospital centres at the time.

Nurses, due to their education and professional philosophy, are the best qualified to determine essential nursing services. Because every practice setting is different, only local nurses, who are most familiar with the area, can devise the best plans for providing essential services. This means working closely with colleagues to determine what is truly essential.

One ICN member (a professional association as well as a registered trade union) has successfully used selective strikes when undertaking industrial action. In such cases, certain departments - for example, anaesthesiology, operating room and radiology - of selected hospitals are chosen as strike sites. NNAs have found this type of strike to be a highly effective means to apply pressure on negotiation partners and perhaps less costly to the organisation than other methods. In the Scandinavian countries, where this is common practice, the essential services provided are based on evening/night shifts and weekend staffing ratios.

Keeping in mind the principles listed in the ICN Strike Policy, one nurses' union uses a record of the staffing ordinarily available in each area thereby establishing the norm for reference purposes. Before developing an essential service plan, the union identifies the essen-

tial nursing services and determines whether they can be delivered by another category of health worker. Once the list of essential services is finalised, it is possible to estimate the number of staff needed to maintain these functions during a strike action. The term *estimate* is purposefully used. All plans must remain flexible enough to respond to needs that arise during a particular job action. This necessitates an ongoing evaluation of the quality of care received within the affected health service(s).

Being proactive, the NNA may wish to consider developing a plan to deal with significant unexpected emergencies with multi-casualties. Again, developing guidelines during a period of relative calm is more likely to ensure appropriate and comprehensive responses in the moment of crisis.

COMMUNICATION

Once the decision to take industrial action is confirmed by the organisation's membership, or leadership as the case may be, the crucial issue of communication comes into play. It goes without saying that a two-way communication between members and leaders is paramount during labour conflicts. United action presupposes that everyone involved is well informed and committed.

Communication with the major stakeholders within the nurses' environment is equally important for the success of any industrial action. Yet, it is often neglected. Well in advance, the public should be aware of the issues being negotiated. The nurses' case should be presented in clear, concise language and supported with statistical and pertinent anecdotal evidence. To avoid misunderstandings and conflicting opinions, designated spokespersons should be the only authorized persons to communicate with the press and other media. Nurses should monitor the news and immediately report any false or questionable information released. Prompt action will greatly assist in correcting any disseminated misinformation.

The advantage of informing the public well in advance of any negotiation is that public opinion will already have applied a certain pressure on the negotiations. Nurses must do all in their power to have the public on their side. Good relations with the media should be encouraged at all times, and especially during labour conflicts.

Notice of an impending strike, specifying the character and extent of the work stoppage, should be given to the health-service administration or employer. The timing of a strike notice is often indicated in labour legislation or collective agreements. If not, nurses must ensure that sufficient time be given so that arrangements can be made for patients to receive proper care. This is particularly so if certain units are to be closed.

Notice should also be given to other unions active in the workplace (if they exist) and to the local labour federation, as well as to instructors and students in schools of nursing and other educational institutions using the facilities to provide clinical instruction. If appropriate, volunteer organizations active in the affected facilities should also be notified.

CONCLUSION

Whether NNAs are professional associations, trade unions or both, they and their members will be affected by industrial action taken by nurses or other health care workers. NNAs need to formulate standards of conduct and procedural policies in the event of such action. Professional concerns must be carefully considered and the NNA has a vital role to play in keeping them in the forefront. The ICN principles ensuring essential services during industrial action must be applied in order to ensure public safety.

Defending nurses' rights within the corresponding legal framework is essential if claims are to be properly addressed. If the legal framework does not allow for constructive social dialogue and workplace negotiations, lobbying campaigns to introduce changes in

labour relations legislation or regulations must be undertaken. The NNA, be it within its own SEW programme or with other organizations having the authority to represent the employment interests of nurses, has the obligation to protect nurses' professional and economic interests and ensure quality nursing care to the population.

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