

# InterOffice Memo

Department of Workforce Development

Date: 06 December 2004

File Ref: labor dispute policy.doc

To: Job Service Supervisors and All Staff Involved in Taking and Writing Job Orders

From: Brian Solomon, Director  
Job Service Bureau

Subject: **Job Orders and Labor Disputes**

DWS Job Order Policy and federal regulations prohibit accepting job orders where a labor dispute is in progress and the job listing will aid, directly or indirectly, the filling of vacancies affected by the labor dispute. This memo clarifies what a labor dispute is, and when our policy should be invoked

## Background

In a recent situation, a local office was notified that a company expected to receive a notice of intent-to-strike from a union representing their employees.

DWS Job Order Policy and Procedures states, "Job orders will not be accepted for positions that are vacant due to a labor dispute, strike or lockout."  
([http://www.dwd.state.wi.us/dws/staff/job\\_order/policies\\_procedures/default.htm](http://www.dwd.state.wi.us/dws/staff/job_order/policies_procedures/default.htm), section B-10) Federal regulations state, "State agencies shall make no job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage." (20 CFR 652.9(a))

When is there a labor dispute? Is there a difference between a labor dispute and a work stoppage? When do we apply our policy to decline a job order during difficult contract negotiations?

## Discussion

There are three elements required for our policy to take effect:

1. There must be a vacancy for a position that is involved with the labor dispute;
2. There must be a labor dispute in progress;
3. Taking the job order will aid, directly or indirectly, the filling of vacant positions involved in the dispute.

Under our policy, we can only take a job order for a position that is currently available or is expected to be available within 90 days. All job orders must have a "vacancy". The vacancy can occur in the future. Positions that are involved in the labor dispute

would be those job titles represented by the union involved in the labor dispute. Job titles that are not represented, or are represented by other unions not involved in the dispute, *could* be listed. When this occurs, a mandatory statement is required to inform the job seeker of the situation. The mandatory statement is in the Job Order Policies and Procedures and is available in WJOS.

When does a labor dispute exist? Clearly, a work stoppage, either a strike or lockout, triggers our policy. Can a labor dispute that has *not* resulted in a work stoppage trigger our policy? Yes, but it depends on the situation. These situations must be looked at on a case-by-case basis. There needs to be more than the possibility of a work stoppage. An actual event or action is needed. Rumors of a strike, knowledge that the labor contract has expired, or news media reports of difficult labor negotiations may not be sufficient to trigger our policy. Staff should consult with management or seek technical assistance in these situations before accepting or declining a job order.

In the case cited in the opening 'Background' line, we have an action sufficient to trigger the policy. Although a strike has not started yet and may not start, the company notified a local office that they expected a strike. They expected a notice of intent to strike from the union. In this case, filling any of the affected positions would be dealing with positions "the filling of which is otherwise an issue in a labor dispute involving a work stoppage," (20 CFR 652.9(a)). The posting of a job order immediately prior to a work stoppage could provide aid in filling vacancies created from the work stoppage. Until we receive notice as to the resolution of the labor dispute, we should not accept job orders for the affected positions.

Staffing agencies may be used to recruit replacement workers during the labor dispute. We cannot accept job orders that would recruit for positions affected by the labor dispute. For this reason, job order policy requires staffing agencies to provide the name of the work site company on all job orders. This information is placed in the staff comments section and **must be kept confidential by staff.**

### **Action Required**

Staff should be alert for requests for job orders that may involve labor disputes. These requests may come from staffing agencies. Job order responsible staff should decline job orders that clearly violate policy. If the situation is not clearly a work stoppage, contact your supervisor before accepting or declining the job order.

### **Questions**

For more information or if you have any questions, please contact Phil Anderson at (608) 261-6974.