

## **FIRE BRIGADES National Employers**

---

**To: Chief Fire Officers/Firemasters  
Chief Executives/Clerks to Fire Authorities  
Chairs of Fire Authorities**

**Members of the Employers' Side of the NJC**

---

19th May 2004

### **CIRCULAR EMP/11/04**

Dear Sir/Madam

#### **UNOFFICIAL INDUSTRIAL ACTION**

1. Circular EMP/9/04 provided fire authorities with a copy of a resolution passed at the FBU's conference earlier this month stating that the FBU "... immediately withdraws from the implementation of the June 2003 agreement."
2. As a result of information provided by Chief Fire Officers and Firemasters we are aware of the varying impact this has had within individual fire authorities, including refusal to attend IPDS training, refusal to respond and train for New Dimension incidents etc.
3. However, it is now becoming clear that action has progressed in some authorities to '999 calls only'.
4. We are currently seeking legal advice based on the information providing by authorities. However, in the interim, we would draw your attention to an Employers' circular issued in 2002 on the subject of unofficial action – EMP/16/02. A copy of the circular is attached (**Appendix A**).
5. A further circular was issued on the subject of partial performance, which may also be of assistance to authorities at this time – EMP/23/02 (**Appendix B**). It should be noted however that that circular was issued in the context of partial performance as a result of official action. Accordingly paragraph 5 refers to the Employers' position at that time and in those circumstances.
6. The Employers meet tomorrow afternoon to consider the current situation and we will keep you advised of developments.

Yours faithfully,



**Gill Gittins  
Senior Negotiating Officer**

Layden House, 76-86 Turnmill Street,  
London, EC1M 5LG  
Telephone 020 7296 6600 Fax 020 7296 6686  
Employers' Secretary, Charles Nolda

Direct Dial  
020 7296 6723  
020 7296 6712

e-mail: gill.gittins@lg-employers.gov.uk

**FIRE BRIGADES  
National Employers**

---

**To: Chief Fire Officers/Firemasters  
Chief Executives/Clerks to Fire Authorities  
Chairs of Fire Authorities**

**Members of the Employers' Side of the NJC**

---

3<sup>rd</sup> September 2002

**CIRCULAR EMP/16/02**

Dear Sir/Madam

**UNOFFICIAL INDUSTRIAL ACTION**

1. Authorities will be aware that unofficial industrial action is taking place in a number of brigades.
2. In most affected authorities we understand the Fire Brigades Union have advised that their members will provide emergency cover only.
3. This is a breach of contract and likely to be construed as industrial action short of strike action in accordance with the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A).
4. Under the legislation the Fire Brigades Union is required to conduct a ballot of employees before taking action in order to have the protection of statutory immunities contained in TULR(C)A.
5. There is also a statutory duty to provide an authority with at least 7 days notice of such a ballot and the subsequent result. At least 7 days notice must then be given before any industrial action can start.
6. The current industrial action does not comply with the legal process and as such authorities will wish to consider their response.
7. In legal terms, and where an official of the union has induced, authorised, or endorsed the action, an authority may seek repudiation from the union's principal Executive Committee, president or general secretary. This has the effect of making the action unofficial and removing the trade union's liability.
8. In order to repudiate the endorsement, the union must supply the committee or official who gave the 'authorisation' with written notice of the repudiation without delay and, as far as possible, to every member believed to be taking part in the action. The notice to members must contain the following statement, although there is nothing to prevent the trade union adding

additional messages provided that this does not contradict the terms of the prescribed statement or make its meaning ambiguous:

“Your union has repudiated the call (or calls) for industrial action to which this notice relates and will give no support to unofficial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain of unfair dismissal.”

9. Where proper repudiation is given, the action becomes unofficial at the end of the next working day after the repudiation takes place. This gives those taking the action a day to decide whether or not to continue.
10. Failure to repudiate the action will mean that the union is exposed to claims for damages from an authority that has suffered as a result of the unlawful action. An authority may also seek an injunction to halt the action. Failure to comply with an injunction can result in substantial fines or sequestration.
11. In addition to the action an authority may take against the union in the case of unlawful industrial action, the authority may wish to consider whether or not to take action against the individual employees concerned. Suspension and dismissal are options open to an authority however both would have serious industrial relations consequences.
12. Whilst an employer may refuse partial performance it is likely that in this case an authority may prefer to allow employees to continue to work and instead make an appropriate deduction from their pay. The same would be true of any action short of a strike and an authority would need to consider the appropriate reasonable deduction given the particular circumstances.
13. The Employers' Side of the National Joint Council gave general consideration to this issue yesterday. They recognised that the power of decision in these matters rests with individual fire authorities, and felt that at this stage they should draw the legal considerations to your attention.
14. The Employers meet again next week and will have another opportunity to decide whether to issue more specific guidance.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'G. Gittins', with a stylized flourish underneath.

**Gillian Gittins (Mrs)**  
**Senior Negotiating Officer**

Layden House, 76-86 Turnmill Street,  
London, EC1M 5LG  
Telephone 020 7296 6600 Fax 020 7296 6686  
Employers' Secretary, Charles Nolda

Direct Dial  
020 7296 6723  
020 7296 6712

**FIRE BRIGADES  
National Employers**

e-mail: gill.gittins@lg-employers.gov.uk

---

**To: Chief Fire Officers/Firemasters  
Chief Executives/Clerks to Fire Authorities  
Chairs of Fire Authorities**

**Members of the Employers' Side of the NJC**

---

30th September 2002

**CIRCULAR EMP/23/02**

Dear Sir/Madam

**STRIKE ACTION AND RESPONSES TO PARTIAL PERFORMANCE**

1. A number of fire authorities have sought advice from the Employers' Secretariat on how they should respond to partial performance in the event of strike action by the FBU. It is clear that authorities wish to act consistently with their neighbours and many have said that they would welcome the views of the National Employers.
2. Partial performance can occur in two ways. The first is where employees attend for work when they are contracted to do so but do not undertake all of their duties while they are there. In the fire service this would typically take the form of "emergencies only" action, which was the subject of advice in circular EMP/16/02.
3. The second concerns the type of action where employees fulfil all of their duties while at work but where they attend for only part of their contracted working time. We do not yet know the precise form that any strike action would take but we do know from the resolution carried at the FBU's recall conference on 12th September that it is likely to be "discontinuous". Partial performance could therefore occur in the form of, for example, one-hour strikes.
4. The National Employers have now considered this matter and have noted that authorities effectively have three options in dealing with partial performance. These are:
  - (i) to accept partial performance and to allow employees to return to work as normal at the end of any period of strike action;
  - (ii) to refuse to accept partial performance and to say to employees who take strike action during a shift that they will not be permitted to work during, and will not be paid for, the remainder of that shift;

(iii) to refuse to accept partial performance and to say to employees who take strike action that they will not be permitted to work, and will not be paid, until they agree to work normally (ie until the dispute is resolved).

5. While it is for individual fire authorities to decide how they respond to partial performance, the Employers believe that the protection and safety of the public has to be the overriding consideration and that this would best be achieved if firefighters and control staff were permitted to work whenever they were available to do so (option (i) above). This approach would be further reinforced if personnel were not prevented from responding to any major or life threatening incident if they were prepared to do so during a period of strike action.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Phil White', written over a horizontal line.

**Phil White**  
**Assistant Employers' Secretary**