

Do I have to cross the picket line?

Refusing to cross a lawfully established picket line is protected by the National Labor Relations Act. You have the legal right not to cross a picket line in solidarity with your own union, out of sympathy for workers from another union, or just to avoid confrontation. By refusing to cross a picket line while on duty you are essentially engaging in a strike in sympathy with the picketing workers. Refusing to cross a picket line is a legally protected act.

When you approach a picket line you may be asked to honor the picket line. Politely asking someone not to cross a picket line is also a legally protected activity.

The decision is yours, you have the right to cross the line or honor it. Your decision is a matter of ethics and loyalty. Honoring a picket line shows your support for the picketing workers, their union, and the labor movement as a whole. Refusing to cross a picket line tells the employer that unless they end their dispute with the employees there will be no business as usual. But crossing a picket line signals your support for the employer's position in the dispute, reinforces the power of employers in general, and suggests that business will continue as usual regardless of how the employer deals with its employees.

Whether you honor the line or cross it, your actions are legally protected by the National Labor Relations Act. But even with the protections afforded by the NLRA, refusing to cross the line can have consequences and is, therefore, an act of personal courage in support of the picketers and the labor movement.

Here are some key points to remember when making your decision.

- If you are a union member, you can legally refuse to cross the picket line:
 - By doing so you are engaging in a sympathy strike.
 - As is with other types of strikes, strikers can be permanently replaced but not fired.
 - Permanently replaced workers are placed on a preferential recall list until a suitable vacancy becomes available.
 - If the picket is for an unfair labor practice strike, a replaced worker must be returned to work as soon as they make an unconditional offer to return.
 - If your contract contains a "no strike" clause that expressly bans sympathy strikes, you can be disciplined for honoring a picket line, but normal rules of discipline apply; talk to your steward or union representative.
- If you are not a union member, you can legally refuse to cross a picket line, but you will not have a union to represent you if your employer disciplines you for your refusal. Contact the National Labor Relations Board on-line at www.nlrb.gov or by phone at (617) 565-6700.
- Managers can be fired for refusing to cross picket lines. If you are unsure whether you are a manager, ask someone who has authority over you at work to clarify this for you.

- Customers may refuse to cross a picket line and picketers have the right to ask customers to honor their picket but should not intimidate, block customer access, disparage a company's product, or say anything that is untrue or casts the product in a false or misleading light.
- No law can keep your employer from taking an adverse employment action against you, but you have the legal right to refuse to cross a picket line and your employer must have a legitimate business reason for terminating your employment other than your decision to honor a picket line. Letting your employer, and coworkers, know in advance that you will not cross a picket line may help your case if your employer decides to discipline you later.
- Union members can be disciplined by their union for crossing a picket line but unions may not discipline members if refusing to cross a picket line clearly violates the no-strike clause of the contract the covers the member in question.

Important Laws and Cases

National Labor Relations Act Section 7 codified at 29 U.S.C. §157.

Picket lines must be legally established and not constitute a secondary boycott under 8(b)(4) or an illegal recognition picket in violation of 8(b)(7). Refusing to cross an illegal picket line is also illegal.

NLRB v. William S. Carroll, Inc. 578 F2d 1 (1st Cir. 1978). Firing an employee for refusing to cross a legal picket line is an unfair labor practice but an employee may be fired if there is a legitimate business reason for termination where, as in this case, the employee could have opted not to drive a route that required crossing a picket line but accepted the route knowing it would require him to cross a picket line and later refused to cross the line.

Food and Commercial Workers Local 1439, 275 NLRB 30 (1985). The union cannot discipline you for failure to honor another union's picket line if your own union's contract has a "no strike" clause barring sympathy strikes.

Butterworth-Manning Ashmore Mortuary, 270 NLRB 1014 (1984).

The employer had a contract that forbid the employer from terminating employees for sympathy strikes. The Administrative Law Judge found that the employer violated the NLRA by replacing an employee and refusing to reinstate her after she made an unconditional offer to return to work.

Redwing Carriers Inc., 137 NLRB 1962, enforced by 325 F2d 1011 (DC Cir. 1963).

If there is no evidence that the employer terminated an employee due to anti-union sentiment or in retaliation for the employee's refusal to cross a picket line then the termination may be deemed legal if evidence shows the termination was based on a legitimate business reason.

References

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Robert A. Gorman and Matthew W. Finkin, *Basic Text on Labor Law Unionization and Collective Bargaining* (St. Paul, MN: Thompson-West, 2004).

Robert M. Schwartz, *Strikes, Picketing and Inside Campaigns a Legal Guide for Unions* (Cambridge, MA: Work Rights Press, 2006).



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