

Appropriate Responses to Different Types of Industrial Actions

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I. Introduction

Labor rights are among the basic rights guaranteed by the Constitution of the Republic of Korea for citizens. In the event an employer suffers damage due to a collective action of a labor union, it cannot claim compensation from the union or its workers (Article 3 of the *Trade Union and Labor Relations Adjustment Act*, hereinafter the “*TULRAA*”). Collective actions by labor unions aiming to improve working conditions are not subject to criminal punishment under Article 20 of the *Criminal Act* (Article 4 of the *TULRAA*). However, if a labor union's actions during a dispute are unlawful, those unlawful actions become subject to civil and criminal liabilities, as well as disciplinary action by the employer. For such actions to be considered legitimate labor actions, the justifiably established union, purpose, procedures, and means and methods must all be justifiable. In other words, for a workers’ dispute to be deemed justified, it must meet these four criteria: ① The independent union must be an entity eligible to negotiate collectively; ② The purpose should involve fostering autonomous negotiations between labor and management for the improvement of working conditions; ③ It must commence only if the employer refuses collective bargaining on specific demands for improving working conditions and should follow the legal procedures, including obtaining the prior consent of union members, unless there are special circumstances otherwise; ④ The means and methods must be in harmony with the employer's property rights and should not involve or condone any acts of violence.¹

Labor union actions during disputes involve collective refusal to provide labor, which can be divided into general strikes (full strikes) and partial strikes. Secondary actions such as slowdown strikes, work-to-rule, workplace occupations, and picketing lines accompany these dispute actions. Regarding the methods and means of these labor actions, labor union laws have various restrictions: ① Labor actions are prohibited if

¹ Supreme Court ruling 99do4837, Unanimous Decision by Full Bench, October 25, 2001.

they violate laws or societal order (Article 37 of the *TULRAA*); ② Acts that disrupt the entry of individuals unrelated to the dispute or those seeking to provide labor and acts that interfere with operations or that disrupt regular work processes while soliciting or persuading participation in dispute actions through violence or coercion are prohibited (Article 38, Paragraph 1); ③ Labor actions must not hinder the regular performance of tasks aimed at preventing damage to workplace facilities, spoilage of materials, or products (Article 38, Paragraph 2); ④ Acts of violence, destruction, or occupation of facilities as designated by presidential decree that are related to production facilities or other major operations are prohibited (Article 42, Paragraph 1);² ⑤ Actions that suspend, abolish, or interfere with the normal maintenance and operation of safety facilities are prohibited (Article 42, Paragraph 2); ⑥ Actions that impede the legitimate maintenance and operation of essential duties are prohibited (Article 42, Paragraph 3).

These fundamental principles of legislation on labor actions explain how they specifically apply in actual strike-supportive measures like secondary actions such as slowdown strikes, work-to-rule, workplace occupations, and picketing.

II. Slowdown Strikes

1. Concept

Work slowdowns or deliberate reductions in work efficiency by labor unions, where employees formally provide labor but intentionally perform tasks slowly, incompletely, or in a sloppy manner to reduce productivity, are termed "slowdowns" (태업). Slowdowns differ from full strikes (파업) in that they involve partial non-fulfillment or incomplete fulfillment of labor, rather than a complete refusal to provide labor.

2. Criteria for validity of slowdown strikes

Unlike strikes, slowdowns occur within the workplace where employees only partially follow the employer's instructions. Therefore, they should, in principle, abide by the employer's managerial rights regarding labor instructions. Refusal to perform tasks not covered by slowdown intentions, contrary to the union's intentions, might result in violation of Article 37, Paragraph 2 of the *TULRAA*, leading to disciplinary action as per employment regulations.

1) Case #1: Implementation of lawful operations following resolutions by the union's

² Facilities where occupation is prohibited include electrical, computer, or communication facilities, railway vehicles or tracks, places storing hazardous materials, among others. Occupation of these facilities could result in the suspension or cessation of production and other major operations or areas of business (Article 21 of the *Enforcement Decree to the TULRAA*).

operating committee resulted in hindering the normal functioning of the company's operations, seemingly to advocate for the workers' demands. This could be seen as a form of dispute, but it failed to comply with such requirements as the union membership needing to vote on whether to take such action and regulations on cooling-off periods (conciliation procedures) and reporting the labor dispute, making it an illegal act.³

2) Case #2: Setting a daily income cap of KRW 50,000 for a taxi driver and intentionally controlling it to cause substantial financial losses for the company is disruptive. Additionally, influencing operations to match the income cap, like operating sparsely populated coastal routes or engaging in gambling during work stoppages, seems to align with a form of dispute (slowdown strikes or partial strikes). These actions appear to violate regulations outlined in the *TULRAA*.⁴

3. Slowdowns and wage reductions

Even during slowdowns, the principle of "no work, no pay" naturally applies, allowing for wage reductions. The extent of such wage reductions can be based on the proportion of work refused as per the usual workload specified in the employment contract or other agreements. Calculating the proportion of work refused requires comprehensive consideration of the details of the work, type of tasks involved, and other relevant factors. According to Article 44, Paragraph 1 of the *TULRAA*, the employer is not obligated to pay wages to employees for times while they participate in labor actions and do not provide labor accordingly. Slowdowns involve partially withholding the labor agreed upon in the employment contract, enabling wage reductions for the corresponding portion on the part of the employer. In determining the level of reduction, factors such as how much labor was withheld, how much output was reduced, and the company's wage calculation method should be considered if not stipulated in the related collective agreement or employment rules.⁵

4. Slowdowns and workplace closures

When a labor union withholds some labor as part of a slowdown, the employer can rightfully refuse to accept any labor through workplace closures and thereby be relieved of the obligation to pay wages. The legitimacy of workplace closures due to slowdowns is determined after considering specific circumstances such as reasonableness, attitudes during negotiations and progress between labor and management, the nature and duration of the slowdowns, and impact of the slowdown on the employer.

³ Supreme Court ruling on May 15, 1990, 90do357.

⁴ Supreme Court ruling on December 10, 1991, 91nu636.

⁵ Labor Administrative Guidelines: Nojo 68110-40, February 4, 2003.

III. Work-to-Rule

1. Concept

Work-to-rule refers to the collective actions of labor unions or groups of workers within a workplace, aimed at supporting their demands by strictly adhering to laws, collective agreements, or regulations that are not usually strictly followed. This behavior involves exercising the rights granted to workers collectively, thereby disrupting the normal functioning of business operations. In essence, it involves intentional, exaggerated adherence to laws, collective agreements, or employment rules to decrease work efficiency or performance, pressuring the employer to concede to their demands. Generally, work-to-rule operates similarly to strikes or slowdowns. It commonly manifests as strict adherence to regular working hours, refusal to do overtime or work on holidays, collective use of vacation days, strict and literal compliance with safety and health regulations in all situations, and other similar actions.

For instance, compelling union members to collectively take vacation days during negotiations on renewing a collective agreement aims to secure a favorable position, constituting a form of confrontational legal advocacy. Similarly, nurses, particularly those required to wear specific attire for identification and hygiene reasons, not adhering to the prescribed attire collectively, disrupts normal hospital operations and also falls under this category of confrontational work-to-rule.⁶

Additionally, if workers, to support their demands, collectively refuse customary holiday work which they have traditionally performed, this constitutes disruptive behavior affecting normal company operations, qualifying as a form of labor action.⁷

2. Legal nature of work-to-rule

For work-to-rule actions to be considered legitimate labor actions, the following must be evident:

① Purposeful Intent: It should aim to support the labor demands in question; ② Collective Action: It must be a collective effort; and ③ Disruption of Normal Operations: It should result in "disruption of normal business operations." Here, "normal operations" do not refer strictly to "lawful operations" but rather to activities that are practically or customarily carried out. Thus, any action that disrupts these practical or customary operations is considered a form of labor action. However, when specific labor-management practices are established, while the parties should generally

⁶ Supreme Court ruling on June 14, 1994, 93da 2916.

⁷ Supreme Court ruling on December 26, 1997, 95nu8427.

comply, if these practices blatantly violate mandatory regulations, adherence cannot be enforced. Actions demanding correction in line with legal regulations due to established practices blatantly violating these regulations are not deemed labor actions. The legitimacy of work-to-rule as a form of labor action is judged based on general criteria for assessing the legitimacy of labor actions.

For example, refusing overtime work typically conducted according to collective agreements, employment rules, labor contracts, or customary practices is considered disruptive to normal business operations and qualifies as a form of labor action. However, if the actual practice of overtime work blatantly violates legal regulations stipulated in labor standards, demanding corrective actions in compliance with the law doesn't constitute a labor action. In such cases, the labor beyond legally mandated overtime hours does not need to be provided.⁸

3. Types of work-to-rule

(1) Refusal to work overtime or on holidays

Workers collectively refusing, in support of their labor claims, to work overtime or on holidays as normally done in alignment with collective agreements, employment rules, labor contracts, or customary practices, which in turn has the potential to disrupt normal business operations, qualifies as a form of labor action.

1) Case #1: Refusal to engage in customary practices

Even if overtime work is typically agreed upon by the parties involved, if workers are instigated to collectively refuse overtime they have traditionally performed, thereby impeding normal business operations, this is considered a form of labor action.⁹

2) Case #2: Refusing to work overtime

Despite a collective agreement allowing for holiday work due to unavoidable work circumstances or production disruptions, workers collectively refuse to work on holidays without valid reasons, despite the customary nature of the company's directive to work on holidays. This refusal disrupts normal business operations and qualifies as a labor action.¹⁰

3) Case #3: Strict adherence to stipulated working hours

For instance, if a collective agreement mandates that employees start work at 9:00 AM, but the union instructs its members to all arrive precisely at 9:00 AM, causing delays in operations such as repairs due to a sudden influx of employees at that hour, this disrupts normal business operations. This collective action, intended to support workers' labor

⁸ Labor Administrative Guidelines, Hyup-Lyuk 68140-208, May 29, 1997.

⁹ Supreme Court ruling on October 22, 2001, 91do600; Supreme Court ruling on February 27, 1996, 95do2970.

¹⁰ Supreme Court ruling on July 9, 1991, 91do1051.

claims, obstructs the company's usual operations and qualifies as a labor action.¹¹

(2) Collective use of annual leave and similar actions

Collective utilization of annual leave by a labor union to advocate for its claims, obstructing normal business operations, qualifies as a form of dispute action. Although it might formally appear as individual workers exercising their holiday rights, the collective need for holiday usage becomes unlikely, and could be viewed as an infringement on the employer's right to adjust the timing of employee holidays.

Instances that qualify as labor actions are those where collective annual leave is used with the intent to disrupt normal business operations. Using collective leave solely to interfere with work is not considered a legitimate action.

1) Case #1: Misuse of monthly paid leave

If a worker, without having a genuine purpose to take leave, exploits the monthly paid leave for other motives, this is not considered legitimate use of holiday entitlements.¹²

2) Case #2: Collective use of annual leave to gain advantage in negotiations

Failing to follow proper procedures when utilizing collective annual leave during contract negotiations to cause the employer severe financial loss and undermine the company's normal operations towards increasing the workers' negotiation strength constitutes an illegitimate labor action.¹³

(3) Work-to-rule in safety and health regulations

Safety and health work-to-rule entails adhering strictly to safety regulations and general rules to ensure safety, indirectly impacting operations. If such stringent adherence disrupts work to advocate for workers' claims, it can be deemed a form of labor action. Whether strict compliance with safety rules constitutes a labor action depends on whether it genuinely aims at improving safety or merely serves as a means to disrupt work. If the strict adherence to safety rules surpasses what is objectively necessary for safety or aims solely at hindering work operations, it is considered a form of labor action.

IV. Workplace Occupations

1. Concept

¹¹ Supreme Court ruling on May 10, 1996, 96do419.

¹² Supreme Court ruling on March 13, 1992, 91nu10473.

¹³ Supreme Court ruling on April 23, 1993, 92da34940.

Workplace occupation refers to a form of labor action where workers remain in the workplace facilities, engaging in continuous rallies or demonstrations to increase the effectiveness of primary labor actions like strikes. Occupying workplace facilities is an active form of labor action. When the occupation involves only a portion of the workplace facilities and does not block the employer from accessing, controlling or supervising the work facilities, it can be considered a legitimate labor action. However, if the occupation completely and exclusively blocks access to non-union individuals or prevents the employer from managing, leading to work disruptions or chaos, it surpasses the limits of legitimacy.¹⁴

When union members occupy the main entrance of a factory and the corridors leading to the factory manager's office, making it nearly impossible for outsiders to enter the main building and causing significant disruption to the company's normal operations during lunchtime or at night by chanting slogans or singing, such actions by union members are considered illegal labor actions.¹⁵

2. Justification of workplace occupations

During labor disputes, strikes often accompany sit-ins at workplaces as a means to secure and strengthen the efficiency of work stoppage. Sit-ins themselves cannot be deemed illegal. If the occupation does not completely block the employer from entering or exiting the facilities and does not interfere with company operations but remains a partial and coexisting occupation, it is recognized as justified.¹⁶

However, occupying the employer's business facilities entirely and exclusively over an extended period infringes upon the employer's facility management rights and cannot be justified.¹⁷

1) Case #1: SsangYong Motor's labor union occupied the workplace from May 26, 2009, to August 6, 2009, utilizing violence and occupying the factory completely and exclusively. Due to this overstepping of legitimate action, the defendant had the obligation to compensate the plaintiff for its losses.¹⁸

2) Case #2: The defendant conspired with around 70 other labor union members to physically occupy the company's factory gate, securing it with locks they had acquired on their own, partially or completely controlling the access of transport vehicles utilized by the company or its branch managers. Even if these actions were taken by the labor

¹⁴ Supreme Court ruling on June 1, 1991, 91do383.

¹⁵ Supreme Court ruling on January 15, 1991, 90snu6620.

¹⁶ Supreme Court ruling on July 14, 1992, 91da43800.

¹⁷ Supreme Court ruling on July 14, 1992, 91da43800.

¹⁸ Supreme Court ruling on June 15, 2023, 1019da38543.

union to counter the company's attempts to neutralize their declared strike, their methods involved active interference with work, not merely passive disruption. Thus, it surpassed the justified limits of labor actions.¹⁹

4. Facilities where workplace occupations are never justified

Article 42, Paragraph 1 of the *TULRAA* prohibits the occupation of "facilities related to production, other major tasks, and facilities equivalent to them as designated by presidential decree." Presidential decrees outline specific facilities where occupations are prohibited, including electrical, computing or telecommunication facilities, railway vehicles or tracks, and places storing hazardous substances. Other facilities subject to prohibition include those whose occupation could lead to the suspension or termination of production or other major tasks (Article 21 of the *Enforcement Decree to the TULRAA*).

However, if an employer hires individuals unrelated to the affected business to carry out tasks disrupted by the labor dispute, striking workers may occupy key facilities needed exclusively by the substitute workers. In this scenario, if an employer violates the prohibition against substitute labor stipulated in Article 43, Paragraph 1 of the *TULRAA*, worker occupation of facilities to prevent substitute labor is considered a justified act under the Article 20 of the *Criminal Act* (Justifiable Acts) concerning criminal liability related to obstruction of business.²⁰

V. Picketing

1. Concept

Picketing refers to the act where a labor union obstructs the entry of non-union members or others to the workplace and calls for support for a strike. Essentially, it involves encouraging workers to participate in the strike while gaining public support for the union's demands, aiming to economically impact the employer more effectively. Picketing itself is not an independent form of labor action but primarily serves as a supplementary means carried out to enhance the effect of strikes or boycotts.

Picketing entails appealing to non-striking workers or third parties to support the strike and align with it. Therefore, it usually takes the form of an appeal or surveillance but can manifest in various ways based on specific needs. Commonly, methods involve installing placards at the workplace entrance, using loudspeakers, or distributing

¹⁹ Supreme Court ruling on July 9, 1991, 91do1051.

²⁰ Jang Seung-hyuk, "Permissible Scope and Criminal Liability of Collective Actions by Workplace Occupation," *Labor Law Research*, Vol. 48, First Half of 2020, Seoul National University Labor Law Research Society, pp. 198-199.

printouts to persuade and encourage alignment.

Picketing involves urging those not participating in the strike to cooperate with it or prevent actions that obstruct the strike. It is employed by labor unions as an auxiliary method to effectively execute their labor actions. Typically, it involves union members hanging placards at the company entrance or holding signs with slogans or demands while stationed at the entrance and voicing their demands.

Strikes, as part of labor action, may be accompanied by picketing as a supportive measure or simultaneous occupation of the workplace for rallies and protests, and picketing itself cannot be considered illegal. However, in such cases, picketing should ideally involve peaceful persuasion within the realm of verbal and written communication to persuade those who continue to work to instead join the strike. Resorting to physical force, threats, or coercion is not justified.²¹

2. Criteria for determining the legitimacy of picketing

(1) Picketing is considered legitimate only when peaceful persuasion methods, such as verbal and written communication, are employed toward workers who refuse to participate in a strike and wish to continue working.

During labor actions, strikes sometimes accompany picketing as a supportive measure to enhance the effectiveness of work stoppages. While picketing itself cannot be considered illegal, when it comes to those who do not join the strike and wish to continue working, legitimacy is acknowledged within the bounds of peaceful persuasion and verbal and written communication. Resorting to physical violence, threats, or coercion is not justifiable.²²

(2) According to Article 38, Paragraph 1 of the *TULRAA*, actions obstructing the normal entry, work, or operation of prospective workers at the workplace are unjustifiable.

In a situation where the plaintiff obstructed the access of employees attempting to enter the company's premises for about a month, using force to block the entrance, it disrupts the company's operations. Hence, such strike action cannot be considered socially justified due to its method or means, hence qualifying as an illegal action.²³

- 1) Case #1: Assaulting, threatening, pressuring or otherwise harassing employees who wish to continue working to stop working:

The labor union occupied various branch offices of an insurance company during working hours or very close to them, involving 16 to 160 union members who chanted

²¹ Supreme Court ruling on July 14, 1992, 91da43800.

²² Supreme Court ruling on October 12, 1990, 90do1431.

²³ Supreme Court ruling on September 30, 1994, 94da4042.

slogans, sang labor songs, verbally abused the CEO, physically restrained employees, and chased them away. These actions, even if considered labor actions, went beyond the acceptable limits of law, infringing on property rights through comprehensive and exclusive facility occupation or by employing threats (grabbing by the neck and making intimidating statements) and violence, which fall outside the boundaries of legitimate labor actions.²⁴

2) Case #2: Obstructing workplace entry, such as closing the main gate:

The labor union, in collusion with its members, forcibly occupied the entrance of the company's factory by locking it with their own locks, preventing access by the company's security personnel, controlling the entry and exit of transportation vehicles used by the company and the managing agents of the company's, thereby disrupting the product transport operations of the company or its agents. This kind of action, which actively disrupted work through various forms of coercion or physical force, exceeded the legitimate boundaries of labor actions.²⁵

3) Case #3: Using force or threats to participate in a strike:

The labor union occupied parts of an office, engaging in night vigils with groups of around 10 members taking turns and making noise, shouting slogans or singing songs, playing musical instruments, causing disturbances, verbally attacking and threatening employees who were not participating in the strike, actively urging them to join, and damaging the functioning of the equipment on-site. These actions, extending beyond the boundaries of legitimacy in terms of methods and means used during labor actions, were unjustifiable.²⁶

4) Case #4: Actively obstructing the work of other workers or third parties:

The picketing of workers participating in a strike was directed at those who continued working. While such actions are viewed as part of alliance strikes to achieve effective labor actions, obstructing the mailing operations of notifications to everyone by hiding and confiscating all notifications at the worksite cannot be justified even as a form of supportive picketing during a strike.²⁷

5) Case #5: Individuals in a third-party position picketing in specialized areas:

Considering the airport's significance in prioritizing the safety and order of domestic and foreign individuals, the prohibition of unauthorized occupation of airport facilities under the former *Aviation Act*, and the control and supervision of airport facilities' security and safety by the airport corporation under supervision of the Minister of Land, Infrastructure, and Transport, picketing actions carried out by the defendant and others

²⁴ Supreme Court ruling on November 10, 1992, 92do1315.

²⁵ Supreme Court ruling on July 9, 1991, 91do1051.

²⁶ Supreme Court ruling on May 8, 1992, 91do3051.

²⁷ Supreme Court ruling on July 14, 1992, 91da43800.

as part of the union's activities at the airport, despite being asked to discontinue the protest and vacate the facilities, persisted, and continued to be regarded as unlawful acts in the contractual relationship between the subcontractor, the airport corporation, and the workers' positions as third parties.²⁸

VI. Conclusion

By examining the specifics of secondary actions during strikes, such as slowdown strikes, work-to-rule, workplace occupations, and picketing, we've delved into the lawful means and methods of legitimate labor actions. Collective action rights, constituting the right of labor unions to strike, are legally guaranteed. However, if such rights to strike are abused by labor unions, those labor unions may face civil and criminal liabilities as well as disciplinary action from employers. Therefore, labor unions should exercise special caution in the methods and means they employ during strikes to ensure those strikes remain lawful and are conducted within permissible boundaries, thus safeguarding both their rights and responsibilities.

²⁸ Supreme Court ruling on November 12, 2020, 1016do8627.