



## THE PUBLIC SECTOR

### Public-sector strikes: employer preparation in a nutshell

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With the economy in recovery, unions are pushing to regain the pay losses their members suffered during the recession. Mindful of the need to reinstate essential programs lost during the recession, most public employers are carefully balancing labor costs against the cost of recovering needed public services and aren't inclined to give employees a full "catch-up." The result of this combo: a heightened prospect of labor strife in public-sector workplaces and the possibility of strikes.

In this context, a recent posting by a union organizer for the Service Employees International Union (SEIU) is revealing: The union has implemented a "strike school" to enlighten union activists about how the mere threat of a strike can pressure employers into making concessions at the bargaining table. Touting the benefits of the school's curriculum, the article observes that in some jurisdictions, all it took was a strike vote and earnest preparations for a strike to obtain concessions.

We start with the premise that with three exceptions—strikes by police officers, strikes by firefighters, and strikes that present an imminent risk to health and safety—public-sector strikes are lawful if they occur after impasse procedures are exhausted.

In anticipating and working to ward off threatened strikes, management has three goals:

- (1) Preventing a strike if possible;
- (2) Maintaining essential operations under strike conditions; and
- (3) Not allowing the strike to cause the employer to yield important management interests or its position in bargaining.

#### **Key elements of strike planning/prevention strategy**

Strike prevention starts with steeling elected/appointed officials and top management against the fear of strikes. This is done by developing a strike contingency plan, followed by consensus building in closed-session meetings and reinforcing the elected board's confidence in the agency's team and the agency's negotiation strategy.

Strike prevention also requires agencies to create a strike response team that plans and executes a counter-strike strategy. This must be an intense agencywide effort that relies on the agency's legal, operational, and leadership resources to diagnose likely strike targets and assess appropriate responses, including maintaining essential operations.

Strike planning further requires attention to internal and external publicity explaining why the employer's negotiation position is fair and consistent with the public interest. There's nothing wrong—and everything right—with telling employees the employer's position in bargaining and explaining the lawful consequences of striking, including loss of pay and often a prohibition against using sick or vacation leave during strike days. Even polling employees about their strike participation may be lawful, provided employers give them assurance against reprisal for their responses.

Part of strike planning requires assessment of whether the strike is lawful or unlawful and whether the employer should seek injunctive relief through the Public Employment Relations Board (PERB). If a strike would present an imminent threat to public health or safety, employers almost always initiate a request for injunctive relief with PERB. In non-health/safety situations, however, resorting to PERB isn't always a good idea, because union-friendly PERB is not reliably on the side of employers in strike situations.

Strike planning/prevention is always tied to the employer's negotiation strategy and to considerations of timing. When employers make important concessions too early in a heated negotiation situation, they are forfeiting points that could have helped reach closure if the concessions were offered at a later time.

Finally, strikes are usually a prelude to settlement of labor disputes. When entering a strike situation, there should be a commitment at all levels of an organization that the employer's bargaining position won't change as a result of the pressure of a strike.

#### **Bottom line**

Here are five essential steps for preparing for strikes:



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- (1) Develop a full contingency plan as early as possible when faced with the threat of a strike.
- (2) Don't abandon your bargaining position because of strike threats. Doing so will only intensify the union's commitment to current bargaining demands and encourage strike threats/action in subsequent negotiations.
- (3) Remember that while strikes can disrupt an agency's operation, a strike often has a more destabilizing effect for employees, who forfeit their wages during the strike. Typically, employers have more leverage to wait out a strike than financially burdened union members.
- (4) Don't interrogate or threaten employees with discipline or other adverse action if they participate in a lawful strike.
- (5) Most important—after a strike, focus on healing and restoring good relationships.

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