

CSBA Advisory for Board Members

Strikes and Other Concerted Activities During the Pandemic

This Advisory provides school board members an accessible resource when bargaining units threaten to strike or take other actions in opposition to reopening schools for in-person instruction. This Advisory describes the general types of legally protected and unprotected activities that might be utilized by employees to dissuade schools from opening. It is not a replacement for consultation with legal counsel, as each bargaining relationship is unique and informed not just by the law, but also by the collective bargaining agreement and by the status quo.

When a Union May Lawfully Strike

“Concerted activities” are a range of job actions by employees, some are presumptively lawful and others presumptively unlawful. A strike is generally defined as work stoppage by union members endorsed by the bargaining unit. The Public Employment Relations Board (PERB) has ruled that surprise strikes create an unlawful pressure tactic so advance notice to the employer is required before conducting a lawful strike.



POST-IMPASSE STRIKE

If parties are negotiating and do not reach an agreement, one or both of the parties may declare impasse where future bargaining would be futile and file for impasse with the PERB. Impasse may be reached even where the underlying decision was not subject to negotiations, but the bargaining unit had demanded to bargain the impacts of the decision.

- ▶ During impasses, parties are obligated to work through the impasse process below until/unless they reach tentative agreement.
- ▶ If the parties do not settle after the release and consideration of the fact-finding report, in most cases the union, following notice, may then lawfully strike. The right of employees to strike may be limited by language in the bargaining agreement.

UNFAIR PRACTICE STRIKE

PERB has determined that, although pre-impasse strikes are generally presumed unlawful, such a strike may be lawful where 1) the district committed an unfair practice, and 2) the district’s unfair practice was a substantial motivating factor leading to the strike.

During the pandemic, districts may receive unfair practice charges around bad faith bargaining related to employee safety prior to the initiation of an unfair practice charge strike.

The Statutory Impasse Process



Mediation



Fact-finding hearing



Fact-finding report released



Post-fact-finding procedures exhausted



District implements its last-best offer



When a Union May or May Not Conduct Other Concerted Activities

UNPROTECTED ACTIVITIES

These are activities that are largely presumed unlawful:

- › **Sick-out** — often called “blue flu” or “chalk dust flu,” is when employees try to disrupt the flow of educational services by calling in sick, usually at designated school sites within the district.
- › **Rolling Strike** — is when the union strikes different work sites on different days.
- › **Ping Pong Strike** — also known as the intermittent strike, is when the union may strike one day, wait three days, and then strike for two days.

A district may request that PERB seek an injunction on behalf of the district to stop any unlawful strike or other work stoppage.

PROTECTED ACTIVITIES

These are activities that are largely presumed lawful:



- › **Protesting** — Employees may participate in activities outside of the workday to communicate dissatisfaction with the employer. For example, absent a local rule to the contrary, bargaining units may **picket, protest,** or **leaflet** at school board meetings, near school property, and at the homes and businesses of board members and administrators.



- › **Work to Rule/Contract** — Employees may deliberately follow every collective bargaining section, rule, policy, or procedure of the employer. In some districts, back-to-school night, open house, substitute assignments, etc., are voluntary and teachers “work to the contract” and refuse to participate.



- › **Buttons/Clothing** — Employees may wear union buttons/clothing in the workplace during the workday absent a showing by the employer that the union buttons/clothing are disruptive. Wearing union buttons/clothing advocating bargaining demands or supporting the union are not political activities prohibited by the Education Code.

Questions?

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