

FREQUENTLY ASKED QUESTIONS ABOUT STRIKES INDEX

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FREQUENTLY ASKED QUESTIONS ABOUT STRIKES

As you know, a strike has never been a goal for CUEA. It is the CUSD Board of Education's harsh and dictatorial refusal to bargain with us in good faith that is creating chaos for education in Capistrano.

The board's unilateral imposition of egregious salary and benefits cuts are not only well beyond the scope of what the fact finder recommended as reasonable, they exceed those in settlements between teacher's groups and school boards in comparable school districts throughout Orange County.

Most importantly, the CUSD board is the only one in Orange County to demand *permanent* cuts, putting Capistrano's teachers in a perpetual economic free fall that will cripple the community's ability to attract and retain quality teachers into the future.

So while we do not want to strike, the board has left us with no viable alternative other than rolling over, effectively giving up on the collective bargaining process in Capistrano . . . unless public pressure can bring the board back to the table, where CUEA remains ready and willing to bargain.

It is natural that CUEA members have many questions related to a potential strike, should a majority of unit members vote to authorize one.

The following questions and answers provide some of the details:

WHAT IS THE BOARD'S ULTIMATE OBJECTIVE?

This is a question that continues to be asked by our members. While we can only guess at their ultimate objective, we can use their actions as an indication of their beliefs. The school board exhibits no respect for the job we do every single day, they have no respect for the students, they have no respect for parents, nor do they seem to care whether or not they destroy the proud school system that benefits our community.

Several teachers want to know how a strike will benefit them vs. taking the permanent pay cuts.

The answer is two-part:

First, if we accept the superintendent and school board's unilateral imposition, forcing us to work under terms and conditions to which we have not agreed, we will have given up our right under the law to require the district to negotiate in good faith. The school board will have learned that it does not have to bargain in good faith with us ever again.

Second, is the practical – a 10% permanent pay cut, the equivalent of a month's pay – will continue into the future and set you back financially for years and years as we attempt to negotiate back to the old levels. For some the imposition will lower their retirement payments. It will encourage the school board to continue to use your paycheck to balance their budget.

Standing up for ourselves, the students, and the beliefs we hold dear is the right thing to do. We know that bullies are fundamentally cowards and if we allow them to get their way without a challenge, it will only encourage them to continue their bullying behavior. We would not tolerate children bullying other children; neither should we tolerate the board's abuse of power.

WHAT IS AN ACCEPTABLE SETTLEMENT and WHY IS THIS HAPPENING?

How close does the district's offer have to be for us to accept, or how far away for us to decide to call a strike?

The CUEA Representative Council unanimously accepted the fact finder's report as the basis of a settlement. Within that framework, we believe a fair and reasonable settlement can be reached, if the district will actually negotiate. CUEA has maintained that the event that would trigger a recommendation to the membership to strike would be a decision by the school board trustees to unilaterally impose a permanent 10% pay cut.

Any decision regarding strike or settlement is ultimately in the membership's hands. You will vote and decide if the offer is close enough to ratify.

WHAT IS THE PERCENTAGE NEEDED TO STRIKE – WHAT IS THE PROCESS FOR DECIDING?

What percent of "yes" strike votes are needed for the union to go forward with a strike?

Per CUEA governing document, CUEA Executive Board shall determine the percent needed to call a strike. In most circumstances the percent needed is a majority of those voting.

How much lead time will we have?

A decision to call the strike, made by the CUEA Executive Board after an authorization vote by the CUEA membership, will be based on a number of factors. It is likely that you will have several days between the decision to call a strike and the day it commences.

Will we have to clear out all of our personal belongings from our classroom?

Anything that you value should be removed. There is no guarantee that any strike breakers will respect your personal possessions. In addition, anything of yours that would aid the strike breaker should be removed.

When the date gets close, we will provide specific instructions on preparing your classroom.

When might a strike occur? Please explain the events that need to take place before a strike?

CUEA remains committed to reaching a fair settlement through negotiations, even though we have the right to strike right now. Since the board has now unilaterally imposed a series of cuts, CUEA members need to take a vote authorizing the CUEA Executive Board to call a strike in the event that public pressure does not force the board back to the bargaining table. An actual strike would be called at a time that makes strategic and tactical sense (it would not necessarily be immediately after a positive strike authorization).

Could the strike last two to three months?

It is very unlikely that a strike would last that long, both because our members will determine when enough is enough, but more importantly, the parent community would become very active in getting the parties to settle.

Can we be "locked out" by the School Board?

No.

Are there strategies other than a traditional strike?

All of us, leaders and your professional association staff operate with a goal to reach a fair settlement. The leadership of CUEA, with the support of professional staff, will do everything possible to avoid a strike.

Efforts to inform parents and the public are intended to add their voices to our call for the school board to settle. Tactics like working to rule can be used again and extended to cover more of the free work we do every day. Walking and talking in neighborhoods can broaden the knowledge and support for our efforts.

There are other strategies and tactics that will be considered and used depending on the circumstances.

The goal is not and never has been to strike. The strike is a tactic used as the last resort.

If I cross the picket line, can the district force me to do anything other than my regular duties?

Yes. Anyone who crosses the picket line and reports to work as a strike breaker is subject to whatever assignment the district decides. It could be in your regular classroom or in a different room, with your regular or with different students, or you could even be assigned to a different school site. You should not expect to do your normal work.

Can subs administer the STAR test?

Yes, they can administer the test according to the state rules, but they need to be trained to proctor the exam.

In the event of a strike, are we still responsible for grades?

You are responsible for assignments you have given and graded before the strike begins. After the strike begins, you have no responsibility for grading.

Can teachers use sick days or personal days to fulfill obligations to students and parents for activities such as the middle school trips to Washington, DC?

No, strike is a work stoppage. Going on school trips would be the same as crossing a picket line. Do not be surprised if the district chooses to stop all extra curricula activities during a strike.

If we strike, how does it affect graduating seniors (especially AP/IB candidates)?

AP students will miss your instruction during a strike. It is unlikely that a strike breaker will be capable of teaching the AP programs.

WORK DAYS, DO WE GET TO MAKE THEM UP

Making up the days missed while being on strike is a bargaining issue.

PARENTS WILL HAVE A LOT OF DECISIONS TO MAKE IF THERE IS A STRIKE

Parents will have a choice to make after looking at the facts. They will ask themselves if their children can get a quality education supplied by strike breakers who may or may not be qualified to teach at all.

Parents will have to consider if is it quality education to throw the students into the multi-purpose room and show movies, or have them complete generic lessons with classes of mixed grades that may or may not support what is normally expected of the students?

Parents will need to decide whether their children are safe in an environment where strangers are the teachers.

If parents demand that the school board settle and that their children be provided with a real education, not baby-sitting, the strike will be shorter and the options greater.

CUEA/CTA/NEA COMMITMENT

Will interest-free loans be available to striking members?

Yes, there are interest-free loans available to CTA members who participate in the strike. The loans are available after five days of striking, retroactive to the first day. The member must have been on the picket line (or doing other approved and recorded activities for the CUEA) to be eligible. The amount available is currently \$70 per strike day.

What will CUEA and CTA/NEA do to assist striking teachers?

Teachers who strike will be entitled to the full protection of CTA/NEA legal services. Reprisals against any teacher or group of teachers who engage in authorized strike activities will not go unchallenged. Further, we will not advise teachers to participate in any unlawful strike activities. Also, CTA leaders and staff from other locals will assist our efforts (much like fire departments that have mutual aid agreements). Staff who specialize in organizing, negotiations, and legal assistance will also be assigned if CUEA members are forced to conduct protected strike activities. CTA is paying for two-thirds of the costs of CUEA crisis organizing. This money is contributed by the over 325,000 CTA members and prevents the cost of the crisis from falling completely on local dues.

THE STUDENTS

Aren't strikes against school boards really strikes against students?

Poor salaries, inadequate working conditions, and constant turmoil drive good teachers out of our district. This hurts students more than would the temporary loss of instruction. The real question is whether we should allow the district to continue the deterioration of the educational system without protest.

SPECIAL EDUCATION ISSUES

Some special education and related services teachers are being told that they have to provide services to their students in the case of a strike. This is wrong, students may have rights to services, but the teacher is not the person/entity responsible for providing the service. That is the district's responsibility. Every special education teacher and related service provider is entitled to exercise their right to participate in a legal strike.

What about the law that says special education students has to have a sub with a special education credential? Who will hold the district accountable for completing the necessary background checks?

Parents will need to demand that a qualified teacher is provided for their child. Principals have a responsibility to determine that only qualified individuals are used to teach special needs students. A principal jeopardizes his/her professional standing if he/she violates law by placing highly vulnerable special needs children in the hands of unqualified people. Individual teachers may also file a complaint if they believe the district is violating the child's rights to special services by assigning an unqualified person to provide the instruction/support.

What happens if we are on strike and I have IEPs that are due – legal deadlines? Are there compliance issues that can cause me to be fired and lose my job?

You are not obligated to prepare or meet about IEPs during a strike. The district either has to do it without you or get a postponement. The district is ultimately responsible for compliance issues

I am a speech pathologist on a preschool assessment team. If we strike, how do the preschool assessments get completed, since speech pathologists do not get substitutes? After I strike, will I just have to pick up where I left off and complete all of the remaining assessments for the year?

When the strike ends, you are expected to work a normal work day/week with a normal workload. It would be a violation of the contract for the district to expect you to do double duty. It is their responsibility to get the work done. You have a right to strike.

If there is a work stoppage, are employees responsible for any special education itinerant therapy?

No.

CAN I BE FIRED BECAUSE I PARTICIPATE IN A STRIKE?

Rumors are being spread by a district intent on sowing seeds of fear and confusion. All of us have concerns about what can happen to our jobs and careers if we go out on strike. Some members fear that this superintendent and this school board will act viciously and illegally, attempting to fire teachers for exercising their right to strike. Some fear that even though the district knows it's illegal, they will try to fire people, hoping to make them go without pay while things are tied up in the courts.

Some principals or other administrators are telling CUEA members that if they participate in a strike they will lose their jobs, not be rehired and even that participation by the teacher is illegal. These threats are illegal, should be noted with time place, who else was there and exactly what was said – this information becomes very important should we have to challenge an adverse decision.

Below is an outline of the law and decisions that define what our rights are:

1. In a very recent decision, the Public Employment Relations Board (PERB) repeated its well established law:

“Once the parties have exhausted the statutory impasse procedures, a union may lawfully engage in an economic strike...”

California Nurses Association v. Regents of the University of California (February 2, 2010) PERB Decision No. 2094-H, p.45. In addition, once the parties have exhausted the statutory impasse procedures (mediation and fact finding), a union may lawfully engage in a strike provoked by the employers' unfair practices. With the delivery of the fact finding report the right of CUEA members to engage in a strike is legal.

2. Public school employees have the right to participate in the lawful activities of employee organizations for the purpose of representation on all matters of employment relations. Cal. Govt. Code Sec. 3543(a). Accordingly, teachers have the right to participate in a strike called by their union after the parties have exhausted the statutory impasse procedures. Moreover, “It is unlawful for a public school employer to impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain or coerce employees” because of their exercise of this right.” Cal. Govt. Code Sec. 3543

3. To our knowledge, no teacher has ever been fired for participating in a legal strike in California since the legislature adopted the collective bargaining law, the Educational Employment Relations Act (EERA), in 1976. Prior to 1976, in one instance, the Jefferson School District attempted, unsuccessfully, to fire teachers for striking.
4. Under the California Education Code (EC), teachers can be dismissed only for specified causes. EC 44932. The district might try to claim that striking in violation of a directive issued by the school board not to strike is "Persistent violation or refusal to obey . . . reasonable regulations prescribed...by the governing board of the school district." EC 44932(a)(7). However, because teachers have the right to participate in a lawful strike after exhaustion of impasse, such a district directive is not "reasonable" and is not "cause" for dismissal under the Education Code.

Even the Association of California School Administrators (Strike) Manual states: *"A few school districts in the state have attempted to put into effect a policy or regulation which would provide for automatic abandonment in the event of an unauthorized absence. In interpreting one such provision, the California Attorney General's office has ruled that such a policy is without effect since there is no statutory provision giving a school district such power to make that type of decision."*

5. In addition, the Education Code specifies timelines and procedures for dismissal. Prior to May 15, the governing board must give the employee 30 days notice of intent to dismiss and an opportunity to demand a hearing before the Commission of Professional Competence (CPC). EC 44934, 44936, 44944. The CPC is a three-person panel that includes a teacher, a neutral and a district administrator (all from outside the district and all trained). At the hearing, the employee is entitled to legal representation provided by CTA's GLS attorneys. The decision of the CPC is deemed the final decision of the governing board. EC 44944.

If the district attempted to dismiss teachers in violation of these statutory requirements, CTA would file Writ of Mandate and Injunction in Superior Court to compel the district to follow the mandatory requirements of the Education Code, and possibly an unfair labor practice charge with PERB alleging discrimination or interference with protected activity.

In sum, while nothing prevents the superintendent and school board from taking irrational acts, even this board is unlikely to attempt violation of every law and regulation governing collective bargaining and teacher dismissal. If they do, CTA will stand with the members.

What about probationary teachers?

The sections above apply to probationary, RIF'd, temporary, job sharing and all other certificated staff represented by CUEA/CTA.

The California Education Code provides that probationary teachers must be given a 30-day notice as to the reasons for a contemplated dismissal during the school year and are entitled to a hearing. However, in a mass action, probationary teachers could not be singled out as a group. Probationary teachers cannot be fired for exercising their right to engage in protected strike activity. Probationary teachers would be entitled to a hearing before the PERB, even in the case of non-renewal, if they were punished for engaging in a "protected" activity. Hundreds of probationary teachers struck in Hayward and Vallejo in 1995 and in San Diego, Compton, and Oakland in 1996 and in Needles in 2000. None were punished or fired for their participation in those strikes.

What about temporary teachers?

The law is clear regarding the rights of temporary teachers who work more than 75% of the school year. Striking would not affect the recall of a temporary teacher. In fact, if the temporary teacher participates in the strike, they are more protected against release, then if they didn't. Temporary teachers could not be punished for exercising their right to engage in protected strike activity.

What about RIF'd teachers?

RIF'd teachers are treated the same as any other teacher. Your rights to recall do not change because of your participation in a strike. The district cannot legally change the established order of rehire. The rehire order established at the RIF hearing determines when you come back, not your principal or the district.

What about Job shares?

Some principals have told job share teachers that if one teacher decides to work during a strike, then both must work during the strike. This is wrong. All teachers will determine their own involvement in a strike. Each teacher would strike or work only those days for which they are scheduled to work. The district can not insist that a teacher come to work on days which are not part of their schedule.

When two teachers sharing a position/job participate in a strike, they would lose pay for those only days scheduled on the calendar when they are on strike. Pay would be deducted based on the percentage of assignment days missed.

As in any of the employment questions, it would be an illegal act for a principal or the district to punish or otherwise discriminate against a person with a job share because of the person's involvement in a strike.

HEALTH INSURANCE, SICK LEAVE

Can the District cancel our fringe benefits if we strike?

No. COBRA, a federal law, prohibits the district from canceling benefits without 30-day notice. In addition, if they do cancel them, COBRA requires that you be given the opportunity to pay the premium yourself. In addition, most companies that provide such benefits also require a 30-day cancellation notice. If an attempt is made to cut off benefits, CTA legal counsel will take prompt action. *No district has ever succeeded in cutting off benefits and very few even threaten to do so.*

As you know the school board passed a strike resolution that threatened to cut off insurances and to treat it as daily earned benefits rather than the monthly earned benefit as currently (and as past practice) exists. Any change to the way benefits are paid is bargainable and would represent a unilateral change in working conditions. CUEA has taken two actions to defeat this threat. We sent the district a demand to bargain over the unilateral change, and we filed an unfair labor practice against the school board's strike resolution adopted to threaten and frighten members.

If I strike, will I jeopardize my retiree health benefits?

No. The contract says that employees must have completed at least 10 years of consecutive service as an employee to the district at the time of retirement in order to qualify for retiree health benefits until Medicare eligibility. Strike day(s) would not jeopardize benefits as you continue to be an employee of the district. Teachers, who have in the past had to take non-compensation days, days in which they were not paid, have received this benefit upon their retirement. Strike days would not be treated differently.

If I become sick while on strike can I take sick leave?

No. While on strike, access to sick leave is not allowed. If you are already on sick leave before the strike begins, you could remain on sick leave until your illness/disability goes away, at which time you would be on strike.

RETIREMENT CONSIDERATIONS

How are teachers ready to retire affected by striking?

Teachers and other education employees who are members of the STRS retirement system stand to lose pennies per (strike) day per month if they participate in a strike. The formula for the calculation of an estimated final compensation is a straightforward calculation.

The basic formula:

The number of service years an employee has in the STRS system (service credit) is multiplied by the average of the highest three consecutive years of service or the highest year of service (for those with 25 or more years of service credit) of the earnable salary and is multiplied by a percent amount (age factor) determined by a STRS table. The age factor tops at 2.4% at 63 years or at age 61 ½ with 30 or more years of service credit.

Facing cuts in pay via a reduced salary schedule or furlough days over the next two or three years (including 09-10) means the salary you will use to compute your retirement will be the year (s) prior to the first pay cut year.

Let's calculate the STRS retirement for an employee who is 60 years of age, has worked for 26 years in the system (and has earned 26 years of service credit) and whose highest earnable salary is \$75,000.

The formula would look like this:

26 (years of service)
X 2% (factor at age 60)
X \$75,000

\$39,000 (Annual retirement income)
\$3,250 (Monthly retirement income)

The formula, if the teacher were on strike for one day, would look like this:

25.994566 (years of service reduced by one day)
X 2% (factor at age 60)
X \$75,000

\$38,991.85 (Annual retirement income)
\$3249.32 (Monthly retirement income)

The difference of is 68 cents per strike day per month.

The amount of your service credit can be enhanced by the number of sick leave days you have accumulated at retirement. You cannot use sick leave days to reach the "eligible for retirement" threshold, so if a strike brought your years of service below the minimum retirement threshold, you would have to delay retirement until you reached that threshold. Once you meet it, the sick leave days can be used to increase your service credit.

Using accumulated sick leave to reach the retirement “bonus” levels: You can use up to 20% of your contract days to qualify for the bonus levels (the exception to the above). For CUEA members, it means you can use up to 37 accumulated sick leave days for this purpose. You would not have to delay retirement and work additional days to retire with 25, 30, 31, or 32 years of service.

A strike is not considered a break in service.

Members using the Article 15 Reduction of workload from full-time program created by the “Willie Brown Act”: A small number of CUEA members could be negatively impacted by participating in a strike. Members who are currently using the Willie Brown Act reduced year program have to work a minimum of one-half the days in the scheduled work year to get a full year’s credited service. That means the participant must have worked 93 days to earn the benefit. Members who worked last fall’s semester have already met the obligation. Members who are working only the spring semester may have a problem unless they worked some days in the fall semester (for example as substitutes). There are about 12 members in this category. CUEA will work with these members to insure that they do not forfeit a half year of service credit by missing some days due to a strike.

The language in Article 15 reads they must have five consecutive years of service prior to participating in the reduced workload. To accumulate a year of service, a person must work 75% of the year. If an individual member is in danger of not making the 75% threshold due to absences where had no paid leave is available, CUEA will work with the teacher to make sure that a year of service is not lost due to a strike.

California Education Code 22713(a.3) provides: “..Additionally, the member shall have five years of full-time employment immediately preceding the reduction in workload.

(3) The member may not have had a break in service during the five years immediately preceding the reduction in workload. For purposes of this subdivision, sabbaticals, other approved leaves of absence, and unpaid absences from the performance of creditable service for personal reasons from full-time employment do not constitute a break in service.” Being on strike is considered a personal reason and not a break in service.

Why did the fact finder not make a recommendation regarding retiree benefits?

The fact finder ignored several of the district’s original proposals for compensation cuts, including eliminating retiree benefits. The district did not specifically present or argue for the elimination of retiree benefits at fact finding. However, the district has never dropped any of their proposed options under their “last and best” proposal. We do not, however, believe it likely that the district will unilaterally impose elimination of retiree benefits, but that option cannot be ruled out.