



Q&A for MANAGERS AND SUPERVISORS JOB ACTION (STRIKE) BY UPTE

May 23, 2005

Important Questions and Answers about Strike Activity by UPTE

UC has learned that UPTE, the union representing UC's research support and technical workers, will be conducting a one day strike on Thursday May 26, 2005. UC has also learned that other unions such as CUE representing Clerical employees may honor the UPTE picket lines. Below are answers to some important questions about your employees' rights, what managers may say/may not say to employees, and the status of current negotiations.

Q. When a strike is called or supported by a union, are employees represented by those unions unable to come to work?

A. Non-striking employees are free to come to work. The law protects the right of all employees to cross a picket line. Under the labor laws, employees are free to make up their own minds about crossing a picket line and continuing to work. Any employee, including union members, has a right to refuse to participate in a work stoppage. The University will provide security protection around the entrances to work places to ensure that the safety of all members of the University community is not compromised.

Q. Do employees who pay union dues and are union members have a different obligation than non-members to support a strike called or supported by the union that represents them? Can the union member be penalized for not striking?

A. No employee is ever under any obligation to strike. Unions are legally prohibited from threatening or coercing members in other ways to keep them from coming to work. However, some unions have the right to levy fines against members, but not agency fee payers, who choose to work during a strike, including a sympathy strike. The employee needs to contact her/his local union representative regarding possible penalties for not striking. The University will not deduct union fines from employees' paychecks.

Q. If an employee asks whether s/he can resign their membership from the union, how should I respond?

A. Under California law, if there is no contract in effect between the University and the employee organization, an employee in the bargaining unit for which there is no contract is free to resign his/her membership from the employee organization. However, the issue of union membership is also governed by the rules and bylaws of the employee organization. Employees should check with their union representatives regarding this issue, including the correct procedure for resigning union membership.

Q. What can an employee do if s/he wants to work, but is being confronted by picketers or striking employees and blocked from entering the work site?

A. Pickets are lawful so long as they are peaceful, conducted only on public property (i.e., sidewalks), do not block access for other employees, do not interfere with the normal course of business, and do not prohibit non-striking employees from working. The University will assist employees who want to work by providing security or transportation across the picket lines.

In addition, non-striking employees should avoid confrontations and need not respond to any comments that picketers may direct at them. Non-striking employees should not invite or



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engage in any exchanges, which might inflame the situation. If an employee feels s/he is being harassed or prevented from working by picketers or striking employees, the employee should notify their supervisor or campus Labor Relations office.

Q. If an employee comes to work during a strike, what pay and benefits will s/he receive?

A. Employees who come to work will receive their normal compensation and benefits.

Q. If the employee doesn't come to work as a result of an UPTE strike, will the employee's pay and benefits continue?

A. Employees will not be paid for time lost due to participating in a strike. Benefits that are affected by the percentage of time worked during the month may be affected.

Q. Can an employee engage in picketing or protesting on her/his own time?

A. UC has a long tradition of respecting the civil expression of individual views, and individual employees are free to express their rights so long as such participation is on their personal time, does not conflict with their agreed upon work duties, or violate established University policies.

Q. Can managers respond to questions asked by an employee about the strike?

A. IF an employee asks a question, managers can respond to her/his questions.

- Managers **may** ask employees if they *plan to come to work* for the purposes of determining staffing needs.
- Managers **should not** survey or communicate with employees concerning their intention to participate or not participate *in a strike*. Such communication could be found to violate employee rights under labor law. Employees should be referred to their union about specific questions regarding union membership, union activities and potential strike activity.

Q. What actions can the University take if employees are absent during a declared strike period?

A. The University will presume, absent medical certification, that absences from work during any declared strike period are strike related. Authorization for an absence from work (e.g., vacation leave) may or may not be given depending on operational necessity and without regard to the employee's reason for the requested leave. Employees who are absent from work without authorization during a strike will not be paid for the absence and may face the possibility of disciplinary action for cause depending on the facts and circumstances (e.g. applicable contract language, misconduct). No disciplinary action should be taken regarding strike activities without prior consultation with your local Labor Relations Office.



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Q. In preparation for an anticipated strike, can the University make plans, such as hiring temporary employees or temporarily assigning staff to different job duties or departments?

A. The University may take reasonable and prudent actions to prepare for a strike such as hiring temporary employees or reassigning work. However, all plans should be made in consultation with your labor relations department. In general, all actions must be consistent with applicable contract provisions and firmly based on operational necessity.

Q. Is this strike protected under state labor laws?

A. Under state law, any union that engages in or supports a work stoppage, such as a strike, before the impasse procedures required by state law have been completed, is presumed to have committed an unfair labor practice. The University believes that UPTE's planned strike has been announced prior to the completion of impasse procedures and is therefore unprotected under state labor laws. In fact UPTE and the University are still in active bargaining. No impasse had been declared by any party. UPTE has not agreed to a declaration of impasse and the appointment of a mediator.

Q. What happens when contract negotiations remain unresolved?

A. Under the *Higher Education Employer-Employee Relations Act* ("HEERA"), the state law that governs the UC's labor contracts, when the university and a union are unable to reach agreement at the bargaining table, either party may declare that an impasse has occurred. The state then reviews the matter and decides whether or not to confirm the impasse. If impasse is confirmed, both parties must abide by certain procedures designed to resolve the impasse. Those procedures begin with mediation by a neutral state mediator. If that doesn't bring about a settlement, the state then appoints a neutral fact-finding panel, which issues a report with recommendations to guide the parties to a possible solution. Unless the parties agree to a longer period, the panel must submit its report privately to the parties within 30 days after the panel's appointment. Within 10 days after that, the panel may choose, but is not required, to make its report public. After the factfinder's report is provided to the parties, they must consider the findings and recommendations in good faith.

Q. When are impasse procedures completed?

A. The impasse process is completed only when there has been a meaningful opportunity for the report to be considered by both the University and UPTE in good faith, and then only if it is established that the report fails to change the circumstances and provide a basis for settlement or movement that could lead the parties to settlement. If and when impasse procedures are exhausted and the parties have failed to reach agreement, the employer may unilaterally impose its last contract offer. The University and all unions are obligated under state law to continue participating in the impasse process through its conclusion or until an agreement is reached between the parties.

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