

JOB ACTIONS AND OTHER ACTIONS TARGETTING THE EMPLOYER

I. Introductions (if you are using this handout as the basis of a training).

II. The Basics

A. What are actions for? Actions against the employer are demonstrations of support by the union membership, either

- 1. To influence contract negotiations** as they are going on, or
- 2. To support enforcement of our rights** between negotiations.

B. Why are militant and creative actions important?

1. Our battles are not won at the table: never when they are for good contracts and often not when they are for good grievance resolutions. Argument alone, no matter how compelling, will seldom bring home the bacon in the context of a power relationship. So, management must be pressured—perhaps aggravated, worried, or even dismayed. Our greatest assets in this regard are the essential qualities of the union itself, our numbers and our unity.

2. Actions deter management in the long run, while pressuring them in the short run, by making it clear that infringements on our rights and interests will create problems for them that they may wish to avoid in the future.

3. Our unity and strength are built by use, like muscles. Members are empowered as they learn that taking collective action is easier, safer, more fun, and more effective than they may have thought. Members bond as they prove to one another that they can rely on one another. And effective actions raise the fighting profile of the union as an organization among the members as much as among management.

4. You need tools to keep getting the job done. Actions that are tailored to the corresponding goals (in practical and symbolic terms), that are creative and varied, that make the best use of the talents and situations of members, and that distribute burdens fairly will be more effective, and will maximize member interest in the short and long terms. So, familiarity with a toolbox full of options and a preparedness to add to or vary those options will serve you well.

C. What are the legal and procedural considerations?

1. They are important. Almost certainly, you know of the importance of the sit-down strikes (factory occupations) in the history of the UAW, and of the effective use of civil disobedience (by UAW leadership among others) in the civil rights movement and numerous other struggles. No one who is familiar with these facts is likely to argue that you should never break the rules. However, breaking the rules just about always carries a cost, and that cost may be in terms of credibility and or in terms of delaying effective action. So, know the rules and avoid breaking them negligently, thoughtlessly or without a candid and even-handed discussion of the possible consequences.

2. They have various sources.

a. Know your contract. It probably places at least some restrictions on your actions. Not all contracts are the same, but provisions that forbid mass absenteeism (including picketing during work hours as well as strike activity) during the life of the contract are very common.

b. Procedural prerequisites to a strike are imposed by the Federal Mediation and Conciliation Service (FMCS), its various state counterparts, and the UAW constitution. See below.

c. Local ordinances may require a permit for pickets. See below.

d. For additional information, refer to *Legal Rights for Union Activists: The Basics—Answered*.

e. Consult an organizer or officer of the local whenever you have any doubts—and sometimes when you don't.

III. Strikes

A. We have the right to strike, and some of our members may need to be reminded or reassured of this. We are workers recognized as covered by the National Labor Relations Act (NLRA) and its Section 7 protection of concerted action. The Bar Association's Code of Professional Responsibility is sometimes raised by those who would suggest otherwise. No private association like the Bar Association could trump federal legislation if it wanted to, but the Code does not, in fact, directly or indirectly, forbid striking, and the Bar Association does not purport, through the Code, to have done so. Staff attorneys (and the code does not apply to our other members) are "of counsel" to management and are no more prevented by legal ethics from striking than they are from leaving their employment permanently. In practice, there have been a number of strikes by NOLSW units, and no meaningful challenge to our right to strike has ever been raised.

B. There is more than one type of strike.

1. "**Economic strikes**" are those taken to obtain concessions (which need not be economic) from management during contract negotiations. Most strikes are of this type. In theory, management can hire permanent replacements for economic strikers and need not dismiss the replacements at the end of the strike, but this fact has never been seen to have practical relevance in any NOLSW strike, probably because there is not such a "vast reserve army of the unemployed" waiting to take legal services jobs from strikers.

2. "ULP strikes" are those caused or prolonged by the employer's commission of an Unfair Labor Practice, i.e. a violation of the NLRA. In a ULP strike, the employer can theoretically hire temporary replacements only and must dismiss them at the end of the strike. There have been past instances of the hiring of temporary replacements for NOLSW strikers, but these instances have been few, limited, and ineffectual for the same reasons stated above. ULP strikes are also exempt from certain notice requirements normally imposed on the union (see below), but timely filing of necessary notices before the contract even ends (by far the best practice) generally renders this distinction practically irrelevant, too.

A. Involve your organizer from the local early if you're even thinking about striking (e.g. because the expiration of your contract is approaching)..

B. Don't jump the gun. Almost certainly, your contract forbids you from striking until after it expires. This does not mean, however, that notices and other preparatory steps must or should wait until after expiration.

C. Comply with various pre-bargaining procedural prerequisites to a strike. (A separate handout is available concerning the notices listed below, with samples of all the documents mentioned)

1. Notify the Federal Mediation and Conciliation Service (FMCS) that you intend to renegotiate the contract terms. This is required by the NLRA and accomplished on an F7 form available on the FMCS website. This must be done at least 60 days before expiration of the current contract. The sanction for non-compliance is that you will not be permitted to strike until 60 days after you do comply.

2. Notify the State counterpart to FMCS. This is most easily done by sending them a copy of the F7. This notice must be within 30 days of notice to the FMCS but the best practice is probably to give it at the same time and get it all done.

3. Give written notice to the employer that you wish to renegotiate. Again, this notice must be within 30 days of notice to the FMCS but the best practice is probably to give it at the same time and get it all done. Another good thing to get done at the same time is your request for the information you will need to formulate and cost out your contract demands. You can include this request in your letter giving notice.

4. Request authorization from the UAW Regional Director. This involves a request form, an approval form filled out for the director to sign, and a brief summary (in letter form, amounting to little more than a list) of the issues to be bargained.

D. Inform your members re: certain basic facts and frequently asked questions.

1. Strike benefits: The UAW has a strike fund of almost a billion dollars and pays strikers a benefit of \$200/week until unemployment kicks in after about 7 weeks. These benefits may be supplemented by hardship loans or grants from any funds the unit has set aside for the purpose.

2. Strike duty: Regular and documented participation in strike duty is required. The amount of strike duty required is up to the unit and is usually around 15-20 hours per week. There is typically flexibility in scheduling to accommodate those who have found alternative employment during the strike or have child care or other scheduling issues.

3. Getting other work during a strike is not prohibited. It is typically encouraged and even assisted by a committee established for the purpose, as long as the member somehow puts in the required strike duty as well.

4. Replacements and insurance: The employer can theoretically hire replacement workers and/or stop paying insurance premiums during a strike. However, in the history of NOLSW strikes, there has been very little hiring of temporary replacements, none of permanent replacements, and when management

of one program finally threatened to cut off insurance (in NYC, after four months), the UAW pledged to pick up the premiums, and management backed off.

5. Votes: While the UAW constitution specifies only a majority vote of the membership to ratify a contract offer, it requires a two-thirds majority for a strike vote or strike authorization vote (the latter being an authorization to the bargaining team to call the commencement of the strike without further consultation). This is a fact which may later dictate the order in which you take your votes.

6. More generalized fear. No one can promise that a given struggle will be brief, nor that it will be successful, and some members may need to be reminded that it is not realistic to seek such assurances. In addition to reminding people of their rights, and of a history that does not bear out their worst fears even where their rights do not reach, and of the solidarity that they can count on, as mentioned above, you may wish to remind them, too, of the values and long-term goals for which they are fighting (including a better legal services with less turnover, of which the clients are the ultimate beneficiaries). You may also wish to share with them tales of other successful struggles that have been waged under similar circumstances, and your organizers can certainly supply these. Of course, you will have the best results screwing people's courage to the sticking point if you have been keeping an organized, informed and active shop all along. (There is another handout available on internal organizing) Getting your members to turn out in support of the struggles of other workers from time to time, besides being a positive contribution in its own right, is an especially effective way of making resistance thinkable when your members need to mount it for their own sakes.

E. Consider setting deadlines in advance: one date on which you expect to have the offer management is prepared to have be the subject of a strike vote, and another shortly thereafter, when that offer will in fact be the subject of a strike vote. This approach has worked well with multiple employers to prevent 1) endless dragging out of negotiations before management makes their serious offers, and 2) past abuses in which management's real offer came to the table just before or even during a meeting scheduled for a ratification and strike votes, so that the members had little or no time to analyse and evaluate the offer before voting. A vote of the members to set such deadlines is not a strike authorization vote.

F. Prepare for a strike in other ways.

- 1. Line up a strike headquarters.** Find a space near the office that you can use if necessary. Your first step should probably be to ask the local Labor Council if there is another union with offices nearby that could lend you some space.
- 2. Make decisions about strike duty** requirements and assignments.
- 3. Begin setting up relevant committees** (hardship, jobs, outreach, etc.)
- 4. Make sure transfer memos, etc., are prepared.**

G. Take a strike or authorization vote (as described in D5 above), by secret written ballot, and preserve the ballots in a marked envelope with the union's other records.

IV. Picketing

A. When. You can picket anytime during a strike. When not on strike, prohibitions against mass absenteeism will limit you to off-work hours. Mornings and evenings are possibilities, but the most popular choice is lunchtime. If you want members to stagger their lunch hours so as to maintain a picket for a longer period (albeit with fewer people), you can do that.

B. Where. You have a legal right to picket, with or without a permit, on public property as long as you are not obstructing normal vehicular or pedestrian traffic. So, you can't be in the waiting room or hall, nor across the entire width of the sidewalk, nor (unless permitted by the police) in the street. The most common location is, of course, the sidewalk outside the place of work. However, other places we have effectively engaged in picketing activity have included outside the firms of board members, outside of managers' homes, at the entrance to a board member's gated community (a siege-like operation we called "Operation Greenwich Storm"), at the airport, and in the subway an executive director rode to work. When sorely provoked, we have won concessions by threatening to picket a program fundraiser. [See ambulatory, residential, and common situs picketing]

C. Other restrictions.

1. Permits are usually required by local ordinances for pickets above a certain number (probably around 50) or involving amplification equipment. The latter restriction extends even to a hand-held megaphone, but you can make an awful lot of noise and attract a lot of attention without a permit using acoustic noisemakers. If you do need a permit, it's not generally hard to get one, but try to take care of it two or three days in advance.

2. Secondary activity means picketing, boycotting etc. that is not directed against the employer but against a third party for doing business with the employer, and it is prohibited by the NLRA, but this has little application to our struggles.

V. Tactics other than strikes and pickets.

1. There are many. With a bit of creativity, you can come up with an almost limitless list of your own, but here are a few ideas, mostly battle-tested, to get you started: , staging phone-ins or fax-ins, ostracizing management or conversely pestering them about every little thing or alternating between the two (operation neurotic mess), a coordinated campaign of grievances, a solidarity potluck lunch to which management is not invited, open mockery such as having everyone start laughing when the director brings up his favorite absurdity yet again and keep laughing until he gives up, displaying signs or union tee-shirts on office doors or windows or on the union bulletin board, working to rule (sticking rigidly to job descriptions and standard working hours), staging sit-ins, taking it to the media—or at least to YouTube, scheduling Union Tee Shirt days, filing valid complaints against the employer for e.g. fire hazards, boycotting meetings or events in which management is invested, packing board meetings with members and allies, having the whole shop go together to the boss's office to voice their objections, a

campaign of whistling or humming a tune with a message you know (or have made sure) that management will recognize.

2. Build your actions into an escalating campaign. Use committees to get members involved in planning and deciding what actions to take. Develop a theme around the issues about which the unit feels most strongly. Think tactically about the timing that will give your action the greatest impact. “Find the strokes that move the folks”; making it fun will increase participation and help you sustain what may be a long struggle. Start with smaller actions and build momentum from their success.

3. Reach out. Identify and connect with community and labor leaders, politicians, even board members who will support your issues. Consider former clients as allies (recruiting current clients may raise ethics problems). In extreme cases, you may even wish to communicate with funders.

3. Know your rights. Do not take at face value management’s insistence on what tactics are and are not permissible. Check your contract, and refer to the attached handout *Legal Rights for Union Activists: Messaging Without Picketing*. You may also wish to consult your organizer and ask that, if necessary, he she consult our labor counsel. There is caselaw on, for example, what can be displayed where within the office.

VI. Exercise :

Develop an action campaign (if you are using this handout as the basis of a training).

VII. Additional Resources

Schwartz, Robert M., *Strikes, Picketing and Inside Campaigns, A Legal Guide for Unions*, Work Rights Press, Cambridge, MA 2006.

UAW Grievance Handler’s Pocket Guide. (Every steward should have a copy of this.)

Your NOLSW organizer.