

FREQUENTLY
ASKED QUESTIONS

ABOUT NEGOTIATIONS
& POTENTIAL STRIKES



FRESNO TEACHERS
ASSOCIATION

JANUARY 2017

INDEX

FREQUENTLY ASKED QUESTIONS ABOUT NEGOTIATIONS & STRIKES

Page 3: WHEN MIGHT A STRIKE OCCUR?

Page 3-4: WHAT IS AN ACCEPTABLE SETTLEMENT?

Page 4: WORK DAYS, DO WE GET TO MAKE THEM UP?

Page 5: WHAT WILL PARENTS DO DURING A STRIKE?

Page 5: WHAT IS CTA/NEA, COMMITMENT TO US?

Page 5: THE STUDENTS

Page 6: WHAT CAN I DO TO HELP ENSURE A GOOD OUTCOME & AVOID A STRIKE?

Page 6-8: CAN I BE FIRED BECAUSE I PARTICIPATE IN A STRIKE?

Page 8: WHAT HAPPENS TO MY HEALTH INSURANCE, SICK LEAVE DURING A STRIKE?

Page 8-9: WHAT IS THE IMPACT ON MY RETIREMENT?

Page 9-10: SPECIAL EDUCATION ISSUES

This document has been prepared by CTA organizers with assistance from the NODD and Legal Departments.

Given that locals have unique contracts, some sections may use examples not relevant to your situation, if so just ignore them.

FREQUENTLY ASKED QUESTIONS ABOUT POTENTIAL STRIKES

The Fresno Teachers Association (FTA) and the California Teachers Association (CTA) have prepared this document because of the many questions we are receiving about negotiations and a potential strike at FUSD. A strike has never been a goal for FTA. Our goal has always been to transform public education in Fresno.

WILL WE NEED TO STRIKE?

We don't know yet. That depends on whether the District bargains with us fairly in the current negotiations. Any potential strike would have to be authorized by a vote of the membership. We are hopeful that the new School Board will see how our proposals will improve education in Fresno.

While we do not want to strike, the District may leave us with no viable alternative. Together with parents and community we can bring enough public pressure to cause the District to bargain in good faith and do the right thing.

In last year's re-opener negotiation, we proposed class size caps, social-emotional supports, and safety measures. However, the District refused twice to bargain on those items. Hopefully, they will listen and respect the voices of the educators, who are the ones that know best what our students need.

HOW LONG WILL NEGOTIATIONS TAKE?

There is no way to predict how long negotiations will take. Our current contract expired on June 30th, 2016. All terms and conditions stay in place until we are finished with the bargaining process. Our last contract took approximately one year to bargain.

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

It is possible that a strike could occur sometime in 2017. Before a strike occurs, the Association and the District must finish the negotiations process, and there is no way to predict how long that process will take. If the two parties do not come to an acceptable agreement through negotiations, then the District may declare impasse, and give the Union a "last, best, and final" offer. Our membership will decide if they want to accept the District's "last, best, & final offer", or proceed to non-binding mediation. If the mediation is unsuccessful, then a neutral Fact-Finder will be appointed and a hearing will be held. The Fact-Finder will issue a report, but the report is non-binding on either party.

The Association has a right to strike following the completion of the Fact-Finding report. The Association remains committed to reaching a fair settlement through negotiations. After the Fact-finding report is received, the School Board has the legal right to unilaterally impose terms that "were reasonably contemplated" in their last and final offer. The Association has the right to strike after receipt of the Fact-Finder's report regardless of whether or not the School Board has imposed.

WHAT IS AN ACCEPTABLE SETTLEMENT?

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?

Any decision regarding strike or settlement is ultimately in the membership's hands. You will debate and then vote to decide if the Fact-Finding recommendations, the School Board's offer or the terms they unilaterally impose is acceptable to you.

How much lead time will we have?

Once membership has authorized a strike, the decision of when the strike would begin is with the Executive Board. The Executive Board will make their decision based on a number of factors. It is likely 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.

How long would a strike last?

It is very unlikely that a strike would last 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. Just the threat of a strike was enough to force a rational settlement at other places such as at Fresno State, Sac City Unified, and Stockton. Recently, Yuba City teachers went on strike for 7 days before they reached a settlement. However, Fresno Unified is much bigger than Yuba City, and we are in a teacher shortage. The District can't even get enough subs to fill in for us now, let alone replace 4000 educators if we walked off the job. Our last strike was in 1979, and lasted eight days before a rational settlement was reached. However, the District did not have over \$100 million dollars of new money coming into the budget, and we were also not in a teaching shortage. Our hope is the District will listen and bargain with us in good faith, so that we don't need a strike. Our proposals would improve education for all of our students. The best strike is one we never have.

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

No.

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 students or with different students, or you could be assigned to a different school site. You should not expect to do your normal work.

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?

No, a strike is a work stoppage, and strikers will not be paid during that time. 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.

WORK DAYS, DO WE GET TO MAKE THEM UP?

Making up the days missed while being on strike is a bargaining issue. You should not count on being able to make up the days, but we will certainly fight hard for them in the final settlement.

WHAT WILL PARENTS DO DURING 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.

Parents will have to consider if it is "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.

WHAT IS THE CTA/NEA COMMITMENT TO US?

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 be on the picket line (or doing other approved and recorded activities for the local association) to be eligible. The amount available is currently \$70 per strike day. You would not incur any immediate loss of income in the event of a strike as you are paid monthly not daily.

What will CTA/NEA do to assist striking teachers?

Members who strike will be entitled to the full protection of CTA/NEA legal services. Reprisals against any member or group of members who engage in authorized strike activities will not go unchallenged. Further, we will not advise educators to participate in any unlawful strike activities. Also, CTA leaders and professional staff from other locals will assist our efforts. Professional staff who specialize in organizing, negotiations, and legal assistance will also be assigned if members are forced to conduct protected strike activities.

What would FTA do to assist striking teachers?

The Fresno Teachers Association has a strike fund. In the case of a strike, we would work out a process to have a hardship fund that members could apply to if they have an emergency situation.

THE STUDENTS

Aren't strikes really strikes against students?

Poor salaries and benefits, inadequate working conditions and constant turmoil drive good educators out of our district. This hurts students more than would the temporary loss of instruction. The District can afford to recruit and retain the best teachers in our area but instead choose programs over people. Only 3% of our students are graduating "college-ready" and only 28% of our students are reading at grade level by 3rd grade. **The real question is whether our students deserve better than what they are getting right now?** With millions of new dollars expected to come in, we will either transform the system, or continue to have a sub-optimal education system for our students.

WHO IN MANAGEMENT DECIDES WHETHER TO ACCEPT OR REJECT OUR PROPOSALS?

The Superintendent designates a bargaining team to negotiate with the Association. However, this team takes direction from the School Board, and the School Board is the one that ultimately ratifies or rejects the contract.

WHAT CAN I DO TO HELP ENSURE A GOOD OUTCOME & AVOID A STRIKE?

1) Participate in the process.

We will be hosting monthly evening bargaining sessions. We encourage our members to attend. We will be making decisions together as a group. The more members attend these events, the more of a signal it sends to management that they should settle the contract.

2) Join us in the upcoming actions we will be doing

We are currently signing banners from each school that say we support our bargaining team's agenda. Please sign those banners, and we will deliver them to the Board. The more united we are, the less likely we are to need to strike.

3) Start saving money now - just in case a strike is necessary

The ironic thing about labor negotiations is that the more a group is prepared for a strike, the less likely one is necessary. We encourage educators to start saving money now, just in case a strike is necessary. If we don't need to strike, then you can use that money however you choose.

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 Association, with the support of professional staff, will do everything possible to avoid a strike.

There are other strategies and tactics that will be considered and used depending on the circumstances. There will be petitions, rallies, and numerous other activities. **The more active and united we are, the less likely we will end up needing to 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 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. The Educational Employees Relations Act protects collective activities to improve the workplace, so members cannot be disciplined or retaliated against for taking part in union activities.

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

CAN I BE FIRED BECAUSE I PARTICIPATE IN A STRIKE?

It is illegal for members to be fired or reprimanded for participating in a lawful strike. This includes probationary, temporary, job sharing and all other certificated staff represented by the Association.

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

1. 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.
2. 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 members to engage in a strike is legal.**

3. 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
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.
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 a 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, this School 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/intern teachers?

The sections above apply to probationary, temporary, job sharing and all other certificated staff represented by the Association.

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. The irony is that probationary teachers who choose to strike are more protected than those that don’t.

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 job shares?

Some principals have told job share teachers 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 cannot insist 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 days only which they are scheduled to work. 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.

WHAT HAPPENS TO MY HEALTH INSURANCE, SICK LEAVE DURING A STRIKE?

Can the School Board 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 you be given the opportunity to pay the premium yourself. In addition, most companies providing 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 School Board has ever succeeded in cutting off benefits and very few even threaten to do so.***

It is normal for the School Board to pass a strike resolution threatening to cut off insurances and to treat it as daily earned benefits rather than the monthly earned benefit as currently exists. Any change to the way benefits are paid is negotiable and would represent a unilateral change in working conditions.

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

No. The contract says 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.

WHAT IS THE IMPACT ON MY RETIREMENT?

How are teachers ready to retire affected by striking?

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.

Cuts in pay via a reduced salary schedule or furlough days over the next two or three years (including the current year) 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)
\$3,249.32 (Monthly retirement income)

The difference is 68 cents per strike day per month.

The amount of your service credit can be enhanced by the number of unused sick leave days (up to 37) 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.

A strike is not considered a break in service.

Note: There is a provision under the law that allows for non-consecutive years when there has been a financial change in the district that reduces salary – like furlough days.

SPECIAL EDUCATION ISSUES

Some special education and related services teachers may be told 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. It 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 have 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.

WHO CAN I CALL IF I STILL HAVE QUESTIONS?

Contact Mo Kashmiri at 559-260-8988 or by email at mo@fresnoteachers.org.