



OPENING SCHOOLS DURING A STRIKE

New Jersey school districts experience relatively few teachers' strikes. When our state's school employee strikes are compared to other jurisdictions, the few strikes we experience, and their relatively short duration, are a reassuring affirmation that collective bargaining is promoting labor peace in our school districts.

However, a board of education that is facing a strike finds little comfort in state-to-state comparison and is hard pressed to believe that negotiations in New Jersey promotes labor peace. That board is facing the possibility of a major disruption in its ability to provide its community with a continuous educational program. For the period of time immediately preceding the strike and through the eventual settlement of the dispute, the district must concentrate all its resources and energy on reacting to the strike as effectively as possible.

Many policy decisions must be made to manage district operations during this time. Not only must the board continue to direct its negotiations but it also must address the needs of the students and of the community. In this context, one of the most important policy decisions a board must make is whether schools will be kept open during the strike.

There are many issues which must be considered in the decision to keep schools open during a strike. Considerations involving bargaining tactics, community concerns and educational needs, will need to reflect each district's local conditions. However, the most important, and universally applicable, criteria in the decision to open schools must be:

Student safety. No district should open its schools if it is not confident that its students will enjoy the same degree of supervision and freedom from unsafe conditions that normally exists in the district. In some districts, certain buildings or programs may have to be closed temporarily, or for the strike's duration, if opening them would create an unsafe condition.

Once it has been determined that student safety can be assured, then boards must also consider the following:

Opening schools puts pressure on the union to end the strike. In order to get the union to compromise on its demands during a strike, pressure must be brought to bear on the union. Labor relations practitioners generally agree that the most effective pressure is economic, rather than legal, moral or political. By keeping schools open

during a strike, a school district does not have to make up the school days affected by the strike. It will qualify for state aid according to its original calendar which provided for at least 180 student days. Consequently, teachers who are striking will lose a day's pay for each day of the strike. This loss is not a punishment, but an application of the principle, "No work—no pay." It is identical to private sector experience where wages lost to strikes usually cannot be made up.

By keeping schools open and docking teachers for each day of the strike, the district increases the pressure on the union to settle. If schools are shut down, on the other hand, the lost student days will almost certainly be made up by the district by extending the end of the school year. When days are made up, your teaching staff will be paid their normal salary for those days. All that has occurred to the teachers in this situation is that the beginning of school is delayed and the last day of school is extended further into June (or Christmas and spring vacations are shortened). This creates almost no pressure on the teachers' union to settle negotiations swiftly. Rather, it provides a psychological boost to the union leadership and members because it is interpreted as complete victory for the union.

Opening schools provides an important community service. Most families using the public schools have either only one parent who works, or two working parents. These families depend upon the public schools to provide a safe and supervised environment for their children during the school day when there are no parents at home. Opening schools during a strike meets this important community need.

Failure to open schools, however, means that many parents are forced to choose between finding alternative and expensive child care facilities, leaving the children unsupervised at home during the entire workday, or staying home from work, at a loss of pay or vacation time, to supervise their children. These parents often form the most vocal community faction pressuring the board to "settle at any price."

Opening schools may be another source of problems for the board. Although keeping schools open adds pressure on the union, it does not concurrently relieve the board from strike pressures. The board should anticipate that its decision will become the source of negative union reactions. The union is likely to attack the decision to open schools as irresponsible and to attract

some community support for this position. The striking union will probably accuse the board of “holding the students hostage” by opening schools, of providing merely a babysitting service, and of jeopardizing the safety of the student body by running schools that are poorly supervised, chaotic and dangerous. The board can refute these charges only by providing the best educational programs possible during a strike, by permitting neutral community representatives to meet with the board and administration to discuss the condition of the schools and, where appropriate, by inviting these people to tour the school buildings in order to allay their concerns and rebut the union’s charges.

An adequate educational program can be offered during a strike. With good administrative planning and a full commitment by the board, many districts have found that a valid educational program can be provided during the difficult days of a teacher strike. Some districts, including very large districts, are able to attract and retain 80% or more of their normal student body during a strike, by emphasizing to students that attendance is expected and that teaching and learning are going on.

One cannot minimize the enormity of the administrative effort needed to provide an educational program during a strike. Nor do we argue that the educational program offered during a strike will always be as good as your normal program. It can be, however, a T&E program that addresses basic skills at all levels of your system, and it should be the best program possible given the “less than best” situation created by the teachers’ strike. Success by the board and its administrative team in this endeavor provides a psychological boost to the board in its negotiations efforts, and tends to increase community support for the board during the strike period.

A commitment to open schools in the event of a strike and evidence that the administration is prepared to do so effectively will deter some strikes, shorten others, and minimize repeat strikes. Any union, when weighing the decision to strike, should consider the costs of a strike compared to the benefits to be gained. If the union knows that the employer can operate indefinitely during a strike, a rational union will be reluctant to order its membership to strike. (Some strikes are caused by personality conflicts, deep-seated hostilities, or internal union politics, and these may be unavoidable, no matter what stand the employer takes regarding the union demands on the table or the threatened strike.)

Some threatened strikes have clearly been avoided when the union realized that the board was not intimidated by its strike threat, but rather was prepared to take the strike rather than capitulate to unreasonable union demands.

Other strikes appear to have been shortened once the union realized that the board was prepared to take a long strike. Finally, there is some evidence, and commonsense supports this conclusion, that a union which strikes with impunity in one year because it knows the days lost to

the strike will be made up and hence no economic losses are incurred by the strikers, is prone to call a strike in that same district during the next negotiations. On the other hand, in a district where the union membership recently lost five days pay during a strike that resulted in only a marginal increase in the board’s offer, the likelihood of a repeat strike next time around is slim.

It must be noted that in some situations the successful opening of schools may lead to a longer strike. This can occur for two reasons: the board is not under the intense pressure to capitulate that exists when schools are shut down by the strike, so it “hangs tough” with its pre-strike negotiations position; or the union may become more and more adamant about its high salary and benefit demands because it feels it must save face with its constituents who are losing money during the strike, and/or because it believes that the teachers’ wages lost during the strike must be made up through an increased wage offer by the board. The latter is obviously circular reasoning: “We struck (illegally) to get a better offer from the board, we’re losing money during the strike, so the board owes us the money we would have received if we hadn’t struck!” Whether or not one is convinced by this reasoning, it is a predictable union reaction.

Planning Ahead

Obviously, the decision to keep schools open involves many serious considerations of various alternatives and their implications. Successful opening also requires planning: substitutes must be found; security must be arranged and the educational program must be planned. Dealing with all these issues, as well as continuing to plan and assess your negotiating strategy, at the eleventh hour simply adds pressure at an already stressful time. Last minute decision making and implementation can result in a less than successful school opening.

Boards of education would be well-served to consider their desire and their ability to keep schools opened during a strike when the issue is an abstract, theoretical concern. Careful, unpressured deliberation of the district’s ability to continue to offer a safe, educational environment in the event the union should decide to utilize its ultimate bargaining power generally results in a well-reasoned and appropriate decision which can be well implemented should the need arise. An advance delineation of what must be done, how it will be done and who will be responsible for those activities eliminates omissions and improves a district’s ability to continue to function safely and effectively.

This proper planning can be accomplished through the board’s development of a district strike plan. The NJSBA Labor Relations Department can provide you, upon request, with examples of the issues which should be covered in a contingency strike plan and approaches various districts have adopted to handle these issues in the event of an employee strike.

Ideally, strike plans should be developed when you

are not involved in negotiations. The strike plan is like one of your policies dealing with the manner in which your district and your administrators will respond to an unexpected, and really unanticipated, emergency. It's there in case you should ever need it, even though the chances of implementation may be one in a million.

However, should the unlikely event occur, you and your administrators will be ready to face it and to manage it. The first issue that will be addressed in your strike plan will be: Do we keep our schools open?

Summary

Teacher strikes remain illegal in New Jersey. Unfortunately, they continue to occur, and boards should be ready to face and to manage an employee walk-out. A district strike plan which considers your ability to keep your schools opened and which addresses the steps that you will take to provide a safe, continuous educational program is the first step in establishing your ability to respond to your employees' illegal act.

Not all districts can successfully open their schools during a strike. In some situations, particularly when your professional negotiator can predict a very short strike and/or your calendar is greater than 180 student days so that no make-up days are needed, opening schools may be inappropriate. But it is an option that should be addressed in every strike plan and in every strike situation.

Finally, the successful ability to operate schools during a strike does not mean that the board should never consider revising its last offer to the union as a means of avoiding or ending a strike. The fact that a district can "take a strike" does not mean that the board should do so. Indeed, it has been said that the best strike plan is one that has been developed, revised periodically, and never used. No one wins in a strike. The board's goal should be to settle negotiations on terms that protect the district's interests, so that the parties can continue their joint efforts to provide a thorough, efficient, and quality educational program.