

Negotiation Update: Frequently Asked Questions: Strikes 10/30/09

Colleagues:

This update is intended as a follow up informational response to Monday's letter from the Chapter President, and to colleagues who have asked about the probability of a strike, should negotiations fail. As you all know from our communications to you that negotiations are not going well. We would fail in our duty to serve our members if we did not plan for the worst case scenario of the Administration rejecting the report, and imposing unacceptable terms and conditions on the teaching faculty. With all this in mind, here are some answers to frequently asked questions about strikes.

What happens if negotiations fail, and the Administration rejects Fact-Finding? Upon rejection, as a practical matter, the parties try and negotiate a final deal. For however long the parties continue to negotiate, the status quo must be maintained. Legally, if the parties are at impasse, then the Administration can implement its last offer and/or we can strike upon 10 days written notice. If the University implements, be it before or after further negotiations, it must implement its entire offer, both already agreed to contract articles and its remaining proposals on the table. It cannot cherry-pick which contract articles to impose.

Who decides whether we go on strike?

The leadership of the Akron-AAUP alone CANNOT authorize a strike - only the membership can do so. The Akron-AAUP Executive Committee may recommend that a strike authorization vote be conducted. If the members vote to strike, the leadership may schedule a strike at the appropriate time. A vote to strike does not mean a strike is inevitable, but it does signal to both the union leadership and the administration that there is support for a strike.

What if the membership votes against a strike?

In that event, the Akron-AAUP would have no leverage at the bargaining table and we would be forced to try to bargain a contract on the Administration's terms. With no leverage, faculty would end up with either no contract or a contract with unreasonable and punitive administrative language as we've pointed out above.

If there's a strike, will I have a choice whether to participate?

Although we hope that all Faculty members will participate, there is no requirement to do so. It is clear that some Faculty members have responsibilities that cannot be neglected, such as time-sensitive grant-funded lab research, medical and therapeutic care for patients, or the maintenance of laboratory animals. We must decide on an individual basis which activities meet this standard and which do not. At the same time, it's important to keep in mind that the power of a strike is completely dependent on a high level of participation. If a strike occurs, each faculty member's individual choice will affect the collective outcome - choosing not to strike means settling for whatever measures were still on the table at the time of the impasse.

Are there other options short of a strike?

According to ORC 4117, public employees may have recourse to informational picketing and/or striking. A strike must be scheduled for full, consecutive workdays. Ohio law does not

recognize “blue flu,” (i.e., employees calling in sick on the same day), one-day strikes, or other types of quasi-strikes. Such actions could be found to be illegal. However, an individual’s decision to not participate in voluntary activities, such as graduations or committee work, is legal.

Is a strike legal in higher education?

Yes. In 1984, Chapter 4117 of the Ohio Revised Code (ORC) established the collective bargaining law for public employees in Ohio, including the right to strike. Before that time, public employees in Ohio were forbidden to go on strike.

Doesn't a strike potentially harm students?

Our intentions throughout negotiations has always been to provide resources to faculty so they can be the best teachers and researchers possible. This principle applies to the eventuality of a strike as well. It is a plain fact that faculty working conditions are student learning conditions. AAUP is bargaining in good faith, trying to reach agreement on all of the academic issues prior to the end of our current contract, December 15, 2009. We do not want to start a new year knowing that students' coursework will be in jeopardy. However, the principles of academic freedom, a discipline specific tenure and promotion procedure, and shared governance are closely knitted concepts that work together to provide the best a faculty can offer. In the long run, students will benefit from an educational environment that attracts and retains quality Faculty and that supports mainstream academic values.

A staff editorial in the Akron Beacon Journal (July 11, 2005, p. B3) affirmed this point: “Higher education in Ohio cannot afford persistent divisions within its campuses...At a certain point, the absence of a contract begins to harm the school, slowly yet inevitably. That is something the university and the community surely want to avoid. Settling for diminished principles weakens our integrity and jeopardizes the long term quality of teaching and research - not just for UA faculty, but for faculty around the country. We've based our proposals, especially those that codify our academic principles, on language in other academic contracts (the "industry standard"), the maintenance of which is crucial to all in higher education - students, faculty, staff and administrations alike.

What is Akron-AAUP doing to help avert a strike?

The Akron-AAUP negotiating team, with the support of the Executive Committee and chapter members, has put forth measured and reasonable proposals on ALL of the issues, and we have responded to every counter proposal by the administration - See for yourself on the negotiations section of the chapter website (www.akronaaup.org). We have done so in a timely manner, despite the Administration’s lack of response on critical and mandatory subjects of bargaining.

We are committed to good faith bargaining and are open to specific new counterproposals, if the intent is to try to reach an agreement. Further, Chapter President, Walter Hixson, has requested to meet with the Board of Trustees to clarify our positions and open communications channels between decision makers. He has yet to be invited to a board meeting.

How does a strike work?

Normally, striking employees engage in picketing at the entrances to the premises and other strategic areas. The purpose of the picket lines is not to block access to the premises, but to let

everyone who passes by know that the employees are on strike. Traditionally, people who support the goals of the striking employees as well as members of other unions will refuse to cross a picket line to do business with the employer during a strike.

Will I be paid if I strike?

According to state law, the University is prohibited from paying employees for the days they are on strike. To be sure, negotiations to end the dispute would include the rescheduling of any classes missed during a strike and appropriate payment for those lost days.

What about health benefits?

According to state law, public employees are not entitled to pay or compensation, including benefits, for the period they are engaged in a strike. However, the University is required to comply with Public Health Services Act that provides the opportunity for health coverage continuation for state and local government employees if a “qualifying event” such as a strike occurs. See www.cms.hhs.gov/COBRAContinuationofCov/02_FederalJurisdiction.asp. This coverage parallels COBRA coverage in the private sector. Employees would be able to elect such coverage at their own expense. Alternatives include “special enrollment” in a spouse’s health plan, or month-to-month “stopgap” insurance that is available from private vendors. If an individual does not elect continuation of coverage under the Public Health Services Act, the University will presumably instruct the vendor not to process insurance claims for the dates during which a given employee was determined to be participating in a strike.

If someone isn’t an Akron-AAUP member, isn’t it OK to cross a picket line?

While the decision whether to cross a picket line is a matter of personal conscience, the success of a strike depends on maximum participation by faculty who are members of the bargaining unit, whether they are dues-paying AAUP members or not. All full-time faculty at UA, from college lecturers through professors, are members of the bargaining unit, and therefore the decisions they make have an impact on the outcome. Crossing a picket line does not help the collective effort.

Would I have access to my office/lab during a strike?

Technically, UA has the right to prohibit employees who strike from having access to University facilities. However, it is unlikely that the University would engage in such conduct because this would prevent ALL professors from working during the strike.

Will the national AAUP help us with a strike?

Yes. In the event of a strike, our advisors from National will be on hand to help with strategy and execution. At Cincinnati State, the national AAUP offered to underwrite hardship loans, and it also provided some financial assistance for the AAUP chapter to get a temporary strike office off campus. Furthermore, we should receive ready support and help from our sister institutions that have either had strikes or come close to having strikes. As you know, Kent State faculty were on the cusp of striking when their Board of Trustees relented. Youngstown State faculty were on strike for a week, while faculty at Cincinnati State authorized a strike and then reached a contract agreement before the strike began. Beyond that, our faculty colleagues at Kent State, Cleveland State, and Wright State also will assist. Finally, we hope that our friends in the community, particularly from other unions, will help.

How long might the strike last?

There is no way to answer this question in advance, but we do have two lines of evidence to give us an indication.

- First, the Administration has been very aggressive in its behavior toward faculty thus far. We should not expect them to capitulate just because we authorize a strike. If we authorize a strike, we should mean it and be prepared to execute it.
- Second, recent faculty strikes around the country have varied in their length. Youngstown State was on strike one week, the week before school started. The Eastern Michigan University Chapter, AAUP, went on strike in 2004 for about 8 hours when issues were resolved. The faculty strike at Northeastern Illinois University in 2004 lasted for 20 days. In 2003, Long Island University faculty went on strike for a little over a week before settling their contract. This year the faculty at Oakland-AAUP in Michigan were on strike for a week before resolving their contract dispute. As you know, some faculty unions authorize strikes (KSU, Cincinnati State), but then see their differences resolved before the strike begins.

How will a strike affect pre-tenure faculty who participate?

It is illegal for the University to punish individual faculty for participation in union activities up to and including participation in a strike. Should any punitive actions be taken, Akron-AAUP would aggressively pursue legal remedies, as we have in filing past unfair labor practice charges. To our knowledge, the current administration has never engaged in this type of punitive activity because of union activities.

How often do university professors go on strike?

Historically, strikes have been rare. However, there have been a flurry of strikes or near strikes of late, prompted by newly aggressive behavior from Administrations. Kent State came with days of striking; Youngstown State was on strike; Cincinnati State had authorized a strike, with the latest example being the Oakland strike this year. Currently in California there is significant union activity among the institutions with collective bargaining. There, non-collective bargaining faculty are having a much more difficult time maintaining their rights. In some states, such as Connecticut, faculty have the right to collective bargaining, but the state prohibits strikes and instead mandates binding arbitration to resolve contract negotiations, something we have proposed in the past and had rejected by our Administration.

Where can I read the state law about strikes?

Go to the State Employee Relations Board (SERB) website at <http://www.serb.state.oh.us/statute.html> and look under Ohio Revised Code 4117.15.

**Akron-AAUP
Communications Committee**