

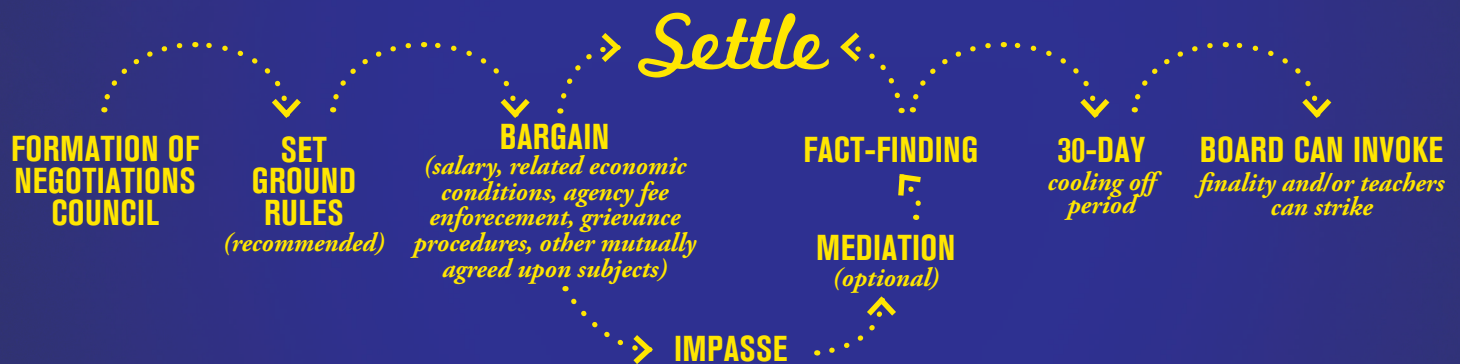
Strike Survival Guide

A resource from the

**VERMONT
SCHOOL
BOARDS
ASSOCIATION**

Great Governance, Excellent Education, Strong Communities

Flow chart of the negotiations process:



ABOUT THIS GUIDE

This guide is intended to provide school boards and administrators with general guidance and information to assist them in their role as negotiators. |

This document should not be relied upon for legal advice. We recommend all boards consult with their attorney prior to the start of negotiations to discuss legal and strategic concerns.

The Strike: Planning and Preparation

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Strike Planning and Preparation³⁵

While neither party should anticipate a strike from the outset of negotiations, school boards should devise a strike plan prior to the onset of bargaining, at a point when the board has time to engage in thoughtful planning and preparation. The VSBA recommends boards assemble a strike plan well in advance of a breakdown in negotiations.

UNDERSTANDING THE LEGAL CONTEXT

THE RIGHT TO STRIKE

Vermont does not prohibit either teachers or municipal employees from striking. Vermont law defines a strike as “conduct by an employee or employee organization or its agents which produces, induces, or encourages a work stoppage, slowdown or withholding of services; such conduct includes recognizing a picket line or other conduct which interferes with or impedes the orderly functions and services of a municipal employer.”³⁷

If the parties have gone through factfinding and continue to find themselves deadlocked, a union may vote to strike, or a board may invoke finality – often referred to as ‘imposing a contract’ - under 16 V.S.A. §2008. However, there are some limitations on the right to strike or invoke finality. The Vermont Labor Relations Board has concluded that the Vermont General Assembly intended at least a 30-day cooling off period after receipt of a factfinder’s report before a school board can invoke finality or before a union can strike.³⁸

Another limitation is that teachers are prohibited from striking either when both parties voluntarily submitted a dispute to binding and final arbitration or after a decision or award has been issued by the arbitrator. If such a strike occurs or is about to occur, a school board may petition for injunctive relief from the superior court within the county where the strike is or will be taking place.³⁹

³⁶ This section has been adapted from the Ohio School Boards Association’s “Strike! A Planning Manual for Ohio School Boards”

³⁷ 21 V.S.A. §1722(16)

³⁸ *Rutland Education Association v. Rutland School Board* (1979).

³⁹ 16 V.S.A. §2021(c)

INJUNCTIONS

A school board may seek a “restraining order or temporary or permanent injunction” in connection with or relating to pending or future negotiations from a “court of competent jurisdiction” in Vermont. Such a court will hold a hearing and issue an injunction or restraining order only if it finds that “the commencement or continuance of the action poses a clear and present danger to a sound program of school education, which in the light of all relevant circumstances it is in the public interest to prevent.”⁴⁰

As a previously mentioned, courts are reluctant to get involved in labor disputes and so the availability of an injunction or restraining order is limited and unlikely. Boards may have difficulty demonstrating a “clear and present danger to a sound program of education” unless the strike occurs at the end of a school year and it threatens to prevent the completion of that school year. However, boards should be aware that the provision of special education services to students may be required in order to fulfill a school district’s obligations under federal law, which could constitute grounds for an injunction.

PICKETING

In its most basic form, picketing is an act of free speech which is protected by the First and Fourteenth Amendments of the U.S. Constitution. Normally, picketing is permitted in areas traditionally considered “public forums,” such as sidewalks. If, in a district, there is any uncertainty with regard to what constitutes a “public forum,” the district board should consult with your school district’s attorney to determine what property near the school would and would not constitute a “public forum” area. Picketers have no right to violate criminal laws, such as trespassing or preventing ingress to or egress from property. Individuals involved in prohibited activities are liable for the consequences of their acts, but the union may be held responsible if it authorized or directed the individuals’ acts.

If picket lines are present, administrators and other employees may attempt to cross the lines and enter the building. If their way is obstructed in any manner, they

should inform picketers that they desire to enter the building and carry out their assigned duties. If picketers refuse to permit them to enter by physical contact or the threat of physical contact, the employees should not attempt to force their way through the picket line. They should, however, report their inability to enter to the building administrator or to their immediate supervisor.

Boards should keep in mind:

- Management has the right to use its property during a strike.
- Non-strikers have the right to come to work without union restraint.
- All employees should avoid confrontations with those employees on the picket line and should immediately report all problems or incidents.
- School officials may monitor or otherwise observe and document picketers and their activities.
- School officials should report any illegal activity immediately to the police.

ROLES AND RESPONSIBILITIES

For school management to be properly prepared for the strike, the specific roles of board members, superintendents, principals and other administrators need to be carefully thought out and planned. The administrative staff needs to know what their jobs are during a strike and exactly what is expected of them. Having one administrator “out of step” with the rest could damage the district’s efforts, which need to be coordinated and cohesive.

SCHOOL BOARD ROLE

In Vermont, most negotiations are conducted by a negotiations council at the supervisory union level, which includes representatives from all member districts.⁴¹ However, final ratification of any agreement on behalf of a school board remains the sole responsibility of the

⁴⁰ 16 V.S.A. §2010.
⁴¹ 16 V.S.A. §261a(a)(8)(D) and §1981(8).

⁴² 16 V.S.A. §2009

local board.⁴² In supervisory districts, the board serves as the negotiations council.

The local school board has a complex role during a supervisory-union-wide employee strike. The board is the chief decision-making body for the local school system. It is their job to do what they believe is in the best interests of the district. When negotiations breakdown at the supervisory union level and a strike occurs, local boards may be pressured to settle contracts at the local level, essentially breaking away from the SU negotiations council. In these situations, local boards must be prepared to make some very important decisions in a highly pressurized and emotional environment. It will be critical for local boards to understand the positions of the negotiations council and be prepared to support those decisions in the interest of taking a unified position against the union.

Before the strike, a board must decide whether it will make every reasonable effort to keep the schools open in the event of a strike. In supervisory unions, the supervisory union board has to work with local boards to decide whether all will commit to that strategy. If that is the decision, then the board must publicly reinforce the superintendent's authority to run the district on a daily basis without any interference from the board or any of its members.

During a strike, school boards should proceed with any regular monthly meetings as planned. All board meetings must be conducted in accordance with Vermont's open meeting laws. If the board needs to discuss the strike or state of negotiations, they should do so in executive session. The board has no duty to publicly discuss matters concerning negotiations, if "premature general public knowledge would clearly place [the board] at a substantial disadvantage." In order to enter executive session, the board must start the meeting in open session and then, after stating the reasons for doing so, and by majority board member vote, move into executive session.

Finally, if the board meets during the strike, the board chair should prepare to take measures to maintain control of the meeting, including setting time limits or creating speaker lists for the public comment period. However, note that there is no requirement that boards take public comment on matters considered by a board in an executive session, as it is not an open meeting.

SUPERINTENDENT ROLE

As the chief executive officer of a school district and supervisory union the superintendent has direct or delegated authority for handling the majority of the questions, comments, suggestions and complaints related to the job action. News media, negotiators, parents and community groups, the board, non-striking staff, legal counsel and other administrators will all look to the superintendent for advice, direction and support.

Strikes demand well-planned, efficient organization. The superintendent and/or his or her designees must provide access and information to all groups or individuals in key positions. Faced with an immediate job action, the superintendent's coordinating and assignment skills become critical in developing an effective line of communication. The superintendent also has to provide moral support to the management team. These will be stress-filled times for everyone. The superintendent is the one to ensure that stress and frustration do not hinder the district's efforts to withstand the strike. It's not an easy task; the superintendent will be under a great deal of pressure.

PRINCIPAL ROLE

Principals should be able to give the superintendent an idea of how his or her school would fare in a strike. If the schools remain open a principal should be able to tell the superintendent how many employees are likely to report and the grades or services they can cover. They also need to be able to report which scheduled events would be disrupted or need to be cancelled, and the anticipated parent and community reaction to those cancellations.

During a strike, a principal has three general areas of responsibility:

- ✓ **ENSURE THAT HIS OR HER SCHOOL (IF OPEN) CONTINUES TO FUNCTION WITH MAXIMUM SAFETY AND EFFICIENCY**
- ✓ **ACT AS THE DIRECT LINK BETWEEN THE SUPERINTENDENT AND THE INDIVIDUAL SCHOOL TO PROVIDE A CONSTANT FLOW OF ACCURATE INFORMATION ABOUT DAILY CONDITIONS**

⁴³ 1 V.S.A. §313(a)(1).

✓ **COMMUNICATE AND SUPPORT THE MANAGEMENT NEGOTIATIONS POSITIONS WITH TEACHERS, PARENTS, AND CITIZENS**

Keeping in mind these responsibilities, a principal should consider three tasks and problems prior to a strike: general preparation, schedules and lesson plans, and support services. If this is the principal's first strike, he or she should initiate a modest self-training program, seeking counsel from the superintendent and other experienced administrators within and outside the district.

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SCHOOL OPERATION
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OPEN OR CLOSED?

The first decision the board must make is whether or not to keep the schools open during a strike. If schools are closed by the board and the strike continues, the days of instruction that are missed must be made up. If those days are made up, the union will suffer no loss in pay. Particularly if media coverage of the breakdown in negotiations has been favorable to the union, closing schools may actually encourage teachers to strike and remain out until all of their demands are met.

However, keeping schools open may not always be the right decision. Particularly in situations where a supervisory union-wide strike is anticipated, it may be likely that the board can't employ enough substitutes to provide the necessary supervision that would ensure a safe environment. The school board, while assessing its resources and strategy, can use the following questions as a guide to help make the right decision about whether to keep its schools open:

1. Can all of the district's schools be kept open indefinitely during a full work stoppage? Is the board willing to operate some schools and close others?
2. What is each principal's attitude toward school closure? What problems, both general and specific, does each principal anticipate if a particular school is closed or if it remains open?

3. How many regular teachers will report to work despite a strike call? To which schools? How many support staff members will report? Make a conservative estimate.
4. How many licensed/certificated or otherwise qualified substitutes will be available to work during a strike?
5. Can the district, given the number of available subs, meet the state minimum educational standards?
6. What innovations are acceptable to allow each substitute to handle larger than normal number of students – large lectures, team teaching?
7. Will the district be able to operate its schools with reduced staff while ensuring the health and safety of students and staff are not compromised?
8. Given reduced staffing, where should the district place its emphasis – on continuing the education of high school seniors or on elementary students? If school is closed, will seniors be able to complete their graduation requirements?
9. Will staffing be sufficiently available to ensure maintenance of essential building services – heat, custodial care, food service?
10. Will the community support the board if it keeps the schools open? If it closes the school? If the schools are closed, what is the maximum length of time the board can maintain community support?
11. Are there additional costs to the district involved in keeping the schools open during a strike? In keeping them closed? What are these costs?
12. Should all extracurricular activities be canceled?
13. How will the media tend to treat the strike? How extensive will its coverage be? If the schools are open? If they are closed?

The board, in reviewing its “to close or not to close” options, also needs to check in with the other members of the management team. Specifically, the board needs to gauge the abilities of the superintendent, other central office administrators and the building administrators. Once a board decides to keep schools open the board must adhere to that decision. A decision made and backed away from is the worst possible way to counter a planned employee strike.

The issue of whether or not to conduct extracurricular activities is one that may receive an extreme amount of public attention and criticism. Depending on your community and its emphasis on sports and interscholastic competition, the decision to suspend such activities may bring significant pressure on the board and administration - and possibly the teachers - to resume the normal conduct of school.

Numerous issues must be considered before making such a decision. The primary criterion is whether or not the schools have remained open. As a general rule, school boards should not continue extracurricular activities if the schools are forced to shut down or cease operation. This would, in effect, allow the striking bargaining unit to implement a “selective strike” in which they can determine the extent of the job action.

As mentioned earlier, principals should compile a comprehensive list reflecting the activities actually affected by the job strike. When the first threat of strike appears, high school principals should immediately notify other schools in their athletic conference of the labor dispute and prepare them for the possibility of rescheduling or canceling athletic contests. Then a contingency plan should be developed on the maintenance of extracurricular activities which details advantages, disadvantages and alternatives.

Extracurricular activities do not carry the priority that normal school operations do. Such activities are not required as a state minimum or as a prerequisite for graduation. If the board feels holding major events will benefit the district, adequate staffing must be arranged before the event can be held. Safety to the children and any observers or participants is of paramount importance.

If the schools are open and the board wants to maintain extracurricular offerings, a number of precautions should be observed. If a striking bargaining unit member offers to continue to supervise an extracurricular activity, the employee should not be allowed to selectively cross the picket line for preferential work. However, some coaches of individual sports may not be part of the bargaining unit and may have separate contracts for their coaching positions. If so, then it may be possible to conduct the activity with regular staffing. It may even be possible to conduct the event with substitute supervision.

If the board decides to cancel the extra activities, be advised that the striking bargaining unit may attempt to use this to its advantage. The board should make the public aware of the factors necessitating the decision. Additionally, the board should not second-guess the decision, but must instead support the resolution with firm conviction. A half-hearted stand will only hurt in the long run, so any decision must be united.

School districts are responsible for the education of students. Therefore, it is important to maintain a proper educational environment at all times while school is in session. This can be difficult in the period preceding the strike, and is more difficult if the school board decides to keep schools open during a strike. This is not to say that schools should not be kept open. Rather, in making its decision as to whether to continue to operate, a board must take steps to insure that a proper environment for education is maintained.

During a strike, achieving minimum standards becomes very important. Each building administrator needs to know what the capacity of available staff will be. The principal should attempt to obtain lesson plans and grade books prior to the strike. Working with staff, the principal should create a list of approved activities to ensure student learning even during exceedingly high student to teacher ratio days. Such activities might include prearranged films, educational TV programs, assembly hall lectures, and team-teaching large groups. Designing a program to educate junior and senior high school students on the strike issues — including the strike’s legal status — is a good way to inform students of the context for the current situation.

SUBSTITUTES AND NON-STRIKING EMPLOYEES

In most instances, only a fraction of the regular teaching staff is willing to work during a strike. Thus, administrators and substitutes must be used to complement the workforce. Some school boards run newspaper advertisements for substitutes and temporarily increase substitute pay. The board should authorize both actions, preferably, in advance of the strike.

One of the two major considerations that must be resolved far ahead of the teacher strike is the source of substitutes. The district should maintain a list of community people who may volunteer even if their help is not needed immediately. Substitutes can also be solicited from the following areas:

- ✓ **SUBS CURRENTLY EMPLOYED BY THE DISTRICT;**
- ✓ **SUBS CURRENTLY EMPLOYED IN NEIGHBORING DISTRICTS;**
- ✓ **QUALIFIED INDIVIDUALS FROM THE DISTRICT'S APPLICANT FILE.**
- ✓ **QUALIFIED INDIVIDUALS FROM OTHER DISTRICTS' APPLICANT FILES;**
- ✓ **VOLUNTEERS;**
- ✓ **STUDENT TEACHERS;**
- ✓ **CLASS PERSONNEL (COUNSELORS, PRINCIPALS, LIBRARIANS, ETC.)**

Another consideration in the hiring of substitutes concerns their financial compensation. In addition to determining whether to hire substitutes on a daily or long-term basis, the following options should be considered before making a decision:

- ✓ **PLACE SUBSTITUTES ON SALARY SCHEDULE,**
- ✓ **PAY THE REGULAR SUBSTITUTE RATE,**

- ✓ **PAY A PREMIUM STRIKE RATE,**
- ✓ **PROVIDE MILEAGE COMPENSATION, AND/OR**
- ✓ **PROVIDE FRINGE BENEFITS**

After the board has decided on substitute compensation and management has developed a large enough pool to provide staffing, the superintendent can then effectively begin replacing striking teachers. The superintendent should obtain the certification/licensure and the subject area from the potential sub. Pursuant to 16 V.S.A. §255, a criminal records check, including fingerprints, as well as a check of the Vermont child and adult protection registries, will need to be conducted for all newly-hired substitutes.

Since the Vermont Agency of Education may want to see the credentials of all substitute personnel, each sub should be asked to have their credentials available. To expedite the process, the superintendent should provide forms which list the name of the sub, the room in which each sub is teaching and the subject area being taught.

Substitutes should report to the school auditorium one hour before school opens on the first day of the strike in order to receive an orientation. The orientation should provide each substitute with:

- ✓ **PROCEDURES FOR ENTERING AND LEAVING THE BUILDING;**
- ✓ **A SCHEDULE OF ACTIVITIES;**
- ✓ **A LAYOUT OF THE BUILDING;**
- ✓ **LESSON PLANS, GRADE BOOKS AND TEACHING MATERIALS;**
- ✓ **CLASS ROSTER OR SEATING CHART FOR EACH CLASS;**
- ✓ **EMERGENCY AND/OR EVACUATION PROCEDURES;**

- ✓ **A LIST OF PEOPLE WHO CAN ANSWER QUESTIONS, INCLUDING PHONE NUMBERS FOR INFORMATION AND/OR EMERGENCIES;**
- AND**
- ✓ **NECESSARY TAX REPORTING FORMS AND ANY OTHER PAYROLL INFORMATION**

Substitutes should also be made aware of the pressures that may be involved in a strike, and be instructed not to discuss the strike with students, parents or the media.

In order to keep the schools operating and the quality of education consistent, the morale and enthusiasm of the substitutes and non-striking employees must remain high. The following strategies can help a superintendent maintain effective communication and boost employee morale in a challenging environment:

- ✓ **DESIGNATE A NON-STRIKING TEACHER, IF POSSIBLE, TO ACT AS LIAISON TO ASSIST IN RECOGNIZING AND SOLVING STAFF PROBLEMS.**
- ✓ **TRY TO GIVE NON-STRIKING REGULARS THEIR NORMAL ASSIGNMENTS.**
- ✓ **DO NOT REQUIRE SUBSTITUTES OR ANY TEACHER TO DO CUSTODIAL WORK.**
- ✓ **HAVE STAFF MEETINGS IMMEDIATELY AFTER SCHOOL TO ADVISE STAFF OF THE STRIKE STATUS AND ANSWER THEIR QUESTIONS AND ADDRESS THEIR CONCERNS.**
- ✓ **GIVE STAFF UPDATES AND PERTINENT INFORMATION BEFORE IT IS RELEASED TO THE GENERAL PUBLIC.**

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MEDIA AND PUBLIC RELATIONS

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Often in the hectic days leading up to a strike, little consideration is given to the board's bargaining position and the public's perception of that position. This is

an area of critical need and boards should work closely with their superintendent to understand their capacity to keep the public informed of the board's position. The board should carefully consider how to communicate its position to provide the public with the best opportunity to fairly evaluate issues in dispute. The issues need to be few in number and well-defined. The high expense of union demands and preserving board control over management decisions are issues with which the public can typically relate.

The board has to be prepared to explain its financial position in ways the public can understand. Ideally, the board communicates regularly with the public in order to build or enhance their understanding of the district's financial challenges. Since most people have difficulty understanding the complexities of Vermont's school finance system and school accounting principles, it is unrealistic to expect community members to understand the nuances of district budget issues based on limited information provided in a sporadic and unclear manner.

Whenever possible, school district finances should be explained in ways that are simple and understandable. Don't overwhelm your audience with detailed numbers. As a rule of thumb, public sentiment is usually with the board in the first days of a strike. The board should capitalize on this situation with a well-orchestrated media campaign. After several strike days pass, the public looks to the board for answers and sentiment usually will begin to swing toward the employees. The board should be prepared for this phenomenon in advance so board members won't be surprised by it and so that the media campaign can be ready for it.

The first step in the media campaign is to identify one spokesperson on behalf of the board. The board should deploy its best communicator – the person who can most effectively convey the district's credibility and position. Taking on the spokesperson role is a high-stakes job that should not be assumed lightly. This spokesperson should work closely with the superintendent to ensure consistent communications across the district or supervisory union. Other board members should be advised not to make comments that have not been agreed to first by the entire board. This system promotes unity and creates an air of credibility.

Newspapers are a good way to communicate information about the board's position. Pro-board newspaper editorials by community members, or pro-board advertisements by concerned citizen groups are effective ways to gather public support. Bulk mail is another useful and perhaps less expensive way to communicate with the public. The board should not publish anything more than its last position on the issues. If a district has created a web page, the district can add communication links on that web page to inform the public of district positions on strike issues as well as to update the public on school district operations during the strike.

The VSBA has a communications support service available to boards that need assistance in this area. We are able to connect boards with a communications specialist who can help develop a communications strategy and plan, including talking points. This communications resource can help boards convey information to the public in a manner that is clear, consistent, and timely, a challenging task to perform in a highly pressurized and emotionally charged environment.

For all public communications during a strike, it is vitally important to avoid saying anything that will cause irreparable harm between the parties. It is important to remember that, in time, the strike will be over and everyone will need to work with one another again.

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BOARD RESPONSE TO UNION TACTICS

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While each community has a distinct character, it is safe to assume that some union pre-strike, strike and post-strike tactics will remain the same. The tactics may vary in degree but all have the same intended effect — to gain leverage against the district in order to settle the strike on union terms. Board members should get into the proper frame of mind to respond to a strike. Striking teachers' behavior, orchestrated by skilled union leadership, can turn out to be just as unpleasant as any behavior found in private sector labor-management strife.

Union leaders will direct well-intentioned community groups and "school booster" groups to put pressure on

the board. The pressure to settle the strike, bargain in good faith, or conduct marathon, around-the-clock bargaining sessions, or any number of other things could appear on the surface to be reasonable requests. But they are typically only made if they enhance the ability of the union to achieve through a strike what they could not obtain at the table. These requests, often simply a diversion by the union, shift the focus from the main issue, settlement of the contract.

Boards may also face: harassing and threatening telephone calls at home; union intimidation of substitute teachers; and community "public service" bulletins published by the union telling the "truth" about the negotiations process. Litigation may increase, with lawsuits or unfair labor practice charges filed, including taxpayers' suits challenging expenditures. There will be ongoing pressure to have "the board negotiate" and to change the negotiating team. Inevitably, the board might hear that the board's negotiator "caused" the strike.

The use of propaganda, misinformation, incomplete information, and outright lies is not beyond the tactical reach of the union. Union propaganda may also be disseminated by well-intentioned but ill-informed teachers through phone calls to parents, pupils and board members. The union will also generally establish its own media communications team to dispense their message during the period of the strike. The board's response to these tactics should be based on a pre-strike strategy that has the flexibility to bend with the circumstances.

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AFTER THE STRIKE

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No matter how long or bitter a strike becomes, it eventually will come to an end. A strike is filled with tension and emotions for all parties, but each side will need to work with one another again once the strike is over. That's why it is so important to avoid saying things during the strike that cause irreparable harm to the working relationships of the parties.

After the strike is over, a district should immediately adopt a business as usual attitude and implement action plans that seek to focus collective attention and efforts

on the education of students. The following short-term action plans are suggested:

- ✓ **BRIEF ALL STAFF MEMBERS AND THE PUBLIC ON THE TERMS OF THE NEW COLLECTIVE BARGAINING AGREEMENT;**
- ✓ **HOLD A MEETING BETWEEN THE SUPERINTENDENT AND THE UNION PRESIDENT TO SEE WHAT CAN BE DONE TO START BUILDING AN ENVIRONMENT OF TRUST AND RESPECT BETWEEN THE ADMINISTRATION AND THE UNION;**
- ✓ **MEET WITH EMPLOYEE GROUPS AS SOON AS POSSIBLE AFTER THE STRIKE, IMPRESSING UPON THEM AND SUPERVISORY STAFF THE NEED FOR ALL PERSONS TO SET ASIDE AND FORGET STRIKE EXPERIENCES AND TO GET BACK TO THE CONCERNS OF EDUCATING CHILDREN;**
- ✓ **SCHEDULE WEEKLY MEETINGS BETWEEN ADMINISTRATION AND UNION REPRESENTATIVES TO KEEP OPEN DIALOGUE**

Administrators and union representatives should also become actively involved in community groups and assist in community projects in order to show the public that the parties can work together again.

Whatever the character of the union's strike, one thing remains constant — the board's best response to the threat of a strike, or to a strike, is to be prepared. In order to be prepared, boards should call upon the administration's experiences and expertise. Boards must be aware of the requirements for a legal strike and what options they have. Roles should be carefully delineated amongst members of the management team. Union tactics must be anticipated and prepared for. If schools are to be kept open, management has to devise a plan that covers all aspects of school operations. Drawing from this chapter and administration expertise, boards can develop a strike plan well in advance of a strike to minimize the number of decisions that have to be made under pressure in an emotionally charged environment. ■

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