

Training Members on Unfair Labor Practices

SkillBrief

The negotiating team, union officers, and worksite leaders should be trained and the general membership provided basic information regarding potential management unfair labor practices. Some points to cover include the following:

Management is very likely to commit unfair labor practices.

Employers often are advised to do so because enforcement of the law is so weak.

Union members cannot assume that even the most blatant management ULPs will be stopped by the NLRB or state or local labor relations agencies.

Often enforcement officials are management oriented.

There are loopholes in virtually every rule against bad faith bargaining. For example, the NLRB might find that an employer didn't really try to bargain directly with the membership but only sent workers its version of what went on in negotiations, or that an employer was justified in retracting agreement on certain bargaining issues because economic circumstances had changed.

Even when enforcement agencies do find in the union's favor, the "penalty" typically will be that the employer is told not to do it again.

Employers can delay legal proceedings so that, even if the NLRB rules in the union's favor, the case may take years to resolve.

Therefore, a winning contract campaign strategy must depend on the internal organizing described in Part 3 and the pressure tactics described in Part 4, and not primarily on the filing of legal charges.

Proving unfair labor practices is very important, nevertheless.

Workers who strike over unfair labor practices (not for a better contract) that the union can prove to the NLRB have a right to get their jobs back from replacements when the strike ends and they unconditionally offer to return to work. If the employer has hired replacements, the employer must lay off or fire them if necessary to make room for the returning strikers.

Workers who simply strike for a better contract (economic strikers) do not have to be reinstated if their jobs were taken by permanent replacements. The employer would only have to hire back economic strikers one at a time when openings become available.

Union leaders and members must keep written, dated notes of all management statements and actions that might possibly be evidence of unfair labor practices. That evidence should be reported immediately by members to their stewards and in turn to the top local union leadership. If there are several alleged violations of good faith bargaining, the NLRB may consider the “totality of conduct.” This means they will look at the history of the bargaining relationship. Therefore several more minor charges may add up to an unfair labor practice win by the union.

The need for the negotiating committee to keep careful notes during bargaining is discussed later in this part of the manual.

If union members launch an unfair labor practice strike, the strike must be called in such a way that provides legal evidence that ULPs—and not economic demands—were the members’ main reason.

The NLRB will later ask, for example...

- In membership meetings, did members discuss the ULPs as the reason to consider striking?
- Did letters, leaflets, news releases, or other materials give ULPs as the reason to strike?
- When a strike vote was taken, did the ballots ask authorization for a strike over ULPs?