

PROTECTED ACTIVITIES DURING LABOR NEGOTIATIONS

REQUIRED DUTIES:

Work-to-rule, partial strikes, sit-ins, slowdowns, or any other concerted activities are not protected if the actions result in failure to perform “normally required and assigned adjunct duties.” (*Modesto City Schools* (1983) PERB Decision No. 291.)

Employees must perform normally required and assigned duties because “employees may not pick and choose the work they wish to do even though their action is in support of legitimate negotiating interests. Accepting full pay for their services implies a willingness to provide full service.” (*Palos Verdes Peninsula Unified School District* (1982) PERB Decision No. 195.) Determination of whether a concerted activity is protected is based largely on whether the activity is voluntary or required is evaluated on a case by case basis. (*Los Angeles Unified School District* (1990) PERB Decision No. 803.)

Required duties may arise from both contract language and board policies. (*Poway Unified School District* (1995) PERB Decision No. 1114.)

Examples of required activities: participation in teacher evaluations, turning in school keys and other district property on request, completing and submitting lesson plans, attending faculty or other mandatory meetings, participating in faculty in-service training, preparing bulletin board displays, selling tickets at sporting events, chaperoning dances, advising clubs if the assignment was already undertaken, submitting progress reports, grades, and attendance records, supervising standardized tests and giving examinations. (See e.g., *Los Angeles Unified School District* (1990) PERB Decision No. 803; *Palos Verdes Peninsula Unified School District* (1982) PERB Decision No. 195.)

VOLUNTARY DUTIES:

Employees are protected from disciplinary action for refusing to perform voluntary activities. (*Modesto City Schools* (1983) PERB Decision No. 291.)

Work is considered voluntary if employees are free to engage or not to engage in the activity. (*Los Angeles Unified School District* (1990) PERB Decision No. 803.)

Examples: Accepting extra period assignments (as opposed to completing them once accepted), using student teachers, substitution among teachers. (*Modesto City Schools* (1983) PERB Decision No. 291.)

INFORMATIONAL PICKETING:

Non-disruptive, informational picketing is a protected activity under the EERA. (*San Marcos Unified School District* (2003) PERB Decision No. 1508.)

Picketing activity that disrupts the operations of third parties by inducing employees of the third parties to halt work constitutes unlawful, disruptive picketing activity. (*City of San Jose* (2010) PERB Decision No. 2141-M.)

The analysis on whether picketing is protected focuses on the *purpose* of the activity; i.e. whether activities were engaged in for the purpose of providing information or disrupting

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operations. (*Regents of the University of California* (2012) PERB Decision No. 2300-H [judicial appeal pending].)

Residential picketing would follow this analysis. (*Pittsburg Unified School District v. California School Board Association* (1985) 166 Cal.App.3d 875, 882.)

POSTING OR DISTRIBUTING MATERIALS:

Government Code section 3543.1(b) grants employee organizations “the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation....”

Employees may distribute union materials during duty-free periods in common/non-classroom areas. (*Richmond Unified School District* (1979) PERB Decision No. 99.)

DISPLAYING SIGNS:

School districts may restrict the display of union or political signs or similar activities to non-work areas during non-work time. (*California Department of Employment Development* (2001) PERB Decision No. 1365Sa.)

POLITICAL AND UNION SPEECH IN THE CLASSROOM:

Courts have held where student or teacher expression occurs in the context of an activity which the public might perceive to bear the imprimatur of the school, the district may exercise greater control over the speech than where the speech is clearly that of the individual speaker only. (*Hazelwood School District v. Kuhlmeier* (1987) 484 U.S. 260, 272-73.)

School officials are entitled to exercise control over classroom speech not only to ensure knowledge is adequately imparted, but also to protect students from material inappropriate for their level of maturity and to protect the educational institution from the perception it is fostering inappropriate indoctrination in front of a captive audience. (*California Teachers Association v. San Diego Unified School District* (1996) 45 Cal.App.4th 1383.) The nature of the teacher/student relationship makes it reasonable for a school district to prohibit teachers from engaging in political speech advocacy during instructional times as a means to disassociate itself from political controversy.

In *Konocti Unified School District* (1982) PERB Decision No. 217, a bus driver who was on duty and transporting students to school made an unauthorized stop on the way to school and urged students to boycott classes in the event of an anticipated employee strike. PERB held that not only did the bus driver temporarily interrupt his work to conduct organizational business, but he discussed such business with students who were likely impressionable and were forced to hear it without the ability to leave.

UNION BUTTONS:

Employees have a protected right under collective bargaining laws to wear union-related buttons or insignia in the workplace “absent special circumstances” (safety, substantial disruption). (*State of California Department of Parks and Recreation* (1993) Decision 1026-S.)