



**ANSWERS TO COMMONLY ASKED QUESTIONS
ABOUT CONTRACT EXPIRATION, THE RIGHT TO STRIKE AND
CONTINUATION OF PAY AND BENEFITS**

1. *What does being on strike mean?*

It means withholding services - **all** services. That means that you do not go to work, teach off campus, assign work to students, or do anything to help management cover your classes. For example, do not supply management with your lesson plans, handouts, or teaching materials.

2. *Are there differences between the rights of Pennsylvania public employees like the faculty and private sector employees?*

Yes, and the differences are significant. Public employees in Pennsylvania are subject to certain limitations that do not apply to private sector employees, but they also have certain rights and protections that private sector employees do not have. Consequently, what you hear about a strike of truck drivers, baseball players or airline pilots may not be applicable to a strike conducted by workers subject to the Pennsylvania Public Employee Relations Act (also known as “Act 195”). In fact, since the passage of Act 88, the rules applicable to strikes by Pennsylvania public school teachers are different from those applicable to strikes by other Pennsylvania public employees.

3. *Is a strike by State System faculty legal?*

Yes. Under the Pennsylvania Public Employee Relations Act a strike by a union may occur at any time after its collective bargaining agreement with the employer has expired, provided that several dispute-resolution requirements set out in the law have been met. The primary requirement is that there be 21 days of mediation before striking. At this point, APSCUF has fulfilled all requirements that must be met prior to going on strike. Therefore, if the membership votes affirmatively to authorize a strike, and the executive council calls for a strike, it can be held and will be legal.

4. *Are there any circumstances under which a strike is prohibited, such that management can go to court and obtain an order to enjoin the employees from striking (injunction)?*

Yes. Act 195 requires a public employer to initiate an action to obtain an order enjoining a strike when that strike creates a “clear and present danger” or “threat to the health, safety or welfare of the public.”

5. *If the old contract has expired, and no new contract has been reached, what are my working conditions?*

Under Pennsylvania law, as it has been interpreted by the Commonwealth Court, the terms of the old contract continue at least until the union goes on strike. That means that the pay rates, fringe benefits and working conditions continue unchanged. The Commonwealth Court has ruled that an employer may not implement its last offer even if there is an impasse in bargaining so long as the employees do not strike. This is one area of Pennsylvania law that is completely different from the federal law applicable to private sector employees.

6. *Can I lose my job if I go on strike?*

Despite all of the public employee strikes in Pennsylvania since they became legal in 1970, we know of no permanently replaced strikers. APSCUF’s legal counsel believes that it may not be legal in Pennsylvania to even try to replace striking public employees. But in any event, there is no practical way that the State System can replace a significant number of striking professors, even if it were legal.

Of course, you can expect State System management, including university presidents, to assert that replacing striking workers is one of the strategies that they will use to keep the universities open during a strike. That sort of threat would confirm the Board of Governors’ position that we should be treated as if we were in the AFSCME bargaining unit. The threat of replacement workers is a standard intimidation tactic used by corporate managers everywhere to try to coerce employees into accepting management’s offer.

Keep in mind that if a strike occurs, the Commonwealth Court has held that an employer legally may implement only its last offer. So far, the Board of Governors has not made any proposal to alter the hiring or seniority provisions of the collective bargaining agreement. Moreover, in practice it would be extremely difficult, if not impossible, for the State System permanently to replace any tenured or tenure-track faculty. You can be assured that APSCUF would vigorously oppose any attempt by management to replace any faculty members

because they have participated in a strike permitted by the Public Employee Relations Act.

7. *Are untenured faculty members protected from management's retaliatory or discriminatory actions while they strike?*

Yes. This protection is provided under Act 195, the Public Employee Relations Act, which makes it an unfair labor practice for management to take retaliatory or discriminatory action against public employees who engage in lawful strike activity.

8. *May non-union faculty legally strike?*

Yes. In fact, APSCUF expects that all faculties, regardless of whether they have chosen to become APSCUF members, will strike should a strike be called. Faculty who have chosen not to join APSCUF enjoy all the rights and protections provided by the collective bargaining agreement and the law; there is no difference between the rights of union members and non-members in the event of a strike. We ask all APSCUF members to encourage non-members to support any action taken by APSCUF. The current assault on the wages and health and welfare benefits would, if successful, cause losses for members and non-members alike. Faculty solidarity is the key to a swift and fair contract settlement.

9. *Will I get paid if I go on strike?*

The Public Employee Relations Act forbids public employees to receive compensation for any period for which they participate in a strike. However, should we strike and an agreement is eventually reached to make up the work missed during the strike, faculty members will be compensated for any work that is made up. Faculty members are also entitled to be paid for all work performed before a strike begins and after it ends. It is APSCUF's belief that the State System currently pays on a delayed pay schedule so that faculty pay is always in arrears. We believe it is the State System's obligation to continue your pay for any work done prior to the strike even if that means issuing you a paycheck while you are on strike.

10. *What effect will a strike have on Blue Shield, HMO or POS coverage?*

A federal law commonly known as "COBRA" entitles employees to continue their group health plan coverage for up to 18 months after loss of coverage due to a "qualifying event." A strike is deemed to be a qualifying event, meaning that you will be entitled to continue your group health plan coverage.

COBRA works this way: Within 14 days after you go on strike, the employer must notify you that you have 60 days to opt for continuation of coverage under the group plan, but at your own cost. You will be notified of the cost, which by

law may not be more than the actual cost to the employer plus two percent, which is designed to be a service charge. If Blue Shield covers you, then you will also be offered the opportunity to convert to a non-group policy. Should you not exercise your right to continue coverage at your own expense, at the end of the option period, your coverage would be terminated retroactively to the beginning of the strike.

It is common for health plan providers to contract with another agency to provide you with information about your COBRA rights. One company, known as "COBRA-Serve" is often used. Should you receive information from such a company, you should treat it as if it comes from the State System or your health care provider. We will be happy to answer individual questions as they occur, but you can rest assured that this is an area closely regulated by Federal law and that any difficulties that arise will be worked out in the end.

11. What effect will a strike have on retirement contributions and/or years of service?

Retirement contributions are made based upon the money that you earn, so there will likely be no effect at all on your retirement contributions should work be made up after a strike. For faculty who participate in SERS and PSERS, any loss of contributions should not significantly affect the final average salary of anyone retiring within three years of the strike. Should you retire more than three years after a strike, there should be no effect at all. Faculty who participate in TIAA/CREF and/or any of the other defined contributions plans could lose contributions for a period of time if work is not made up, which would obviously lessen the investments in your accounts, but we believe that such a loss is extremely unlikely. If time lost is made up, as it likely will be, there should be no loss of contributions or service to any individuals in any of the retirement plans.