Voting to Authorize an Open-Ended Unfair Labor Practices Strike Questions and Answers

Q: Why are our IBHS Bargaining Committee and our IBHS Steward Council recommending we vote to authorize an open-ended unfair practice strike?

A: Our Stewards and Bargaining Committee believe the threat of an open-ended strike will best communicate to management our demands to be treated with fairness and respect, in our workplaces and at the bargaining table. Kaiser has escalated its intimidation of NUHW members, has continued to bargain in bad faith, and has made no significant improvement in its proposals since just after our one-week strike in January. Our committee and council strongly believe that Kaiser will not change its behavior and will not bargain in good faith unless we demonstrate to them that our members are still willing to fight. Of course, the threat of a strike has to be a real threat to be effective. This is why it is important for every IBHS member to support this action.

Q: What would a “YES” vote mean?

A: Voting YES means that you give our IBHS bargaining committee the authority to give Kaiser a 10-day notice of an open-ended unfair practice strike whenever they believe it is appropriate to do so. If Kaiser demonstrates it is willing to make substantial changes, then there may be no need to give the notice. However, if Kaiser remains intransigent, our committee would give the notice. Voting YES also means that you are willing and prepared to participate in the strike should it happen.

Q: What would a “NO” vote mean?

A: Voting NO would mean you are unwilling to give our bargaining committee this authority and that you are unwilling to strike. If a significant number of people vote NO, our committee would not be able to most effectively challenge Kaiser’s intimidation and lack of good faith in bargaining and would likely be forced to accept the proposal Kaiser currently has on the table.

Q: How is an open-ended strike different from the strikes we have had before?

A: For strikes of a set duration, Kaiser can more easily make contingency plans than for a strike with an indeterminate end date. This time Kaiser must handle patient care needs for an extended period of time. Kaiser’s subcontractor, Value Options (VO) is already stretched to capacity at several medical centers, just handing the overflow. And Kaiser remains under tremendous pressure from DMHC to meet regulatory access requirements.

Q: How have we benefitted from our past strikes?

A: Each time we have demonstrated to Kaiser that we are willing to stand together in large numbers during a strike, Kaiser has improved its offer and conduct in bargaining. After the first strike, for example, Kaiser took off the table its proposal to replace all employees’ pensions with an inferior 401(k). After the last strike, Kaiser improved its Retiree Health proposal and moved back the implementation of its other takeaway proposals to 2017. These time-limited strikes got Kaiser to improve and move, just not enough.
Q: What will happen if Kaiser changes its conduct after we give notice but before we strike?

A: If the change were to be more than cosmetic, if Kaiser bargained in good faith and put an end to the intimidation of NUHW members, our committee would postpone the strike and continue bargaining until we had a new and improved proposal to bring to a vote.

Q: Can Kaiser retaliate against me for participating in a strike?

A: Federal law explicitly protects the right of all employees to strike, including doctors and other medical professionals. 29 U.S.C. § 157; Montefiore Hospital and Medical Center, 243 NLRB 681 (1979), enforced in relevant part, 621 F.2d 510, 514–15 (2d Cir.1980); Bethany Med. Cir., 328 N.L.R.B. 1094, 1094 (1999) (holding that the same standards of conduct apply to healthcare employees as to employees in other industries). Federal law also protects striking employees from retaliation. The NLRA makes it unlawful for an employer to interfere with an employee’s right to strike. 29 U.S.C. § 158(a)(1). It is also unlawful for an employer to retaliate or discriminate against any bargaining unit employee who participates in a strike. 29 U.S.C. § 158(a)(3). These protections also apply to per diem and probationary employees.

Q: Who will be responsible for our patients during an open-ended strike?

A: Kaiser is responsible for ensuring adequate and timely care for all if its patients whenever you are off work for any reason. Being on strike is no different than being on vacation or being off on a medical leave. Also, Unions are required to give 10-day notice to Healthcare Employers and as courts have ruled, “[T]he union notification provision is intended as a sufficient safeguard to enable health care workers to strike; there is no requirement that individual employees provide notice.” N.L.R.B. v. Special Touch Home Care Servs., Inc., 708 F.3d 447, 456 (2d Cir. 2013). Moreover, because participating in a strike is exercising a federally protected right, striking cannot imperil or impact an individual’s license any more than taking a noticed, approved vacation.

Q: Can Kaiser replace us?

A: An Employer can legally replace employees who are on open-ended strike for purely economic reasons. However, if the strike is over unfair labor practices, such as a failure of the Employer to bargain in good faith or to protest management’s violent intimidation of union members, the Employer cannot legally replace employees. As a practical matter, Kaiser could not replace 1350 therapists when they cannot even hire the 250 more therapists they say they need and it takes four to six months for the entire hiring process.

Q: Will bargaining continue while we are on strike?

A: Yes. This strike is about Kaiser’s unfair practices, including intimidation and lack of good faith in bargaining. A strike typically discourages unfair practices and encourages both sides to reach an agreement.

Q: When will the strike end and who will make that decision?

A: The strike will end when Kaiser has made changes in its behavior and position that are acceptable to the IBHS members, who will have the opportunity to vote whenever the bargaining committee believes significant progress has been made. The IBHS members as a whole will decide when the strike ends.

Q: Does NUHW have a strike fund or any hardship fund?

A: NUHW does have a strike fund but at this time, its funds are only sufficient to cover the costs of administering a strike and not to cover any amount of lost wages. NUHW does not have a hardship fund. During the one-week strike in January, at one facility, members pooled resources to assist their co-workers with the most need.