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Lawyers for education.



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## WHERE CAN THE UNION PICKET?

With the start of the 2015-2016 school year has come a fair amount of “strike talk.” A recurring question we are asked is: where can employees who are on strike picket? Unions have taken the view that district property is public property and, therefore, they can picket where they choose.

The law does not support that position. While neither the courts nor the Pennsylvania Labor Relations Board (PLRB) have definitively ruled on this issue, there is guidance available. We start with the basic premise that employees on strike have the right to picket. However, that right is not absolute. The PLRB has ruled that an employer can limit access on its property. It also has ruled that an employer’s property rights are equal to the right the employees have to picket. As it relates to a school district, pursuant to Article 7 of the school code, it would appear that a district has indicia of ownership of the land upon which its buildings are located. It has the right to sell unused and unnecessary land and buildings (§7-707), the right to lease them (§7-774), and the right to use them for other purposes (§7-775).

The PLRB, in the few cases it has decided in this area of the law, has relied on precedent from the private sector under the National Labor Relations Act (NLRA). In the case of *NLRB v. Visceglia*, the Third Circuit Court of Appeals rejected a ruling of the NLRB that the employer violated the NLRA when it threatened picketers with arrest if they picketed on private property. The court concluded that there needed to be evidence that it was essential for the pickets to be on the private property in order to communicate its message effectively. The court noted that everyone entering the property had to pass the pickets and those entering should have been able to read the picket signs at the location where the pickets were permitted to picket. In a Temple University case, the PLRB used a similar analysis and looked to see if the employees had an effective means of communicating with their intended audience in the absence of access to the employer’s property.

A common issue we are asked about is whether striking employees can picket in front of the doors leading to a building. Depending on the circumstances and utilizing the analysis noted above, the employer may be able to prohibit that kind of picketing. When a dispute arises concerning the location of pickets and the union seeks immediate relief it can and has gone into court to get a resolution. Once in court, there is the possibility that, in addition to the court addressing the picketing issue, the union may seek court-ordered bargaining. Accordingly if a dispute arises concerning picketing a careful assessment of the situation should be undertaken considering the advantages and disadvantages of limiting pickets. However, should the employer wish to limit picketing in some manner, in view of the current case law, limited though it is, it is our view that the employer has control over where picketing can occur during a strike.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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