

Strategies for Public Sector Workers

Dealing With Prohibitions Against Collective Bargaining and Striking by Public Employees

Most states in the South have statutes or court rulings that prohibit public sector employers from entering into contracts with labor organizations concerning public employee terms and conditions of work and prohibit their employees from striking. Despite these limitations these laws can be circumvented and challenged through actions not expressly prohibited. For example:

- These states do not prohibit, nor constitutionally could they prohibit individuals from joining or supporting unions or unions from organizing and operating to obtain new members. (In fact, such prohibitions in North Carolina were long ago ruled unconstitutional. In *Atkins v. City of Charlotte*, the court held that such statutory prohibitions in North Carolina were an unconstitutional abridgement of the First Amendment right of freedom of association.)
- These states do not prohibit public employees from demanding to meet and meeting with public employer representatives over terms and conditions of public employee work.
- These states do not prohibit representatives of public employees or public employee organizations from demanding to meet and meeting with public employer representatives over terms and conditions of public employee work.
- *“while public employees do not have the right to collectively bargain, they are not precluded from sitting down at a table with representatives of the city and discussing matters concerning the employment relationship”*
- These states do not prohibit public officials from holding discussions with public employee unions and, if desired, reach oral or written “understandings” even though such understandings may be unenforceable. Such a “meet and confer” process may memorialize in writing agreements on terms and conditions. Meet and confer authority falls within a public employer’s general power to carry out its statutory functions, including establishing employee wages and working conditions and such consultation

serves the public interest by permitting more informed governmental action while not interfering with its freedom of action.

Collective Actions on Matters of Public Concern

All public employers are bound by Supreme Court rulings which hold that speech involves a matter of *public concern* when: (1) it can be fairly considered as relating to any matter of political, social, or other concern to the community; or (2) it is a subject of legitimate news interest, that is a subject of general interest and of value and concern to the public. If public employee speech meets the *public concern* test, absent actual disruption of government operations caused by the speech, it is protected by the First Amendment. Subjects of public employee speech which meet this test may include:

- Public comments addressing government employer mismanagement, financial or other corruption, poor performance in providing services, or operations and practices that present health and safety risks to the general public as well as workers.
- Petitioning government employers to improve employee conditions including wages, benefits and other conditions of work (protected by the *petition clause* of the First Amendment).
- Public comments on petitions to employers regarding working conditions because the wages and conditions of public employees may have a direct and substantial impact on the extent, quality and safety of public services performed by these employees.
- Public comments urging public employers and the community at large to support initiatives that will benefit the community as a whole or a substantial portion of the community as well as the conditions of public employees.
- Public comments concerning the adequacy of funding for public services.
- Petitioning employers to support government policies that affect wages and working conditions of public employees

Associational Rights to Act on Behalf of Public Employees

THE FUTURE IS WORKERS' COLLECTIVE ACTION
Southern Workers Medicare for All Campaign

State bans on public employee collective bargaining and strike activity do not prohibit unions from organizing public employees or representing employees by speaking on their behalf to public employers.

The First Amendment organizational rights of freedom of speech and association recognized apply to any form of representative speech or conduct presented to a government employer, not just speech at meetings of governmental bodies opened as a public form. Private communications (e.g. written or electronic correspondence) by public employee representatives to their employers concerning terms and conditions of public employment are also subject to First Amendment protection as are public communications (e.g., demonstrations, media campaigns, etc.) on such matters. Since such communications are by their very nature matters of public concern, they will be protected as long as they do not cause an actual disruption in efficient government operations.

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