



# PLUMBING CONTRACTORS ASSOCIATION MIDWEST



## PLUMBING COUNCIL MIDWEST

603 ROGERS STREET, SUITE 2, DOWNERS GROVE, IL 60515  
PH: 312-563-9526 (PCA) 312-263-6612 or 800-76-VALVE (Council); FX: 630-960-5487

### A Contractor's Guide to Dealing with Strikes

Projects being performed by union contractors at times are affected by strikes (also known as work stoppages), either by a labor organization that (a) represents all or a portion of your workforce, or (b) has no connection to your company but simply is working at the same job site for a different contractor. In the former situation, your company is one of the Struck/Primary Employers on the site and as such can be subject to picketing, while in the latter situation your company is a Neutral/Secondary Employer and cannot be picketed by the striking union.

While the rules vary a bit depending on your status as a "Struck" or "Neutral" employer, in either case it is best to follow certain guidelines. Understandably, contractors must adhere to deadlines, work schedules, and contracts with their own clients to complete the project as stipulated. A strike can produce a tense and disruptive situation (frankly, that's part of the intent), and it can have a significant impact. The union(s) on strike has the right to conduct a strike under specific conditions, yet the union is also obligated to follow the law. Just as importantly, contractors have rights and responsibilities as well. You have a business to run, and a duty to keep up with the work that you took on. For advice on dealing with a strike, read on:

1. Union employees on your payroll (at the job site at which your company has a project in progress) who are scheduled to work but who refuse to cross a picket line established by a separate (striking) union are not required to be paid.
2. Union employees who are scheduled to work but who refuse to cross a picket line established by a separate union typically do not have a right to "show up pay" unless their bargaining agreement has language that requires it.
3. **For "Neutral" employers:** While individual union employees represented by non-striking Unions may have the right to "honor" (refuse to cross and therefore not work) a picket line, Unions whose members are not on strike may not legally require or direct their own members to honor a picket line established by a separate (striking) union—and they cannot threaten to fine or take other action against their members for such activities. Careful review of your contract's no strike clause is recommended to determine if non-striking employees have a right to engage in sympathy strikes during the contract's term. Most times, a "Neutral" contractor will be provided with access to the site through a gate system in which their employees will not have to cross a picket line. This topic is discussed further below.
4. **For "Struck" employers:** Employees represented by the striking union have the legal right to cross a picket line and go to work (but will seldom do so). Employees represented by the striking union who do cross a picket line and go to work, however, can be subjected to internal union charges and fines unless they have first resigned their union membership and taken "financial" core status. Employees can contact the NLRB for further information on such rights. No union can affect or "take away" (or threaten to do so) any employee's benefits or pension rights for crossing a picket line.

The bottom line: an employee who wishes to work at a struck project may do so regardless of a picket line. Union members who cross their own Union's picket line to go to work can be subject to Union charges and fines unless they have first resigned from the Union. Resignation will not affect the employee's rights to benefits or his/her pension rights.

5. Employers must be careful in their communications with their employees concerning their rights to cross or not cross a picket line. Again, careful review of your labor contract's no strike clause is necessary before doing so.

Threats of termination of employment should not be made since the employee could be exercising a protected legal right not to cross a picket line. However, the employees may truthfully be told that they will not be paid (including “show up” time) if they refuse to cross a picket line, and also that if the employee leaves work after a picket line has been established once the worker’s shift has begun, they will not be paid *from that point on*. Furthermore, another individual can be brought in (a replacement employee) and paid to perform the work of the employee who refused to cross the line (or continue to work).

6. In the situation where an employee lawfully refuses to cross the picket line, if the contractor has no other available work for this member to perform, the contractor is not required to place the employee elsewhere (and thereby displace another union member at another job site).
7. **For “Neutral” employers:** Where individual union employees represented by non-striking Unions refuse to cross or work behind a picket line set up by a different (striking) Union, contractors are able to substitute another union employee from the same company to perform that work. If no other union employees are available, the contractor may contact laid off employees who have recently worked for the company to request that they perform the work of the union employee who refused to cross the picket line.

If no laid off employees are available or willing, the contractor may either contact the union hall to request an out of work member (although it is unlikely that the union would refer a member under these circumstances), or hire a comparable member from another local union from the same “parent” union (in other words, if the member is from a UA local, the contractor could hire from another UA local in the area, or beyond if no members are willing to come to work). However, it is recommended that contractors review their labor agreements to determine what, if any, hiring procedures they contain (such as an exclusive referral hall) and what steps must be followed to comply with those provisions.

If no employees will cross, and the Union will not cooperate in requests to “man the job” the Neutral employer (like any other employer) can use temporary replacements to perform the work. The terms of the existing Union agreement would still apply to that work. Such replacements can come from any source: applicants who’ve sought employment with the company, recommendations by existing employees, placing a job ad, or other means.

8. **For “Struck” employers:** Struck employers also have the right to replace striking employees in order to complete their work on a job and can set the terms and conditions that apply to that work. This is a “right” that is not easily or often exercised in the construction field because of, in part, the difficulty in finding appropriately trained and skilled replacements. Before any replacements are hired on a job (even temporarily) a Struck contractor should review the matter with experienced labor counsel.
9. Once the strike concludes, the striking employee(s), including persons who honored a picket line, must be allowed back to work unless he/she was permanently replaced. In the rather fluid and often changing dynamics of a strike, most replacements who are hired are going to be temporary, which means that the striking employee has a right to his/her job back at the end of the strike. It is recommended that legal counsel be consulted when making such decisions. No employee who has legally honored a picket line can be disciplined or terminated.
10. **“Reserved Gates”** –A two-gate or “dual gate” system may legally be established by the general contractor or owner on a project. One gate is “reserved” for the Struck employers (their visitors, suppliers, etc.), and that is where the union pickets must stay, while a second gate is “reserved” for the Neutral employers (their visitors, suppliers, etc.), thereby avoiding any need for employees represented by other non-striking labor organizations or non-union employees to cross a picket line. In this setting, the Neutral employers and their non-striking Union employees are required to use the “Neutral” reserved gate to enter and exit the property. That entrance cannot, by law, be picketed, and employees who use this special gate should not be harassed, intimidated, turned away by strikers or “neutral gate observers”, etc.

**“Struck” Employers on a dual gate job must remember that** all of their employees must enter and exit through the “Struck” gate. The rule does not just apply to the trades or to the striking trades. All of your employees, visitors and suppliers must use the “Struck” gate only. That includes management as well as your other trades who are not on strike.

These rules on dual gates are easily stated, but not easily enforced—you will find that the more effective the gate (meaning, your non-striking union employees are reporting to work through the gate) the more likely that the striking union (perhaps aided by non-striking unions) will react and interfere with access through the gate. These scenarios are always fact specific, and contractors faced with them should seek advice of their own counsel as to the options available to counter the unions’ actions through unfair labor practice charges filed with the NLRB or other strategies.

If a contractor’s union employee who is scheduled to work refuses to enter the job through either gate to show support for the striking union, the same scenarios apply as noted above (no pay for no work, no show up pay, and no guarantee the job will still be available to that individual after the strike ends). While non-striking employees who are required to use the “Neutral” reserved gate to enter and exit the job site are not, by definition, being required to cross a picket line, it is recommended that you contact legal counsel before disciplining an employee who refuses to enter through a neutral gate.

*In closing, the strategy of a strike is to disrupt and halt work at a jobsite and/or against an employer in order for the union to put pressure on the other bargaining party to resume negotiations and reach a settlement that the union finds satisfactory. The majority of unions consider a strike to be an absolute “last resort” effort to lead to a resolution to negotiations. They generally require a vote by the members to be authorized. A strike has the potential (as history has shown) to damage the reputation of the union, as well as the employer or employer group being struck. It’s serious, and it’s meant to be inconvenient and elicit the support of other unions, as well as the ire or sympathy (or both) of the general public.*

*Strikes tend to be associated with tension, emotion, anger, solidarity, and other uncomfortable attributes. So, take the time to think through all actions or remarks, since they could have lasting consequences. It’s understandable that as a contractor your goal is to keep your work going and not suffer a loss due to a situation you didn’t create. But please consider this advice: be cautious and sensible, do not act in haste, try to see the “big picture,” and do seek legal counsel or contact your trade association if you have any questions or doubts as to what steps you should take.*

**PCA Midwest** 603 Rogers Street, Ste. 2; Downers Grove, Illinois; 60515; S.J. Peters, Executive Director. [sj@plumbingcouncil.org](mailto:sj@plumbingcouncil.org).