

# OUR STATEWIDE STRIKE

## QUESTIONS AND ANSWERS

### **Q: Why is NUHW going on strike?**

A: 4,000 NUHW members at Kaiser Permanente are going on strike to protest Kaiser's refusal to bargain in good faith toward a fair contract. To date, Kaiser has refused to ensure that our hospitals and clinics are staffed adequately to provide safe and timely access to care. Also, at a time when Kaiser is making record profits (\$5.7 billion in profits since the beginning of 2009) and Kaiser executives are being paid like Fortune 500 CEOs (Kaiser CEO George Halvorson enjoyed nearly \$9 million in total compensation in 2010), Kaiser is trying to force cuts on workers' healthcare and retirement benefits. That's not fair to workers or patients, and NUHW members are refusing to lie down and accept management's ridiculous demands.

### **Q: Why are 17,000 RNs in the California Nurses Association and 1,800 Local 39 Stationary Engineers striking in sympathy with NUHW?**

A: CNA-represented RNs and Local 39 Engineers recognize and act on the fundamental trade union principle of union solidarity. Kaiser's ruthless concessionary bargaining strategy to take away hard won NUHW standards of economic and health security is not justified by economic or operational need, nor limited to NUHW.

CNA-represented RNs and Local 39 Engineers support their NUHW co-workers in this strike because they recognize that the injuries Kaiser intends to inflict on NUHW workers are and will be injuries suffered by other Kaiser union members. CNA and Local 39 solidarity with NUHW workers now in this strike may be the only effective means of defense against Kaiser's vicious attack on all Kaiser workers and their families.

### **Q: Is NUHW asking workers to sympathy strike with NUHW workers?**

A: Workers who are not members of CNA, Stationary Engineers Local 39, or NUHW who work at Kaiser have been asking what their rights are in regard to sympathy striking with NUHW workers. We have provided the information that we believe will allow workers to make an informed decision.

### **Q: Do employees represented by SEIU UHW at Kaiser facilities have a legal right to honor NUHW/CNA/Local 39 picket lines?**

A: **YES.** Employees represented by SEIU UHW who honor picket lines will be engaged in a "sympathy strike" with NUHW-represented employees. CNA- and Local 39-represented employees who honor the picket lines will also be engaged in a sympathy strike.

In *Children's Hospital of Oakland v. California Nurses Association*, 283 F.3d 1188 (9th Cir. 2002), the federal appellate court for the Ninth Circuit (which includes California) explained that the right to engage in a sympathy strike, that is, the right to strike for the purpose of supporting the cause of workers represented by a different union, is a right protected under Section 7 of the National Labor Relations Act, 29 USC §157.

While a union can *waive* that right to engage in sympathy strike in a collective bargaining agreement, the court stated in *Children's Hospital* that the waiver must be "clear and unmistakable," so that the bargaining unit members are on notice of the waiver. In the *Children's Hospital* case, the court also ruled that a general no-strike clause, that is, a clause that does not say anything specific about "sympathy strikes," does not prohibit sympathy strikes, unless it can be proven that the parties intended to prohibit sympathy strikes. Because the no-strike language in the collective bargaining agreement between Kaiser Permanente (Northern and Southern California) and SEIU United Healthcare Workers-West does not mention sympathy strikes, and because bargaining history and past practice do not indicate a clear intent to prohibit such strikes, it is very unlikely that Kaiser could prove that it and SEIU/UHW-West ever agreed to prohibit sympathy strikes.

**Q: Do I have the same legal right to honor the picket line if SEIU-UHW West fails to give a ten-day advance notice?**

A: **YES.** Section 8(g) of the National Labor Relations Act requires that a labor organization representing employees at a health care institution provide the employer and the National Mediation and Conciliation Service with notice, at least ten days in advance, before engaging in any strike, picketing or other concerted refusal to work at any health care institution. 29 USC §158(g). The National Labor Relations Board and the federal courts, including the Ninth Circuit, have uniformly interpreted this provision to apply only to labor organizations, and not to individual employees. See, e.g., *NLRB v. Long Beach Youth Center, Inc.*, 591 F.2d 1276, 1278 (9th Cir. 1979). Consequently, individual employees are not themselves required to give the ten day notice, and they also do not lose the Act's protection if their union fails to give the ten day notice and they are acting without their union's approval. See *East Chicago Rehabilitation Center, Inc.*, 259 NLRB 996, 999 (1982), enforced 710 F.2d 397, 401-402 (7th Cir. 1983).

**Q: Is it lawful for me to join the picket line and picket with NUHW, CNA and Local 39?**

A: **YES.** There is no restriction on joining the picket line, and the National Labor Relations Board ("NLRB") does not generally treat sympathy strikes and sympathy picketing any differently. See *Montefiore Hospital and Medical Center*, 243 NLRB 681 (1979), enforced in relevant part, 621 F.2d 510 (2d Cir. 1980). While joining a picket line might be restricted by a collective bargaining agreement, the collective bargaining agreement between Kaiser Permanente (Northern and Southern California) and SEIU United Healthcare Workers-West does not appear to prohibit or restrict picketing by sympathy strikers.

**Q: If I am working when the picket line goes up, can I leave my job to join the picket line?**

A: **YES.** The National Labor Relations Board has found sympathy walkouts protected even where doctors in a hospital involved in direct patient care walked out in sympathy with strikers who had set up a picket line, in *Montefiore Hospital and Medical Center*, 243 NLRB 681 (1979), enforced in relevant part, 621 F.2d 510 (2d Cir. 1980). To protect yourself, however, we advise that you give your supervisor advance notice of the fact that you are leaving and the reason you are leaving.

**Q: If I am on an approved vacation, or on leave of absence, can I join the picket line?**

A: **YES.** There does not appear to be any legal restriction on engaging in sympathy strike conduct while on vacation or leave of absence.

**Q: If I am at a site where there is no picket line, but workers at that location are in fact on strike, can I go out in sympathy with those workers?**

A: **YES.** The refusal to work during a strike is protected even when it does not involve picket line activity. *M/G Transport Services*, 204 NLRB 324, 325 (1973) ("picketing and honoring a specific picket line are only two of the many forms of activity protected by Sections 7 and 13 of the Act").

