

*Communications
Workers of America
District 3
AFL-CIO*

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TO: AT&T SE Local Presidents, Staff & their Secretaries
District 3

FROM: Richard Honeycutt
Vice President – District 3

RE: Working Without a Contract – Legal Rights

A common fear about letting the contract expire is that the employer can cut wages, halt payments to benefit plans, cancel vacations, scrap seniority, assign supervisors to unit work, refuse to hear grievances, and so on. In truth, the only areas in jeopardy are union security, dues checkoff, agreements on permissive subjects, arbitration, and matters in the employer's final contract offer. Wages and benefits do NOT change.

Management Rights: The National Labor Relations Act requires management to maintain the contract terms and conditions of employment while it bargains a new agreement, except for the items discussed below. Abandoning or changing a pre-existing condition is an unfair labor practice (ULP), giving the Union a basis for filing a charge with the National Labor Relations Board (NLRB), calling an unfair labor practice (ULP) strike, or filing a challenge to a lockout. This means that the company cannot make unilateral changes to existing terms and conditions without notice to the Union and affording good faith opportunity to bargain with the Union over proposed changes. If unilateral changes are proposed along with an offer to bargain over them and the Union does not do so, only then may an employer implement those changes. Also, notice does not need to be "formal" – i.e., to the bargaining committee or the District Vice-President; it can be to a Union representative at a particular work site. Therefore, it is imperative that those representatives relay any notice to their Local President immediately.

Concerted Activities: Concerted activities post-expiration can run the risk of a lockout, depending on AT&T's willingness to reach agreement at the bargaining table. However, unfair labor practice (ULP) charges can be filed if the employees are locked out for engaging in protected concerted activities and in some respects, lockouts are more advantageous to us than strikes. Informational picketing, leafleting, etc. are all legitimate activities which we should be engaged in, but specific legal rules must be observed to be sure these activities are protected. If you are not sure check with your State or Local Mobilization Coordinator.

Union Security and Dues Checkoff: Union security obligations – like mandatory dues or dues equivalent—are unenforceable in the absence of a contract. Dues checkoff is also at risk, and the company can stop making dues deductions. Members will still owe dues, but the Union would have to collect them individually. It is worthy of noting that this has not happened with most of our employers.

Arbitration: With a few exceptions, arbitration rights disappear during the “without-a-contract” period. The exceptions are grievances that were filed when the contract was still in effect, grievances over events that occurred under the expired agreement, and grievances over events that occurred during the contract extension. For grievances over new matters, including discipline, the employer’s only duty is to discuss the matter with the Union and supply information.

With arbitration no longer a concern, the employer may be tempted to discipline workers who play a leading role in the Union’s mobilization activities. The counterweight is the Union’s ability to strike in protest. While we are working without a contract, **the no strike/no lock-out provisions of the contracts are no longer in place.** Though this is not something that we would encourage, it is an option available, in the event that it becomes necessary. The Union can also file charges at the (NLRB) and without a contract in place, the (NLRB) cannot apply its deferral policy which delays (NLRB) action until the grievance procedure is completed.

Agreements on Permissive Subjects: Contract termination releases the employer from permissive subjects of bargaining, like health insurance and benefits for employees who are already retired and card check/neutrality provisions.

RH/bcc

cc: Nick Hawkins, Assistant to the Vice President
Billy O’Dell, Administrative Director
Angie Wells, Administrative Director
Robert Weaver, CWA District 3 Legal Counsel