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# Labor Continuity and Enterprise Risk Management

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A variety of documents on risk management and business continuity are available for download at: <http://amxi.com/downloads.html>

# Labor Strikes



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- Labor related slowdowns, disruptions and strikes can cripple a business and poorly negotiated contracts can eventually force businesses into bankruptcy in a highly competitive global economy.
- After years of unsuccessfully negotiating contracts with the United Auto Workers, General Motors was forced into bankruptcy. The UAW out performed GM negotiators contract after contract until GM could no longer compete on price, quality and agility. Production costs and a lack of financial and operational freedom significantly impacted innovation and new product development.
- Some experts believe the union will help management increase profitability. As part of bankruptcy court negotiations the UAW agreed to a new contract with a wage freeze and a no strike clause, this contract expires in 2015.
- Other experts believe the union will continue to focus on core issues such as compensation, job preservation and benefits. This strategy was implemented by the UAW during bankruptcy court negotiations, the UAW prevented the Car Czar from pursuing a plan to import small fuel efficient cars from China, a quick boost to GM's profitability. A UAW balloon payment may come due in 2015.
- GM's emergence from bankruptcy is not a reflection of future results.

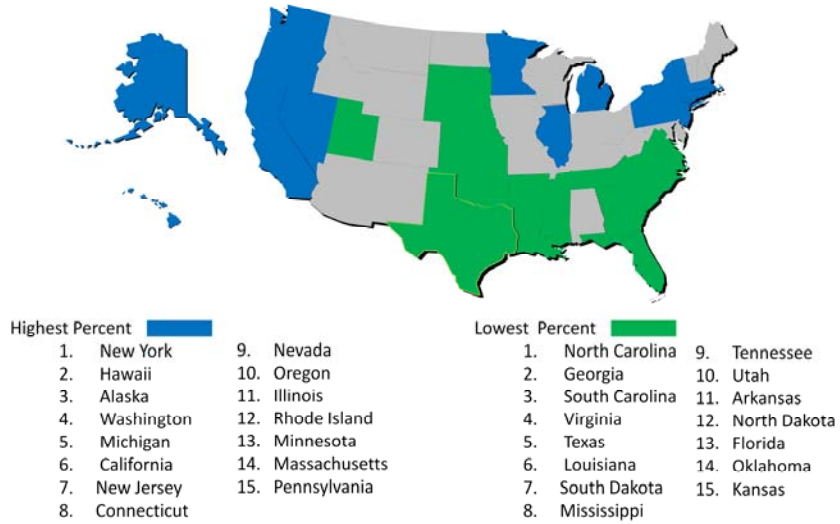
## Major Labor Unions

- American Federation of Labor – Congress of Industrial Organizations (AFL-CIO)
  - American Federation of State, County and Municipal Employees
  - American Federation of Government Employees
  - Utility Workers Union of America
- Change to Win Federation (CtW)
  - International Brotherhood of Teamsters
  - Service Employees International Union
  - United Farm Workers

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- The AFL-CIO
  - About 11.5 million members.
  - Unions include: Air Line Pilots Association, American Federation of Government Employees, Communications Workers of America, International Federation of Professionals and Technical Engineers, United American Nurses, Plus 50 more.
- The Change to Win Federation
  - About 6 million members.
  - Unions include: International Brotherhood of Teamsters, Laborers' International Union of North America, Service Employees International Union, United Farm Workers of America, United Food and commercial Workers International Union.
- According to an AFL-CIO survey, 60M American workers would join a union if they could.
- 12% of the total US workforce is currently represented by unions.
- 37% of public sector employees are represented by unions.
  - 43% in local government – teachers, police and firefighters
- 7% of private sector employees are represented by unions.
  - 22% transportation and utilities, 16% telecommunications, 15% construction.
- 1 in 3 public sector employees are represented by a union and 1 in 14 private sector employees are represented by a union.

# Labor Union Membership



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- Percent of workforce represented by a union:
  - New York – 25%
  - North Carolina – 3%

## National Labor Relations Board

- The NLRB is an independent federal agency created by Congress in 1935, to administer the National Labor Relations Act
  - Governs the relations between unions and employers in the private sector
  - Guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from all such activity

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- The NLRA was designed to curtail work stoppages, strikes and general labor strife, which were viewed as harmful to the U.S. economy and to the nation's general well-being.
- The National Labor Relations Act outlines basic rights of employees:
  - To self-organization.
  - To form, join, or assist labor organizations.
  - To bargain collectively for wages and working conditions through representatives of their own choosing.
  - To engage in other protected concerted activities with or without a union, which are usually group activities (two or more employees acting together) attempting to improve working conditions, such as wages and benefits.
  - To refrain from any of these activities. (However a union and employer may, in a State where such agreements are permitted, enter into a lawful union-security clause).
- The National Labor Relations Board website: <http://www.nlr.gov/>
- The National Mediation Board is an independent federal agency created in 1934. It focuses on labor issues in the railroad and airline industries: <http://www.nmb.gov/>
- The Federal Labor Relations Authority is an independent federal agency, created in 1978. It focuses on labor issues in the Federal government: <http://www.flra.gov/>

## NLRB Employer Violations

- Threatening employees with loss of jobs or benefits if they join or vote for a union or engage in protected concerted activity
- Threatening to close the business unit if employees unionize
- Questioning employees about their union sympathies or activities in circumstances that tend to interfere with, restrain or coerce employees in the exercise of their rights under the Act
- Promising benefits to employees to discourage their union support
- Transferring, laying off, terminating, assigning employees more difficult work tasks, or otherwise punishing employees because they engaged in union or protected concerted activity
- Transferring, laying off, terminating, assigning employees more difficult tasks, or otherwise punishing employees because they filed unfair labor practice charges or participated in an investigation conducted by NLRB

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- The first step is filing an unfair labor practice charge, which may be against either an employer, union, or in some cases, both.
- The NLRB determines if it has jurisdiction. As a federal agency, the NLRB only becomes involved in matters that have an impact on interstate commerce.
- By statute, only charges filed and served within six months of the date of the event or conduct.
- Contact the nearest NLRB Regional Office and ask to speak with the Information Officer on duty, who will listen to your concerns and then explain what is and what is not covered by the NLRA.
- If a charge is filed, the Information Officer will assist in filling out the appropriate charge form. You become the "Charging Party".
- Be prepared to supply at the name, address and telephone number of the employer or union against which the charge is to be filed. The "Charged Party".
- It is the responsibility of the Charging Party to timely and properly serve a copy of the charge on the Charged Party.
- After the charge is filed, the Charging Party will be contacted by the NLRB agent assigned to the case to arrange for the submission of supporting evidence.
- Charging Party cooperation in the investigation is essential. Failure to provide evidence in a timely manner may result in the dismissal of the charge.

## NLRB Labor Union Violations

- Threats to employees such as job loss for not supporting the union
- Seeking the suspension, discharge or other punishment of an employee for not being a union member even if the employee has paid or offered to pay a lawful initiation fee and periodic fees thereafter
- Refusing to process a grievance because an employee has criticized union officials or because an employee is not a member of the union in states where union security clauses are not permitted
- Fining employees who have validly resigned from the union for engaging in protected concerted activities following their resignation or for crossing an unlawful picket line
- Engaging in picket line misconduct, such as threatening, assaulting, or barring non-strikers from the employer's premises
- Striking over issues unrelated to employment terms and conditions or coercively enmeshing neutrals into a labor dispute

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- The Charged Party will be requested to provide relevant information and, if the evidence warrants, will be asked to make witnesses available for an interview. The Charged Party may be requested to provide additional evidence and/or information as the investigation progresses.
- The NLRB may establish deadlines to submit evidence and arguments, so the investigation can be completed in a timely manner.
- The NLRB will complete the investigation, decide whether the case has merit, and implement a decision as promptly as possible.
- The NLRB decision can be expected within 7 – 12 weeks, depending on the impact the case has on the public. The NLRB may also consider a court injunction to temporarily stop the alleged unfair labor practice, if appropriate.
- According to the NLRB, about 65% of unfair labor practice cases are dismissed or voluntarily withdrawn for lack of merit.
- If the NLRB determines the charge has merit, an agency attorney will prepare and present the case to an NLRB Administrative Law Judge (ALJ). The Charging Party and the Charged Party can have legal counsel present and may choose to examine witnesses.
- After the trial is completed, the ALJ will issue a written decision and recommended order.
- The ALJ's decision can be appealed in NLRB in Washington and ultimately in federal court.
- The NLRB oversees about 1,344 union elections and it processes about 25,000 unfair labor practices charges a year.

## Labor's Big Push

- Employee Free Choice Act
  - Eases the formation of labor unions
  - Provides mandatory injunctions for unfair labor practices during organizing efforts
  - Secret ballots optional
  - Employers face significant civil penalties and back pay for certain unfair labor practices
  - President Obama supports this legislation

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- S 560 was introduced by Senator Ted Kennedy with 40 cosponsors, including then Senator Obama. Senator Tom Harkin chairs the committee and is actively pursuing passage.
- HR 1409 was introduced by Congressman George Miller (D-CA) with 228 cosponsors, including every Democratic Party member of the House Education and Labor Committee.
- Labor unions spent over \$52M on getting Candidate Obama elected. In addition, employees of unions contributed \$470M in direct campaign contributions.
- 92% of labor's 2008 contributions went to Democrats and they expect members of the House and Senate to pass the Employee Free Choice Act.
- The Employee Free Choice Act legislation has three major components:
  - 1) It would allow employees to decide how they are going to form a union--either through the current method of a secret-ballot election or by collecting signatures from a majority of employees saying they want to organize.
  - 2) The legislation would allow government arbitrators to determine the terms of a union's contract with management, if no agreement has been reached 120 days after the union formed.
  - 3) Employers will face significant fines for violating the National Labor Relations Act while workers are trying to form a union.
- The recession, weak economic recovery, high unemployment and the current political focus on health care have stalled passage of the Employee Free Choice Act.

## Card Signing & Certification

- Card Signing
  - Employees are solicited face-to-face and one-on-one by card check organizers
  - The organizers record the names of employees that have signed and not signed cards
  - Employers face significant fines, \$20,000 per incident, for violating Federal labor rules
- Union certification is achieved the moment 51% of employees sign cards

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- Management and supervisors are exempt from unionization.
- The card check organizers are professional union organizers that are paid a commission based on the number of people they sign and the number of unions they can certify.
- Employees that do not immediately sign cards will likely be subject to follow-up visits at work, and possible harassment and intimidation, including telephone calls and home visits by card check organizers.
- Companies with staffs less familiar with the intricacies of labor law are likely to be heavily fined during the labor union organizing process.
- Labor relations training for managers and supervisors is critical.

## The First Labor Contract

- The union representatives will present unreasonable demands
- Management and union representatives will attempt negotiations
- A Federal arbitrator will determine collective bargaining provisions in the first contract
- The union and the business must comply with the new contract

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- The first contract must be agreed to by both parties within 120 days after the union secures certification, i.e. signatures from 51% of the employees.
- Union representatives will demand all organizing campaign promises made to employees needed to secure card check signatures.
- It is unlikely a mutually agreeable first contract will be achieved within 120 days after certification.
- The federal government will appoint a panel of arbitrators to determine the first collective bargaining provisions, thus establishing the first labor contract between the union and the company.
- The arbitrators will likely have little knowledge of the industry or workplace, prior to establishing the contract.
- The term of the first contract is automatically set for 2 years.

## Future Labor Contracts

- The labor union presents demands to management
- Management and labor union representatives negotiate the provisions of a new contract, outcomes may include
  - Settlement – a new labor contract
  - Strike
  - Hiatus
  - Hiatus and Strike

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- This is the first real opportunity for management and labor union representatives to meet and bargain each provision in a new contract.

## Why Strikes Occur

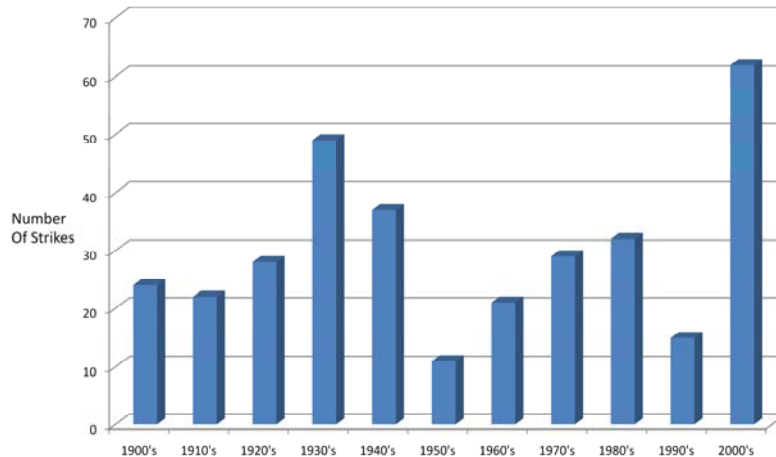


- Management and labor cannot agree on a new labor contract
  - Wages
  - Benefits
  - Job security
  - Productivity
  - Retiree packages
  - Financial performance

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- Labor unions maintain considerable details and analysis on CEO compensation packages:
  - UPS – salary \$960,000, bonus \$40,000, stock and options \$4,001,706, non-equity incentive \$136,944, pension value and deferred compensation \$712,041, other compensation \$30,014, total compensation \$5,880,705.
  - AT&T – salary \$1,420,833, bonus \$0, stock and options \$13,222,978, non-equity incentive \$0, pension value and deferred compensation \$764,772, other compensation \$376,248, total compensation \$15,784,831.
  - GM pre-bankruptcy – salary \$1,558,333, bonus \$0, stock and options \$11,683,783, non-equity incentive \$1,802,000, pension value and deferred compensation \$4,020,400, other compensation \$697,358, total compensation \$19,761,874.
  - Lockheed Martin – salary \$1,774,038, bonus \$4,250,000, stock and options \$7,819,860, non-equity incentive \$8,567,750, pension value and deferred compensation \$2,688,524, other compensation \$451,414, total compensation \$25,551,586.
- There are a significant number of 6 figure incomes among union member in the public and private sector.
  - 20% of all federal government civil servant employees make over \$100K, before benefits, overtime and bonuses.
  - The average federal employee’s pay is \$71,206 compared to \$40,331 in the private sector. This does not include benefits, overtime and bonuses.

# Labor Strike History



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- 8 strikes in the 17<sup>th</sup> Century including:
  - Craftsman, Fisherman, Ship carpenters.
- 6 strikes in the 18<sup>th</sup> Century including:
  - Bakers, Tailors, Ironworkers, River pilots.
- 82 strikes in the 19<sup>th</sup> Century including:
  - Shoemakers, Shoe binders, House carpenters, Textile, Mill women, Bookbinders, Collar laundresses, Coal miners, Railroad, Cigar makers, Cotton mill, Cowboys, Molders, Cloak makers, Carpet weavers, McCormick harvesting machine company, Longshoreman, Baseball players, Switchmen, Pullmans, Trolley workers, Grain shovellers, Newsboys.
- 268 strikes in the 20<sup>th</sup> Century including:
  - Machinists, Steel workers, restaurant workers, Rapid transit workers, Packinghouse workers, Railroad shop men, Gold miners, Streetcar operators, Shirtwaist workers, Garment workers, Timber workers, Silk mill workers, Boston police, Seaman, Farm workers, Pea pickers, Airline pilots, tree pruners, Briggs manufacturing, Tool and die, Rubber workers, GM auto workers, RCA, Hershey chocolate workers, Chicago newspaper, Chrysler auto workers, Maytag workers, Ford auto workers, Disney animators, Allis-Chalmers, International Harvester, NY City transit workers, Montgomery Ward, RJ Reynolds Tobacco, Kohler, Southern Telephone, General Electric, Writers Guild, St John University, NY teachers, Hospital workers, US Postal Services, NY police, Farrah Clothing, Philadelphia teachers, Baltimore police, Washington Post pressmen, Atlanta sanitation workers, Coors Beer, Independent truckers, Screen actors guild, FAA air traffic controllers, Hormel meatpackers, LA sanitary workers, Yale University clerical workers, TWA flight attendants, International Paper, NFL players, Eastern Airlines pilots, Bell Atlantic, NYNEX, NHL players, Safeway, United Parcel Service.
- Strikes in the 21<sup>st</sup> Century including:
  - Verizon, Actors, University of California, Broadway Musicians, Southern California Supermarkets, NHL players, NY transit workers, AK Steel, University of Miami custodial workers, Freightliner, Hayward teachers, GM auto workers, Chrysler auto workers, United Space Alliance, Broadway stagehands, SEMCO Energy Gas Company, Writers Guild, University of California, American Axle and Manufacturing, Sundance Kabuki Cinema Sex in the City, Boeing machinist, Lindsey Oil Refinery, Yale University.

## Labor Strike Impacts

- Brand
- Reputation
- Business operations
- Financial performance
- Customer services
- Employee safety and moral
- Stakeholder value

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- Labor strikes represent a significant risks to organizations.
- Your organization can also be negatively impacted by third-party labor strikes. Know you business partners and supply chain vendors.

## Strategies



- Tone at the top
- Assemble leadership team
- Determine risk appetite
- Develop strategies
- Establish guidelines

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- Maintain excellent employee communications, relations, safety and working conditions.
- Establish guidelines – how will the organization pursue negotiations.
- Determine the feasibility of replacing striking workers.
- Determine the costs to plan for a strike and field a viable alternative workforce.
- A good example of union negotiation success can be found in the US auto industry.
  - The typical UAW assembly line worker earns \$28 per hour, plus \$40 per hour in benefits and pension funding.
- Take into account long-term financial obligation and operational sustainability when negotiating labor contracts.
- Establish long-term strategies and explore options:
  - Products.
  - Services.
  - Supply chains.

# Timeline



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- The number of union employees working under the expiring contract, the duties performed and the structure of the organizations will determine the time required for each phase.

## Initiation

- Review contracts and third party impacts
- Identify team members
- Assess risks and opportunities
- Develop preliminary budget estimates
- Secure executive approval
- Conduct a kick-off meeting

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- The Labor continuity process, communications, meetings, documents are highly confidential.
- Organizations must monitor their labor contracts and the labor contracts of their customers, supply chain vendors and business partners.
- Senior executives establish a leadership team composed of experienced risk management and business continuity professionals.
- Business unit executives must assign top talent and support their tasks, deliverables and schedules.
- The labor continuity team must include representatives from all business units that will be directly impacted by a strike, plus supporting business units and a variety of subject matter experts.
- The designated project manager must develop a project plan, mapping out the major tasks, deliverables and key milestones.
- The preliminary budget estimate helps senior executives assess the costs of executing the labor continuity plan and the benefits of a firm and fair negotiating position.

## Planning



- Prioritize business functions
- Determine acceptable product/service levels
- Identify and train replacement workers
- Develop replacement worker assignments
- Prepare physical and technology security
- Develop communication plans
- Prepare control centers
- Exercise plans

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- A significant amount of time and resources will be spent in the planning phase.
- While the planning and preparatory activities are underway, near completion or complete, the best possible outcome is a new win-win labor contract without a strike.
- It takes a lot of work to “properly” prepare for a labor strike, the larger the striking workforce, the greater the effort and costs.

## Event Management

- Activate control centers
- Deploy replacement workers
- Prepare status reports
- Contract extends or negotiations fail
- Manage pre-event and event activities
- Negotiators reach a tentative agreement
- Union members ratify the new contract

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- As the contract expiration date approaches, some components of the Event Management phase should be implemented.
- If a new contract is secured but not ratified by the rank and file, begin standing-down components of the Event Management phase.
  - Once the new contract is ratified by the rank and file, stand-down the components of the Event Management phase.
- If the contract expires and negotiations are proceeding and the union agrees to continue to have its members report to work, a hiatus, additional components of the Event Management phase should be implemented.
- If a strike is called, activate deployed replacement workers and implement the remaining Event Management activities.

## Business Resumption



- Return to normal operations
- Prepare status reports
- Striking workers return
- Roll-off replacement workers
- Stand-down control centers

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- A settlement is reached and workers return to their jobs.

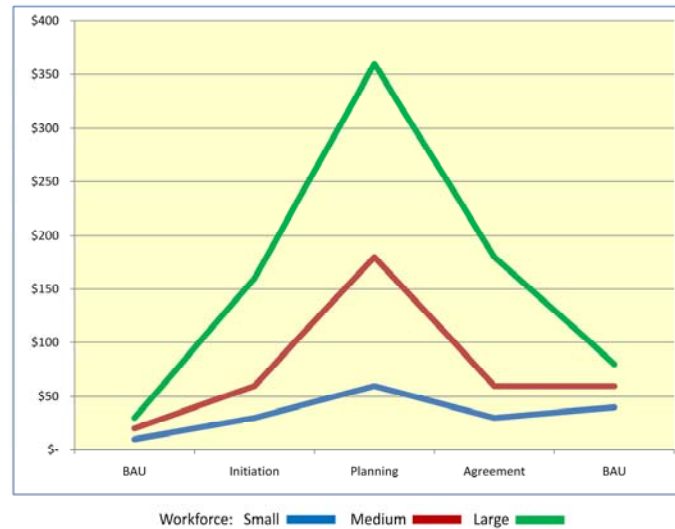
## Lessons Learned

- Strategies
- Initiation
- Planning
- Event management
- Business resumption
- Continuous improvement

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- The lessons learned process is critical to continuous improvement.
- Develop surveys / questionnaires over the course of the labor continuity project.

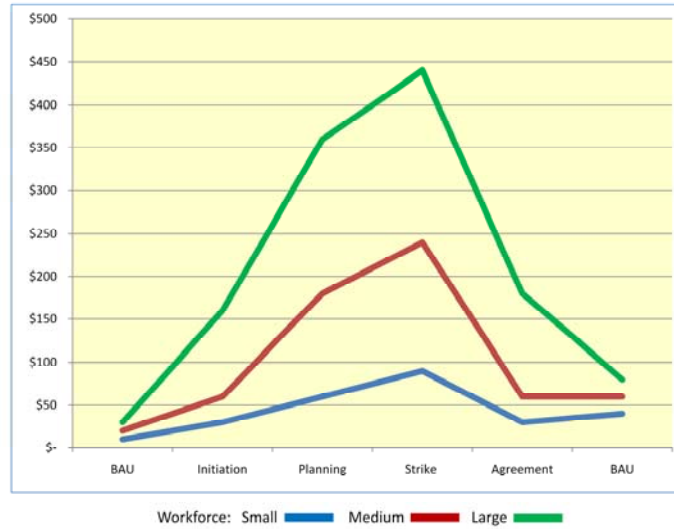
## Cost – Settlement



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- The costs presented in the following slides reflect an organization that can train a portion of their management employees to perform the duties of unionized employees and secure the balance of the required workforce from third-party vendors.
- Third-party replacement workers may also require organization specific training on policies, procedures, practices, methods, safety, tools, techniques, etc.
- Examples include:
  - Flight attendants.
  - Call center operators.
  - Mechanics / technicians.
  - Nurses / healthcare workers.
  - Bank tellers.

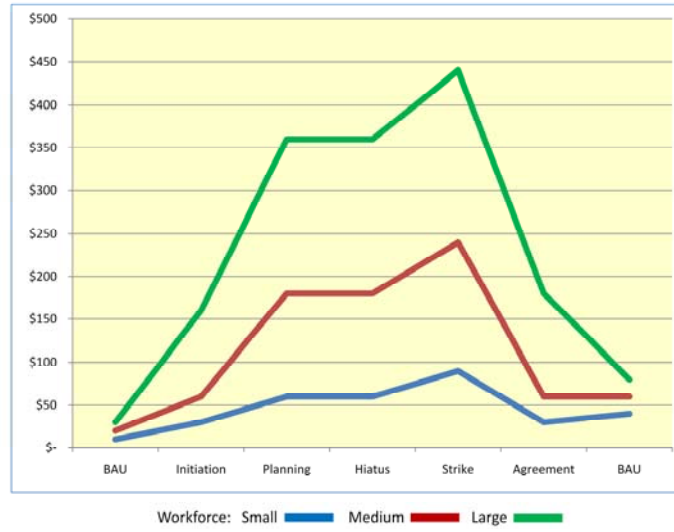
# Cost – Strike



# Cost – Hiatus



## Cost – Hiatus & Strike



# Questions



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Information sources include:

- National Labor Relations Board.
- The Library of Congress – Thomas.
- US House of Representatives.
- US Senate.
- AFL-CIO.
- Change to Win Federation.
- Communications Workers of America.
- International Brotherhood of Teamsters.
- Service Employees International Union.
- United Auto Workers.
- The Wall Street Journal
- The Washington Post
- Wikipedia.
- Meetings and Conferences.