

A brick thrown at a passing truck, shots fired, windows smashed, angry threats made to management and replacement workers. These are the potential side effects of a strike. Security managers must be prepared for such scenes when their company is facing a labor contract expiration date. They cannot afford to assume that their organization will be immune to strike violence. ♦ Recent court decisions demonstrate that the courts are inclined to grant

hefty damage awards to the victims of strike violence. Who ultimately pays those awards depends on how well the company has covered its bases. ♦ If a company is thorough and professional in its handling of security during a strike, a strong case can be made to find the union liable for the actions of its members walking the picket line. In some cases, the company can even recover a portion of its security costs from the union. If, on the other hand, the company neglects any detail in its security preparations, it could find itself not only incurring large legal fees, but also at the wrong end of a damage award, having to pay the price for the violent misconduct of striking employees. ♦ One case, *Petersen v. U.S. Reduction Company*, arose when members of the Oil, Chemical, and Atomic Workers Union went on strike at an aluminum recycling plant in East Chicago, Indiana. The plaintiffs claimed that, as the strike began, one of the strikers threatened to shoot drivers who disregarded the strike to haul aluminum for the company. ♦ On the first day of the strike, shots were fired at two of the company's supervisors. The company responded to the situation by hiring an outside firm to provide security and to escort trucks into and out of the plant. On the second day of the strike, a twenty-seven-year-old truck driver, in the course of earning his \$350-a-week paycheck from a contract hauler, was shot and killed while driving a load of aluminum for the recycling plant.

When Strikes Turn Violent

By Martin B. Herman

Who is to blame for this tragic incident? Certainly the company did not condone the striker's threats, nor did it ignore that shots had been fired on the strike's first day.

A Cook County jury, however, was not persuaded that the company did everything it could to prevent the tragedy. It found the company negligent and awarded the driver's widow \$2.25 million. Separately, the contract security company settled with the driver's estate before trial for \$950,000.

The plaintiffs argued that the trucking company should have been notified of the striker's threats and of the shots fired on the first day. They also claimed that it was the responsibility of the company's contract security service to be aware of the threats and shootings, and to advise the trucking company and its drivers of the danger.

The jury agreed. The company was not found guilty of failing to take action to prevent the strikers' violent behavior. It was found guilty of failing to communicate the danger to the parties that were specifically threatened. However, on November 14, 1994, the Appellate Court of Illinois reversed the decision on a two to one vote.

Although it was overturned, the conclusion to be drawn from this case is that companies must adopt a mandate for clear and unambiguous communication during any strike or labor action. Everyone affiliated with the company and everyone who enters the company's facilities—employees, suppliers, and contract services—should be made aware of all relevant situational details, security procedures, and special circumstances. These same parties should be given updates anytime there is a substantial change, including acts of vandalism, violent incidents, and threats made to people or property.

Corporate options. Companies do have recourse when strikers engage in disruptive or violent illegal behavior. A court injunction ordering the union and its members to cease illegal activities can quickly sour strikers' tastes for risky actions.

Even if the injunction does not have that effect, it directs attention toward the strikers' illegal activities. It may help change the public image of the strikers from one of exploited workers marching for their rights to that of a law-defying gang.

The injunction can also help if the case of someone harmed by the violence goes to court. With appropriate

documentation of the illegal activities, it is difficult for a judge or jury to assign blame anywhere other than on the union and its members.

Another case, this one in Indiana, illustrates how an injunction, even when disregarded, is a valuable instrument for the company. The case, *Dana v. Local 1406 UAW*, also points out how critically important it is to keep accurate records that will withstand scrutiny in a courtroom.

This case involved a strike by the United Auto Workers. Just prior to the strike, the company, an Indiana manufacturing plant, contracted with an outside security firm to provide unarmed guards to secure the plant perimeter and conduct surveillance of the strikers' activities.

The court held that, from the first day the union walked out, its members had been engaged in uncontrolled mass picketing. They blocked the entrances to the plant, threatened the workers, vandalized vehicles entering and leaving the plant, and vandalized the plant itself with rocks, slingshots, and rocket fireworks.

In response to these activities, the company nearly doubled its security contingent and used the surveillance it had gathered to seek a preliminary court injunction against the strikers. The injunction was obtained on the seventeenth day of the strike. It reiterated what the National Labor Relations Act says regarding what striking workers can and cannot do on the picket line. It noted, for example, that they cannot block vehicles entering and leaving the plant and cannot intimidate, threaten, or harass individuals attempting to come to work.

The court found that the injunction had little effect on the strikers' behavior; if anything, they intensified their illegal and dangerous activities, inflicting further damage on employees' vehicles and the plant itself. The company increased the number of contract security guards at least two more times in an unsuccessful effort to contain the violence and vandalism, which was alleged to have continued right up until the end of the strike, some six months later.

The company incurred huge ex-

The plaintiffs argued that the trucking company should have been notified of the striker's threats.

penses as a result of the strikers' continual defiance of the court injunction—over \$1 million in security fees alone. These expenses included the cost of the additional security guards, security consultant fees, living expenses for the guards, twenty-four-hour security for a plant manager who was specifically threatened by the strikers, and attorneys' fees and expenses.

The company argued in court, and a jury agreed, that the majority of these expenses would not have been incurred had the union obeyed the court's preliminary injunction. An appeals court upheld the jury's damage awards, all at the expense of the union. The awards included \$755,000 in security costs, \$65,000 in legal fees, and miscellaneous costs for damages to company and employee property, for a total of over \$832,000. The court did not award payment for the basic nine-officer security contingent that was put in place at the onset of the strike.

The recording of the strikers' activities by the contract security firm enabled the company to obtain the preliminary injunction early in the strike. With the injunction in hand, the company was able to recoup the security and legal costs that went above and beyond what would have been reasonable had the strike been conducted in an orderly, lawful manner.

A significant feature of this case is that it was decided against the union and its officers, not the individual strikers who actually performed the illegal actions.

The \$400,000 brick. This next case, *Browne v. International Brotherhood of Teamsters Local Union 851*, goes fur-

ther to illustrate how the courts view the interaction of the union and its members in assigning responsibility for actions on the picket line.

A shipping company hired security guards to escort trucks across a Teamsters' picket line at its New Jersey facility. On one occasion, as a truck was crossing the line, a brick was thrown through the passenger window, hitting the security escort in the head. One of the strikers later confessed to throwing the brick.

The security guard sued the union local and won an award of \$400,000. In April 1994, a New York appeals court affirmed the verdict, disregarding the union's argument that it should be held responsible only for acts it specifically authorized or ratified.

The court's instruction to the jury, which was specifically affirmed in the appeal, stated that "it is not necessary for the plaintiff to establish that there was a meeting of the union high command where a rock throwing policy was decided upon." Instead, it was necessary for the jury to establish that "the union was aware...that violence or threats of violence had become an everyday occurrence in the strike and that the union either openly encouraged such violence and threats or deliberately failed to check it or give orders countermanding it."

It is important to note that there was significant testimony that the picket line was under the direction of the local shop steward, whom the appellate court stated was clearly "clothed with plenary authority to direct the strike on behalf of the union."

Central to the guard's case was the admission as evidence of his firm's security log, which was contemporaneously prepared and in which were recorded all incidents observed by all of the security guards on duty at the New Jersey facility.

This case has several implications for companies engaged in or facing labor disputes. First, it points out the court's willingness to hold the union responsible for the actions of its individual members on the picket line, whether or not the union actually endorses or authorizes the actions of those individuals. Second, it again points out the critical importance of properly documenting picket activity.

Lessons. For companies wishing to minimize their financial exposure during a strike and maximize their chances of recovering damages from strikers

who act illegally, these three cases offer several key lessons.

Implement security. A company should put adequate security in place immediately. It should also review the company's physical facility to establish controlled access points. While security measures cannot guarantee safety, as two of these cases tragically show, a company can expect no sympathy from a jury if it has not taken ample, reasonable measures to protect all persons who come in contact with the picket line.

The company should establish a strike task force and clearly designate responsibilities. Senior management should involve in-house or outside legal counsel from the earliest planning phase. Management should also arrange training for nonstriking personnel on how to handle threats and confrontations with strikers.

Maintain communications. The first case described here clearly indicates that communication is the company's responsibility. When a labor action is anticipated, the company should draw up a detailed communication plan listing all employees, suppliers, and service companies that need to enter the plant, and outlining provisions for how they will be contacted.

These parties should be given an overview of the situation, and they should be given new information anytime the situation changes, particularly if violent incidents have occurred or threats have been made. The same information should be provided to the local police and fire departments.

The company must also take steps to ensure that it has reliable communications throughout the strike. Management should, therefore, arrange for the facility to have alternative telephone communications such as cellular phones or two-way radios.

The company should also have on hand up-to-date address and telephone lists for supervisory personnel, striking and nonstriking employees, suppliers, transportation companies, state and local fire and police departments, government officials, and media.

Document activities. A detailed log should be maintained, describing all incidents observed by all security personnel twenty-four hours a day. It should be kept contemporaneously and should include all pertinent information such as time and place of the incident, the names of parties involved, the exact wording of picket signs, and the nature

and duration of activities.

Security personnel should be stationed at each entrance gate. They should have still or video camera capabilities or should be accompanied by a trained photographer/videographer. They should also be assisted by a salaried employee who can identify incoming personnel. The security team should make sure that all surveillance cameras and other electronic security systems are operational.

The company could also position observation personnel on the facility's roof tops or other wide vantage points and equip them with telescopic photo or video equipment.

A note of caution is in order here, however. Surveillance and recording of legal picketing activities can infringe on the legal rights of the union and the strikers. The company should make sure that security personnel know without question what is legal and what is not.

The company should consult legal counsel or a security specialist for proper surveillance procedures. It is a good idea to have legal counsel review all of the company's strike contingency plans. Senior management or the security director can present the plans to legal counsel in memo form. These planning documents can be protected as work documents under attorney-client privilege, and thereby, kept out of any court proceedings.

Seek injunctive relief. When picketers are engaging in clearly illegal behavior, the company should record it, document it, and take the evidence to court to seek a preliminary injunction. The picketers will be ordered to cease their illegal activities; if they do not, the company will be protected and will have a clear and unambiguous case when it comes time to recover damages from the union.

A strike is costly enough without the added fear of liability lawsuits and extravagant jury awards. Following these steps will help ensure that when the courts make awards to the victims of strike violence, your company does not get handed the bill. ■

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