



## Dealing With Your Bank When Your Company Is Underperforming

by Thomas C. Washbush

If you are not meeting your banker's expectations, your loan is considered a "troubled loan." Here are some tips to improve your chances of turning your business around:

■ *Establish a strong relationship with your lender.*

Relationships matter. Get to know your banker. Invite him to your business. Share pertinent company information.

■ *Provide information.*

Bankers never complain that one of their portfolio companies are providing too much information.

■ *Be honest.*

Lenders can work through a myriad of problems with you, but dishonesty will sour the relationship probably beyond repair. Failing to inform your lender about something significant is akin to lying.

■ *Have a plan.*

Lenders invest in people more than companies. It is critical to keep your lender's confidence. Take the time to work with your key staff and advisors to create a business plan that can get you back on track.

■ *Be flexible.*

Maybe your strategy is flawed. Don't be afraid to adjust market, customers, pricing and personnel to allow you to be profitable.

■ *Be humble.*

You are no longer dealing from a position of strength. You may be asked to enter into a forbearance agreement.

You may be presented with tighter financial covenants, closer monitoring and more frequent reporting.

Embrace these constraints; you

probably do not have many viable alternatives.

■ *Keep your eye on the ball.*

With everything else going on around you, don't forget to mind the store. It's easy to fall into a catatonic state and do nothing.

■ *Hire a qualified attorney to help you*

*through the process.*

Yes, your interests must be protected, but by someone who under-

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**Your banker wants you to succeed. If you are successful, so is the banker.**

## Plan for Potential Strike when Negotiating in Collective Bargaining

by Marc A. Fishel

In general, people are the most essential resource for businesses. Personnel costs usually account for a significant portion of a business's expenses, so there can be a lot at stake when a business negotiates a collective bargaining agreement with a union for its employees. While all participants expect an amicable resolution in collective bargaining, that does not always happen. Businesses need to plan for a potential strike early in the negotiation process. The following are some issues to consider in strike planning:



1. Prioritize the functions of the business. Determine which matters must continue to be addressed and which functions that can be temporarily tabled. Keep in mind that the first few days of a strike are the most difficult.

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2. Assign managers to handle core business functions.
3. Prepare a letter to be sent to employees in the event of a strike, reminding them they will receive no pay and benefits if they are on strike. This letter should explain the cost they will incur for health insurance, if applicable.
4. Inform employees that they do not have to strike even if fellow employees choose to do so. Employees have the right to engage or refrain from engaging in strike activities. Make arrangements for employees and managers to arrive safely at work during a strike.
5. Communicate with customers.
6. Arrange for workplace security. Contract with a security firm if necessary. Make sure that law enforcement personnel are aware of the situation. Prepare to collect keys and to change locks and security codes if necessary. Take steps to ensure that employees' access to computers is limited if a strike appears imminent. Have duplicate keys to facilities and vehicles. Maintain backup data from computers at an off-site location.
7. Prepare to address media inquiries.

- There should be one spokesperson for the business.
8. Make suppliers and contractors aware of the strike. Make arrangements to ensure deliveries will continue.
  9. Maintain a line of communication with union representatives.
  10. Be prepared to seek an injunction to limit the location and number of pickets.
  11. Determine sources of workers to fill in during the strike.
  12. Make sure managers understand the law's limitations. Employer representatives should refrain from making any unlawful threat during negotiations or a strike.

It is rare that either unions or employers want a strike, but it is always a possibility when employees engage in collective bargaining. Obviously, strikes can be very disruptive, but an employer can discourage a strike or minimize its impact if preparations for a work stoppage are made before a strike is imminent.

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- stands the art of pre-workouts.
- *Safeguard your collateral.* Whatever security was originally taken by the bank, make sure you keep it in working order. That collateral provides comfort to the banker. If the value of the collateral falls, the pressure on the banker to call your loan will continue to increase.
  - *Continue to explore options.* Look for other funding sources. There are many alternatives to traditional banks. But remember, they all are going to be more expensive, making your recovery more difficult. Remember, your banker wants you to succeed. If you are successful, so is the banker. Follow these suggestions and your odds of turning your business around will increase markedly.

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## In the Hopper...

House Bill 134 became effective on October 18, 2007 (although some provisions will not be effective until 1/1/08). It is a package of OSBA Corporation Law Committee proposals intended to make Ohio a more attractive place for businesses to incorporate. The act:

- modifies corporation law relating to the election of directors to allow elections by a majority of votes. Previously, Ohio law stated that the election of company directors only had to receive a *plurality* of votes, which meant that a director could be elected in an uncontested election with a single vote, with all other votes being cast against the election or withheld from the election. Several Ohio corporations had received shareholder proposals

demanding that the company re-incorporate outside Ohio because previous law was interpreted by many lawyers to prohibit majority election standards. House Bill 134 gives companies the option to change their incorporating documents to provide for majority election of directors. All other major states of incorporation (including California, Delaware, Florida, Illinois and Michigan) allow majority voting;

- conforms Sections 1701.782 and 1701.792 of the Revised Code with parallel provisions in Chapters 1705, 1775, and 1782, which deal with converting a domestic or foreign entity into a domestic corporation, and vice versa;
- responds to the *Holdeman v. Epperson*, (2006) 111 Ohio St.3d 551, decision in Section 1705.21 by clarifying that the members of an LLC may

- agree in advance to procedures to be used if an individual member dies or is judged incompetent. This section clarifies the rights of an administrator with respect to the business entity and its remaining members;
- clarifies in Section 1775.14 to make it clear that limited liability partnerships in Ohio create a "full shield" against personal liability of partners for contract as well as for liability; and
  - makes retroactive to August 19, 2005, provisions in the non-profit corporation law enacted in 2006 to permit voting by telephone through the Internet and by mail without first amending the corporation's articles or regulations.

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*From the OSBA Office of Government Relations.*