Essentials of Labor Relations in Community Colleges

Presented By: Eileen O’Hare-Anderson
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Agenda

- Union and Employee Rights
- Management Rights
- Preparing for Negotiations
- Mandatory Subjects of Bargaining
- Preparing for Bargaining
- Interest Based Bargaining
- Drafting Language
- Unfair Labor Practices
Educational Employment Relations Act (EERA)

- Government Code § 3540 et seq.
- Employees have the right to:
  - Organize collectively
  - Be represented by labor organization
  - Present grievances to district
- Labor organization right to:
  - Represent members in regard to wages, hours and terms and conditions
Union Rights

Unions have right to:

- Organize employees
- Not face unreasonable restrictions on solicitation
- Represent members within scope
- Establish restrictions over membership
- Access to the workplace
- Information necessary to represent employee’s
- Employer deduction of membership dues
- Organizational security
Union Responsibilities

Unions have duty to:

– Fairly represent members
– Not threaten or discriminate against members
– Bargain in good faith
– Participate in impasse procedures in good faith
Employee Rights

- Form or join a union
- Right to represent self individually (but not meet and negotiate)
- Participate in protected activities
  - (e.g., picket, distribute or sign petitions/authorization cards, display union insignia)
- Present grievances
- Reasonable release time
- Religious or conscientious objection
Management Rights

Originate From:

• Inherent right to manage district operations
• Management rights provisions in CBAs
• Personnel rules, policies and procedures
Management Rights

Modified by:

• Law
• PERB decisions
• Court decisions
• Collective bargaining agreements
  – Including grievance procedures and arbitration decisions (if binding)
• Past practice
Management Rights

Examples of Management Rights

• Determine organization’s mission, programs, structure and service
• Hire, promote, transfer, train
• Direct work force
• Establish and enforce work standards
• Evaluate employee performance
• Discipline and discharge
Management Rights

Examples (cont.):

- Determine public image
- Determine rights and opportunities for students
- Determine curriculum (with Academic Senate)
Management Rights

- Endeavor to negotiate a strong management rights clause
- Waiver of right to negotiate strictly construed
  - Must be explicit and unambiguous
The Collective Bargaining Process

• Also called “meeting and negotiating”
• Management and labor meet in good faith
• Attempt to reach agreement on wages, hours, other terms and conditions of employment
• Impasse process
• District may unilaterally implement if no agreement reached
Mandatory Subjects of Bargaining

Scope of Representation:

• Wages, hours, and other terms and conditions of employment
  – Not matters within inherent management rights
  – Typical subjects are wages, benefits, hours, leaves, transfers, reassignments, evaluation, discipline and grievance procedures
Effects Bargaining

• Fundamental management decision not within scope
  – How the decision impacts terms and conditions of employment may be.

• Example: layoffs
  – Decision not negotiable, but effect of decision is negotiable
Preparing for Negotiations

Prepare for negotiations:
- Keep a record of changes to CBA for upcoming negotiations
- Communicate to district bargaining team
- If on bargaining team
  - identify CBA subjects of expertise
  - offer knowledge of Union team members
  - identify morale issues and rumor mill
Preparing for Negotiations

• Hold advance training sessions for administrators, supervisors and managers.
• If one or more new members of governing body, consider closed session to brief such new member(s).
• Develop negotiating data.
Preparation for Negotiations

- Review Current Collective Bargaining Agreement
- Establish Communication with Other Employers
- Anticipate Union Demands
Bargaining Approaches

• There are two prominent types of bargaining
  – traditional
  – interest-based

• Can use hybrid — a combination of the two or more.
## Bargaining Approaches

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Planning

• Realistic Timeline
• Decisions Regarding Facilitation
• Decisions Regarding Record-Keeping
• Communications Issues
• Who Should Participate?
• Surveying Issues
• Analyzing Data
IBB Process

• Differences from Traditional Bargaining:
  – Separates the People from the Problem
  – Focuses on Interests, Not Positions
  – Invents Options for Mutual Gain
  – Insists on Using Objective Criteria
ISSUE =
Topic or Subject of Negotiations
INTEREST = One Party’s Concern, Motivation, Fear or Aspiration about an Issue
OPTIONS = Possible Solutions That Can Satisfy an Interest
Commonly Used IBB Terms

CONTRAST WITH POSITION =

One Party’s (Predetermined) Solution to an Issue
Commonly Used IBB Terms

STANDARDS =
(Objective) Characteristics or Factors to Compare and Rank Options
Principles

• Focus on Issues, Not Personalities/People
• Focus on the Future, Not the Past
• Openly and Honestly Share All Information
• Focus on Interests, Not Positions
• Create Options to Satisfy Both Mutual and Separate Interests
• Rank and Evaluate Options with Standards, Not Power
Assumptions

- Bargaining Enhances Relationships
- Both Parties Can Win
- Open and Honest Discussion Expands Mutual Interests and Options
- Standards Can Replace Power Regarding Bargaining Outcome
Steps

- Prepare
- Develop Opening Statements
- Identify Issues
- Create Options
- Create Standards
- Rank and Evaluate Options with Standards
- Achieve Agreement
Sample Agenda

- Check In
- Agenda Review
- Elephants and Ants
- Information
- Agenda Items
- Agenda for Next meeting
- Report Out
Techniques/Tools

• Idea Charting/Group Memory
• Active Listening
• Clarifying
• Brainstorming
• Consensus Seeking
• Process Checking
The Rules of Brainstorming

- **Make No Criticism**
  - Judging is Forbidden
  - Focus on Likes
- **Be Free-Wheeling**
  - Use Imagination
  - Take Risks
- **Go For Quantity**
  - More Ideas the Better
  - More Variety the Better
- **Combine—Expand—Hitch-Hike Ideas**
  - Build on Others’ Ideas
A Group Reaches Consensus
When:

• It Finally Agrees Upon a Single Alternative
• Each Group Member Can Honestly Say:
  – I Believe That You Understand My Point of View
  – I Believe That I Understand Your Point of View
  – Whether or Not I Prefer This Decision, I Support the Decision
    ▪ Because It Was Arrived at Openly and Fairly
    ▪ And It Is the Best Solution for Us at This Time
Challenges of Interest-Based Bargaining

- **Structural Issues**
  - Determining constituents’ interests and keeping constituents informed
  - When key players leave the agency
  - Commitment to the process
  - When management reverts back to “old style” when not negotiating
  - When only one side plays by the rules
  - Boundary issues
Avoiding Pitfalls

- Education and Training
- Communication
- Planning
- Anticipate Potential Issues
- Keep Governing Body Informed
- Minimize Surprises
- Plan for Impasse
Avoiding Pitfalls
Planning for Impasse

• Regarding Impasse:
  – IBB Does Not Guarantee There Won’t Be Impasse
  – May Feel More Vulnerable Without “Hold Out” Proposals
  – Prepare Team/Board for Possibility of Less Flexibility During Impasse
Drafting Language

• Avoid:
  – Mutual consent clauses—gives the union a veto
  – Language that allows the maintenance of past practices
Drafting Language

• Avoid words that lead to grievances:

  – Always
  – reasonable
  – never
  – as necessary
  – All

  – satisfactorily
  – on or about
  – will review and decide
  – will/shall
  – may

Remember: Commas matter!
• Eliminate unnecessary or “feeling” words; i.e.

  – NOT GOOD: “The District believes that it would support an alternative workweek for willing classified employees if the immediate supervisor agrees to the change in schedule in writing.”

  – BETTER: “The District will provide two alternative workweek schedules (4/10 and Tuesday-Saturday) for full-time unit members who have the written approval of his/her immediate supervisor.” (Go on to explain the procedure.)

• Draft with an eye to how an arbitrator will interpret the language.
Drafting Language

• When reading your proposal, or the union’s, ask:
  – Are there legal implications (conforms to laws)?
  – What is the initial year’s cost?
  – What is the long-term cost?
  – Is the cost reasonable in relation to the total cost impact of the settlement?
Drafting Language

• Also ask:
  – Does this language support the District’s objectives and mission?
  – Does the language improve service to students?
  – Does this language solve a real problem?
  – If so, is it a continuing problem or is it an isolated (specific and limited) problem?
  – How does this language change (or solve) the problem?
Drafting Language

• Also ask:
  – Does this language incur unanticipated costs?
  – Does this language restrict or impose on management rights?
  – Does this language advance any of our bargaining objectives?
  – Is this language needed to reach an agreement (is it a deal breaker)?
Unfair Practice Charges

• PERB
  – Jurisdiction over most California Public Agencies, including Community College Districts
  – Adjudicates:
    ▪ Unfair labor practices (e.g., failure to bargain in good faith)
    ▪ Representation disputes
    ▪ Injunction requests
Unfair Practice Charges

• A charge alleging violation of EERA
• Includes:
  – Failure to bargain in good faith
  – Impose, threaten or discriminate against employees or employee organization because of exercise of rights
  – Dominate or interfere with formation of employee organization, or contribute financial or support to it in preference to another
  – Knowingly providing inaccurate information re: district finances
Unfair Practice Charges

Remedies:

- Order to cease and desist conduct
- Return to “status quo”
- Back pay with interest, front pay
- Reinstatement of employee
- Termination of a contract with a third-party
- Injunctive relief
Unfair Practice Charges

Good Faith Violation:

• Totality of circumstances test
  – Indicia of bad faith include:
    ▪ Surface bargaining
    ▪ Failure to exchange proposals or attempt to reconcile differences, “just because”
    ▪ Dilatory tactics
    ▪ Negotiating without adequate authority
    ▪ Conditional bargaining
    ▪ Bypassing representatives
Questions

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