

# Essentials of Labor Relations in Community Colleges

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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.



# Preparing 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

<b>Traditional</b>	<b>Interest-Based</b>
Positions	Interests
Formal Proposals and Counterproposals	Brainstorming
Arguments	Options
Win/ Lose	Mutual Gain

# 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

# Commonly Used IBB Terms

**ISSUE =**

**Topic or Subject of Negotiations**

# Commonly Used IBB Terms

**INTEREST =**  
**One Party's Concern,**  
**Motivation, Fear or**  
**Aspiration about an Issue**

# Commonly Used IBB Terms

**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!

# Drafting Language

- 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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