



Politics in the Workplace and at the Bargaining Table

*Presented for the Association of Chief Human Resources Officers and
Equal Employment Officers*

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Coast Community College District

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Disclaimer

The following information is designed to be a general guide should NOT be considered legal advice. For questions about specific situations, please consult an attorney.

Disclaimer

The following information does not necessarily represent the views of the Coast Community College District or its Board of Trustees.

Purpose of the Seminar

The Role of Internal and External Politics in Labor Relations and the Collective Bargaining Process

How Politics Impact Board Members, Administrators, Union Leadership, and Employees

Purpose of the Seminar

Strategies for Management to Address the Influence of Politics
Recommendations and Best Practices

Politics Is the “Back Door” To Negotiations

- Management negotiators frequently spend time and energy on the *technical aspects* of “at-the-table” negotiations
- The Union typically utilizes the *political process* to influence management compromises

Politics Is the “Back Door” To Negotiations

- The success of political pressure and lobbying of Board and management team members by Unions can lead to undesirable settlements

Who Is Most Affected By Politics

- Board of Trustees
- Superintendent/President
- Administration/Management Team
- Union leaders
- Elected legislators

Political Needs of Unions

- Power
- Esteem
- Affiliation
- Position
- Admiration

Union Strategies To Use Political Influence

- "Morale is low"
- Make employees "Mad"
- "Stacking" Board meetings
- "Targeting" Board members
- "Running candidates" in Board election
- "Frustrate bargaining"

Union Strategies To Use Political Influence

- “Harass” Board and administration
- “Letters and postcards” to Board members
- “Influence” state legislators - Agency Shop
- “Placing administrators at risk” with Board members

Union Strategies To Use Political Influence

- “Fight for community support”
 - Radio/TV spots
- Target Negotiation Team Members
 - Particularly if they refuse to give in to Union demands
- Threaten “Erosion of educational results”

Union Strategies To Use Political Influence

- “Informational Picketing”
- “Work to Rule”
- “STRIKE!”

The Real World

What else have you seen at your District?

Responding To The Union's Political Pressure

- Get your message out
- Use key communicators
- Hold meetings and issue newsletters
- Negotiation sunshine committee
- Persuasive administrator as spokesperson

Responding To The Union's Political Pressure

- Diversion program – Little Takes Place Between November and January
- Send negotiation reports to employees
- Board member communications to 10 friends
- Cabinet communications to 10 friends

Responding To The Union's Political Pressure

- Newspaper releases
- Key issue dissemination
- Testimonials
- Retain management control -- do not give away the right to manage
- Take the educational high road

Responding To The Union's Political Pressure

- Bargain with an understanding of clear definable interests
- Publicize internal analysis
- Publicize comparability analysis among other school districts
- Publicize CPI -vs- Union compensation demands

Responding To The Union's Political Pressure

- Publicize issues related to the public's welfare
- Board commitment to its position
- Board member training
- Letters to the editor

Responding To The Union's Political Pressure

- School site meetings
- Newsletters to employees
- Litigation
- Convince the Union it can get no more!

Responding To The Union's Political Pressure

Individual Employee Political Activity

- No restriction may be placed on the political activities of any officer or employee of a local agency (Educ. Code § 7052.)
- However, Education Code section 7054 prohibits the use of school "funds, services, supplies, or equipment" to support or defeat a candidate for political office
- Education Code section 7055 further provides that the district governing body may establish rules and regulations on officers and employees engaging in political activity during working hours, and on political activities on the district premises

Responding To The Union's Political Pressure

Individual Employee Political Activity

- The District has the power to prevent its employees from engaging in political advocacy in classrooms and when they are otherwise engaged in providing instruction to the district's students
- However, the district has no such power when its employees are not engaged in instructional activities

(California Teachers Assn. v. Governing Board (1996) 45 Cal.App.4th 1383.)

Responding To The Union's Political Pressure

Individual Employee Political Activity

- The district also has the power to prohibit the dissemination of political flyers in district mailboxes in a viewpoint neutral manner because the mailboxes are District equipment and are not a "public forum," where speech cannot be regulated based on content (San Leandro Teachers Assn. v. Governing Bd. of the San Leandro Unified School Dist. (2009) 46 Cal 4th 822.)
- PERB has consistently held that employees may not use district supplies, such as copy machines, or services such as mailboxes, to distribute political flyers (San Diego Community College District (2003) PERB Decision No. 1467.)

Responding To The Union's Political Pressure

Individual Employee Political Activity

- District has no power to restrict employee union activity in the community or at Board Meetings
- The power to restrict during work hours must be viewpoint neutral, meaning the District cannot promulgate rule that only to restrict union activity or that target union activity.

The Real World

What else has been effective at your District?

Five Factors Which Control Successful Negotiation

1. Constraints of law
2. Determination of the Union
3. Integrity of Board and administrators
4. Quality of communication
5. Ability to pay

Five Factors Which Control Successful Negotiation

Constraints of law

- The EERA defines the ground rules and processes by which school districts and bargaining agents negotiate, arbitrate, and grieve disputes
- PERB is given broad authority to investigate and decide cases of alleged unfair labor practices and approve the establishment of local bargaining units

Five Factors Which Control Successful Negotiation

Constraints of law

- Public notice and sunshining
- Understand mandatory v. non-mandatory subjects of bargaining
 - Do not allow union to bring prohibited subjects of bargaining to the table
 - Do not allow union to take permissive subjects of bargaining to impasse

Five Factors Which Control Successful Negotiation

Constraints of law

- Understand when bargaining conduct is an unfair practice
- Per se violations:
 - Unilateral changes
 - Absolute refusal to bargain
 - Conditioning proposals on waiver of rights
 - Insistence to impasse on non-mandatory subjects

Five Factors Which Control Successful Negotiation

Constraints of law

- Understand when bargaining conduct is an unfair practice
- Indicia of Bad Faith:
 - Surface Bargaining
 - Dilatory Tactics
 - Bypassing chose representatives
 - Negotiators without adequate authority

Five Factors Which Control Successful Negotiation

Determination of Union

- Understand and anticipate the collective interest of the union entering into negotiations
- Also understand and anticipate the personal interests of individual union bargaining team members

Five Factors Which Control Successful Negotiation

Integrity of Board and Administrators

- Board Members should:
 - Guide management
 - Set parameters for administrators who run operations
 - Engage in thoughtful deliberation
 - Take action as a unit

Five Factors Which Control Successful Negotiation

Integrity of Board and Administrators

- Board Members should:
 - Determine objectives
 - Determine overall strategies
 - Determine district's interests
 - Determine general policy

Five Factors Which Control Successful Negotiation

Integrity of Board and Administrators

- Board Members should not:
 - Neutral role or Factfinder
 - Guardian of employees
 - Administrator
 - Mediator
 - "Pipeline" of information to Union
 - Hero Negotiator

Five Factors Which Control Successful Negotiation

Integrity of Board and Administrators

What strategies have you used to deal with a divided Board?

Five Factors Which Control Successful Negotiation

Integrity of Board and Administrators

- District speaks in one voice
- No intermeddling in negotiations by non-members of negotiation team
- District operates with firm and fair conviction
- District expresses unity
- No provocation
- Share all information among all Board members

Five Factors Which Control Successful Negotiation

Integrity of Board and Administrators

- Statesmanship
- No shooting from the hip
- Team players
- No loose cannon
- "Hero negotiators" need not apply

Five Factors Which Control Successful Negotiation

Quality of Communication

- District should speak to the union negotiators, employees, and to the public in one clear and unified voice
- Information provided to the union at the table should be timely and accurate

Five Factors Which Control Successful Negotiation

Ability to Pay

- Financial information provided to the union at the table should be timely and accurate
- “Hiding” money does not work in the public sector and leads to distrust and protracted negotiations
- Understand budget implications for alternative settlements

10 COMMON MISTAKES IN NEGOTIATIONS



1. Misjudging The Loyalty of Staff

- During bargaining, employee loyalty is typically extended to their Union/peer group, not their employer
- Do not be misled to believing:
 - Our faculty will accept our best offer
 - Our employees won't strike
 - We're All In This Together

2. Need To Placate The Union

- Stems from fear of the Union
- Union interprets these acts as a weakness
- The Union will never be satisfied
 - If so, the Union would have no reason to exist

3. Need to Meet to get a Quick Agreement

- Agreement is not a function of the number of meetings held
- Do not raise form over substance
- Timing and frequency of meetings is very important
- Too frequent meetings indicate a lack of firmness

4. "Piecemeal" Negotiations

- Isolation of proposals results in giving more
 - You soon run out of "gives" without achieving an agreement
- Better to deal in "packages" and trades
- Get something for every concession

5. Inadequate Cost Analysis

- Accurate cost figures are essential
- "All costs" of the proposal must be included
 - Watch out for "hidden" costs
- Do not agree without knowing the true cost
- Preparation Time v. Amount at Stake

6. Unprepared for Alternatives

- Prepare acceptable alternatives in advance
- Remain flexible
- Advance preparation prevents errors

7. Run Around Own Negotiator

- “Hero negotiators” are seldom successful
- “Hero negotiators” exhibit Board weakness
- “Hero negotiators” destroy the creditability of the Board's negotiator and their team
- “Hero negotiators” protracts bargaining

8. Premature Best Offer

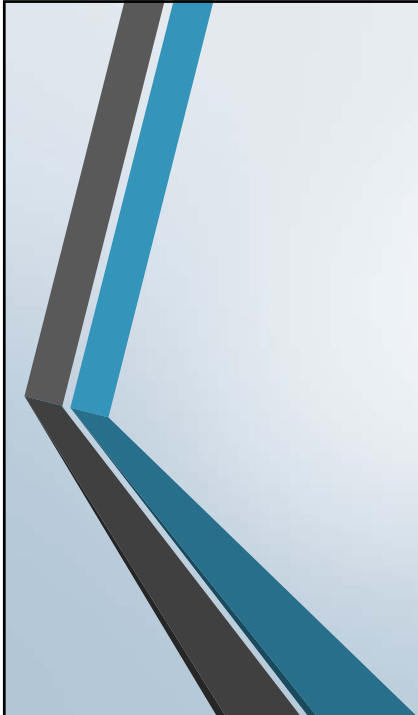
- Most common mistake made
- The “Dance”
- Timing is everything!
- Both sides must feel they have been through the process or they will not value the bargain
- Extract concessions first
- The later the offer, the more it is worth
- Unless truly the last offer, undermines credibility

9. Focus on Organizational Demands

- Too much credit to Union proposals
- Employer proposals are just as important
- Do not mislead Union to think they will get everything they ask for

10. Use of Union Organization Documents

- Do not rely on proposals drafted by the Union
- Check everything
- Clarify ambiguities



Any questions?

Thank You

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AREAS OF CONCERN
CHECKLIST

A. **SEEK ADVICE FROM HUMAN RESOURCES/LEGAL COUNSEL IF CONTEMPLATING THE FOLLOWING EMPLOYMENT ACTIONS:**

1. Disciplining an employee for something he/she communicated.
2. An employee being disciplined has communicated matters which may be of public concern (i.e., whistleblowing)
3. An employee being disciplined has communicated concerns about unlawful harassment or discrimination (race, gender, religion, ethnicity, etc.).
4. An employee being disciplined has been active in any employee organization activities.
5. An employee being disciplined has sustained a work injury or reported a work injury recently or has a pending claim.
6. An employee being disciplined has not been properly evaluated.
7. An employee being disciplined for performance or conduct has no adverse information in his or her personnel file.
8. An employee being disciplined has put the District on notice of a disability.
9. An employee being disciplined has required or has used Family Medical Care Leave within the prior year.
10. An employee is being disciplined for conduct which occurred off the job.
11. A disciplinary action against an employee would not be consistent with disciplinary actions imposed against other employees similarly situated.

B. **SEEK ADVICE FROM HUMAN RESOURCES/LEGAL COUNSEL IF THE FOLLOWING LABOR/UNION EVENTS OCCUR:**

1. **Transfer of Bargaining Work:**

- a. The district wishes to assign work previously conducted exclusively by one bargaining unit to an employee outside of that bargaining unit who has never performed that work.
- b. The district wishes to completely stop assigning work to employees of a bargaining unit who have previously performed the work, yet continue to assign the work to employees outside of that bargaining unit who also have previously performed the work.
- c. The district wishes to contract out to a private party work typically performed by union employees.

2. **Unilateral Change:**

- a. The district wishes to make any changes in operations, procedures, or practices that may directly or indirectly have an impact on a bargaining unit member without first negotiating the change with the appropriate bargaining unit.
- b. The district is contemplating a reduction in workforce or a reduction in the hours of a bargaining unit employee.

3. Interference/Retaliation

- a. Employees begin discussing or asking questions about changing unions or certifying a new bargaining unit.
- b. The District threatens, reprimands or wishes to take disciplinary action against any employee (or applicant) who has recently (i.e., within the past 2-3 years) been active or vocally involved in union matters, filed or been a participant or witness to a recent grievance or unfair practice charge, or otherwise exercised rights guaranteed under the EERA.
- c. A union threatens or retaliates against its own employees or employees of another bargaining unit because of union related matters (i.e., refusing to support a union position)
- d. The district is considering assisting or interfering with the formation or administration of an employee organization, contributing financial or other support to it, or in any way encouraging employees to join one organization in preference to another.

4. Litigation

- a. A union or unit member initiates the grievance process beyond the informal meeting with his/her supervisor
- b. A union or unit member threatens to file an unfair practice charge against the District.

5. During Collective Bargaining

- a. The District has any questions about what are mandatory, permissive, and prohibited subjects of bargaining.
- b. The District considers refusing a request to meet with a union.
- c. The District considers refusing a request to discuss an issue or proposal.
- d. The union refuses to meet with the District upon request.
- e. The union refuses to discuss an issue or proposal requested by the District.
- f. The District cannot immediately provide information that is requested by the union (i.e., within 3-4 days).
- g. The District does not wish to provide information requested by the union.
- h. The District is uncertain as to the absolute accuracy of financial information it provides to the union.
- i. The District believes a union is stalling, undermining, or otherwise failing to negotiate in good faith on a mandatory subject of bargaining.
- j. The District is considering stalling, undermining, or otherwise failing to negotiate in good faith on a mandatory subject of bargaining.
- k. A union demands to negotiate a permissive subject of bargaining (e.g., management prerogatives).
- l. A union proposes a contract clause during negotiation of a collective bargaining agreement that would replace, set aside or annul a provision of the Education Code (i.e., a prohibited subject of bargaining).

- m. A union attempts to cause or attempt to cause the District to commit an unfair labor practice (e.g., attempting to negotiate issues which interfere with the rights of other bargaining units)
- n. The district wishes to back out of a previously-reached tentative agreement during the negotiation of a collective bargaining agreement.
- o. The district and union have reached impasse on a mandatory subject of negotiation.
- p. The district wishes to implement its last, best, final offer following the statutory impasse procedure.

NEGOTIATIONS CHECKLIST

Preparation for Negotiation

- In-service training sessions for supervisors and administrators.
 - District philosophy regarding labor relations
 - Explanation of EERA, the District's employer-employee organization relations system, and relevant rules.
- Role of administrators and supervisors in the process
 - Specify procedures for management input.
 - Specify procedures for keeping management informed as to the progress of negotiations.
- If there are one or more new members of the governing body, individual meeting(s) or closed session to brief such new member(s).
 - Establish agency approach to labor relations.
 - Explanation of EERA, the agency's employer-employee organization relations system, and rules.
 - Background on unions, union officers, and history of negotiations.
 - How the process works; role of governing board members; closed sessions; what to expect.
- Developing negotiation data
 - Gather salary and other benefit survey data.
 - Other "comparable" schools/colleges and public entities
 - Private business in the area
- Multi-year agreements in effect
- Recent settlements
- CPI
- Compile current payroll costs for unit.
 - Unit "profile"
 - Number
 - By class
 - Single, one dependent, multiple dependents
 - Distribution on salary schedule
 - Total base wages
 - Total wage related by item (e.g. retirement, overtime, "incentive" pay etc.)
 - 1% factor
 - Total non-wage related by item (e.g. insurance, flat dollar premium pay, etc.)
 - Cost of salary range movements in forthcoming year
 - Average unit wage
 - Paid leave time usage
 - Turnover
- Review with management present or prior contract
 - What provisions adversely affect efficiency?
 - What provisions result in excessive grievances?
 - Problems caused by ambiguous provisions
 - Provisions restricting management's right to act.
 - Unforeseen costs
 - Excessive costs
- Establish coordination channels with other public employers in area

- Coordinated positions?
- Review each other's negotiations, collective bargaining agreements, and "brainstorm" new ideas.
- Anticipating union demands.
 - Same demands by same union in another district.
 - Resolution passed at union convention.
 - Speeches by union officials
 - List of grievances filed

Analyzing/Costing the Union Package

- Cost impact of compensation and benefit items
- Meeting with affected management to assess operations impact(s) of working condition items.
 - Is there a real bona fide problem?
 - Is it a continuing problem?
 - Is it general in nature or specific and limited?
 - Will the proposal change the problem?
 - Is the proposal the same size as the problem?
 - Is the proposal free from unacceptable operating effects or unanticipated costs, now or in the future, and does it infringe on management's rights?
 - Is the cost reasonable in relation to the problem?

Analyzing Union Negotiating Team

- Learn as much as possible about the union's outside negotiator
 - Check with other management negotiators who have dealt with him/her
 - Does the negotiator live up to his/her commitments?
 - What approach does he/she take in the negotiating process?
 - Will he/she control his/her committee or will they control him/her?
 - Quick settlement or will he/she wait until there is no other alternative?
- Learn as much as possible about the union team members
 - Job
 - Employment history with the District
 - History of union involvement
 - Personality
 - Emotional? Militant? Reasonable?
 - Check with supervisors
 - Which item(s) in union package are of personal interest?
 - Any "special axe(s) to grind"?
 - How much influence
 - With leadership
 - With rank and file

Establish Roles of Negotiating Team Members

- Note taking responsibilities
- Observe union team
- Participation in at-the-table negotiation
- Communicating with Chief Negotiator

Establishing Negotiating Goals and Authority

- _____ Under guidance and direction of Superintendent/President, thoroughly prepare an extended closed session with the Governing Board to establish its role, general negotiating goals and review upper limits of overall authority
- _____ Explain process to Governing Board; the “whys” and “hows” of their policy direction role under it.
- _____ Provide Board members with all relevant information
 - _____ Analysis of union package, including cost and other impacts
 - _____ Survey data
 - _____ CPI data
 - _____ Other settlements
 - _____ Budget data
 - _____ Proposed goals
 - _____ Proposed upper authority for total compensation package
 - _____ Proposed positions on key non-economic policy issues

Sunshining

- _____ Present initial proposal of both District and Union to the Board at a notice meeting
- _____ At a second board meeting, provide an opportunity for public comment on the District and Union’s initial proposals (after a “reasonable” time)
- _____ Board approval of the District’s initial proposal at the second meeting (after public comment)

Establish Communication Procedures to be Followed During Negotiations

- _____ With Governing Board
- _____ With Superintendent/President and key managers
- _____ With District management and supervisors
- _____ Question of factual negotiation bulletins to employees

Initial Meeting

- _____ Create constructive, friendly, professional atmosphere
 - _____ Introductions
 - _____ Basis for rapport between chief negotiators
- _____ Discuss negotiating procedures (ground rules)
 - _____ Total union package?
 - _____ Meeting schedules and locations
 - _____ No “docking” of pay for reasonable number of employees during working hours
 - _____ Confidentiality until agreement or impasse?
 - _____ Union communications to unit employees?
 - _____ Tentative agreement procedure
 - _____ Union negotiating team authority?
 - _____ Union team recommendation. Ratification procedure.
 - _____ Submission of agreement to Governing Body.
 - _____ Set cut-off dates?

Successor Meetings

- _____ Review union items
 - _____ Ask who, what, where when, why and how questions to determine for each proposal...

- Basic thrust
- Justification
- Importance to union team
- By questioning begin process of eroding employee expectations
- Submit affirmative management proposals
 - Be prepared to assume good faith obligation to explain and justify.
 - Keep union team on management's affirmative proposals
- Management counter proposals
 - Seek to negotiate from own proposals
- Initially resolve easier items
 - Set positive tone
 - But consider holding back in order to have enough to bargain with later on
- Tradeoffs
 - Know your priorities
 - Determine union's priorities
 - Determine areas of possible compromise
 - Maximize "ante" to get as much as possible from agency concessions (make union feel they won major victory)
- Tactics: Depends on such factors as...
 - Personalities of negotiating teams
 - Relationship between chief negotiators
 - Agency's employee relations atmosphere
 - Politics and political relationship between Governing Board and union
 - Significance of issue
 - Parties' previous dealings
 - Respective negotiating objectives
 - Parties' perception of detriment of no agreement compared to detriment of making concessions
 - Relative power factors
- Negotiating approaches
 - Have a high aspiration level
 - Demonstrate good faith by:
 - Justifying positions
 - Treating union representatives with respect
 - Be flexible to meet changing circumstances and District concessions (make union feel like they won a major victory).
 - Be alert to union team comments, facial expressions, "body language."
 - Distinguish between union's majority interests and vocal minority positions
 - Negotiate significant money issues as a package
 - Tie together as many unresolved issues as possible at the time major issues fall into place
 - Clearly restate tentative agreements and reduce them to writing in clear language.
 - Maintain on-going communications with Superintendent and Governing Board to assure their positions are being clearly reflected.
 - Avoid
 - Being pressured into making a proposal or responding to one on the spur of the moment.
 - Representing facts of which you are not sure.

- _____ Making commitments you cannot keep.
- _____ Describing a proposal as the last, best offer unless you mean it