

Creating and maintaining strategic labor-management relationships

Brian Hungerford
THE HUNGERFORD LAW FIRM
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Introduction

What one word describes the current relationship between the union(s) and management in your district?

What one word describes how you would like the current relationship between labor and management to be?

Introduction

Scenario #1 - Best Friends

- Management and union reps are very friendly with one another.
- There are few/no grievances or other complaints.
- Bargaining is easy and maybe even uses an interest based model.
- Management does little to hold employees accountable and backs off of doing so when the union objects.
- Everything is fine until the union reps are unhappy with something that management does, at which point they leverage the “positive” relationship to get what they want.
- If you aren’t making concessions at the bargaining table, they wonder where the “collaborative” relationship has gone.
- If bargaining ever gets difficult, they are nice to your face but badmouth you to membership.

Introduction

Scenario #2 - Mortal Enemies

- Management and union reps are usually/always confrontational with one another.
- There are many grievances or other complaints, or at least the threat of such actions.
- Every management decision is challenged.
- The union portrays the “district” as being power-hungry and terrible when communicating with members.
- Bargaining is difficult - you pretty much know it’s going to mediation every time.
- The relationship is negative but predictable; you aren’t every caught blind-sided because your were expecting or hoping for better.
- There is no hesitancy in taking personnel actions because you know the union is going to fight you anyway; that being said, you know that you are going to get a grievance or ULP fairly routinely.

Introduction

Is there a happy medium? What should a labor-management relationship look like? What should your goals be for that relationship?

- Management and union reps are cordial and professional with one another.
- Grievances arise every once in awhile because the district is not caving every time the union objects.
- Many problems are solved at a less formal level, perhaps even at the building level.
- Employees are held accountable as appropriate.
- Communication between management and the union is open and transparent, even when the message is difficult.
- Bargaining takes time and in some cases is difficult because the district is not reluctant to bring its own wants/needs to the table.
- An appropriate balance of power exists - there is compromise but not capitulation by the district.

Working in a Union Environment

Educational institutions are, at their core, environments that rely on interpersonal relationships. That is no different for the interactions between management and the labor organizations that represent your employees. All supervisors must find the balance between establishing and enforcing performance/behavior expectations and creating an unnecessarily combative environment.

- What does it mean to have a desirable labor-management relationship? Does it mean no grievances are ever filed? Does it mean no employees are ever terminated? Does it mean no difficulty in bargaining?
- What does it look like when the labor-management relationships is tilted in favor of the union? What are the potential downfalls?



Introduction

Despite your best efforts, you need to accept the following:

- The labor-management relationship is personality dependent. You likely will have, at some point, union officers or reps who simply can't be worked with in a collaborative fashion. They have decided that management is the enemy and it is their mission in life to fight everything you do.
- At certain times and on particular issues, your local union will follow the OEA/OSEA playbook even if they don't particularly believe in it. This may show up during bargaining or with respect to specific statewide agenda items.
- There will be times when your local leadership/UniServ override the will of the staff in a particular building. Examples might be scheduled changes that don't align with the CBA or protesting discipline/dismissal actions that the staff actually agree with.
- Unions are in a mode of trying to generate member interest and involvement. It's not necessarily because they are trying to be adversarial. It's a matter of trying to sell themselves to members and connect with a membership that is experiencing turnover.



What can you do?

Once you know what your goals are for the labor-management relationship, how do you create the best chance of getting there?

- What do you control?
- How do you get the union to do its part?
- What do you do when things start to get imbalanced in some way?

The union
isn't going
anywhere so
deal with it.

District and building administrators must accept the existence of role of the union.

- Don't take grievances personally - they are a cost of doing business.
- Understand that the union has a legal obligation to represent all bargaining unit members, not just union members.
- There are relatively few changes or actions of real significance that the union will not have some say in.
- The union is a part of a larger statewide and nationwide organization and has an agenda.
- Understand that the "union" is not necessarily synonymous with the "employees."

Representation Rights

What is the scope of the employee's right to representation?

- Represented employees have a statutory right to union representation (*Weingarten*).
- Unrepresented employees (administrators, confidential, etc.) have no right to representation of any kind during an investigation, although you can allow it.
- Representation rights exist under the law only in meetings in which the employee reasonably believes the result could be an adverse impact on employment.

Representation Rights

What is the scope of the employee's right to representation?

- Employees who are merely witnesses and not the accused have no right to representation in investigatory interviews (normally).
- The CBA may expand the situations in which an employee is entitled to representation.
- Unless otherwise provided for in the contract, the right to representation is limited to *union* representation.
- Beware of language like, “a representative of his/her choice.”

Representation Rights

What is the appropriate role of the employee's representative?

- The representative may clarify the purpose of the meeting.
- The representative may advise the employee about contractual rights.
- The representative may ask follow-up questions to bring out mitigating or exculpatory information.
- The representative does not have the right to speak for the employee.
- The representative does not have the right to advise the employee not to answer.
- The representative does not have the right to disrupt the meeting.

Representation Rights

What is the appropriate role of the employee's representative?

- What are my options if the employee shows up with non-union representatives or a representative I wasn't expecting?
- What are my options if the representative is not behaving himself/herself?
- Whose responsibility is it to arrange for a representative?
- Should I allow representation even when there is no right to it?

Practice Tip

Union representatives do not like to be caught off guard. Giving the union president or UniServ/Field rep a heads up when something major is about to happen - such as someone going on administrative leave, the need for a reasonable suspicion test, a dispute between two bargaining unit members - is often a good idea. Doing so can help by avoiding the rescheduling of meetings and sometimes even results in an employee submitting a resignation early in the process.

Know the Contract - Know the Law

You need to know the rules of the road in order to be successful. While it's important that HR is familiar with the rules, it's also your job to make sure all administrators are as well. Those rules will typically come from three main sources:

- **Collective Bargaining Agreement**
- **State/federal Law**
- **Board Policies**

Know Your Contract

Why are some administrators unfamiliar with the CBA?

- Many districts don't give specific training or instruction regarding the CBA.
- Unless a specific issue arises, there may not have been an occasion for the administrator to closely review the contract.
- There's a lot going on, and it is quicker and easier to simply go by what others tell you has always been done.
- It's not always a reader friendly document.

Know Your Contract

What happens when the administrator doesn't know the contract?

- Inadvertent contract violations (grievances)
- You may get taken advantage of by going off what bargaining unit members tell you
- You appear to lack knowledge/confidence
- Organizational consistency is compromised
- You create negative past practice

Know Your Contract

HR must know the contract front to back. It's difficult for most other admin/supervisors to commit the entire contract to memory. So, what's important?

- Complaint Procedure
- Member Rights, such as discipline
- Workday/Workload
- Evaluation
- Personal/Academic Freedom
- Transfer and Vacancy
- Grievance Procedure

Know Your Contract

How can an employer make sure its managers and supervisors have adequate knowledge about the CBA?

- Provide intentional and periodic training for supervisors on key portions of the CBA, especially after a new agreement has been reached.
- Rotate supervisors through the bargaining team. Let them know what an excellent professional development opportunity it is!
- Involve supervisors in evaluating and responding to the grievances that get filed in their departments, as opposed to HR just taking over and writing the response.
- Have supervisors join labor-management meetings on a rotating basis.

Know the Law - Oregon's PECBA

In 1973, the Oregon Legislature passed the Public Employee Collective Bargaining Act, or PECBA. The rationale behind that statute was:

- The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees.
- Unresolved disputes between the public services and their employees are injurious to the public, the governmental agencies, and public employees.
- Allowing employees to organize and bargain collectively is beneficial because it encourages “practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions.

What did the PECBA do?

- It created the right to organize on the part of all non-elected, non-supervisory and non-confidential public employees, including teachers and classified school employees.
- It announced the principle of exclusive representation.
- It created the right and obligation to collectively bargain over a wide range of issues, known as “employment relations.”
- It created a defined process for carrying out that bargaining obligation.
- It gave both employees and employers the right to take “self-help” measures at the conclusion of the bargaining process.
- It created an agency to enforce the law – the Employment Relations Board.

Union Rights Under the PECBA

In addition to establishing the right of public employees to form unions and engage in collective bargaining (including striking), the PECBA sets forth the following:

- An employer may not interfere with, restrain or coerce employees in or because of the exercise of protected activity.
- An employer may not dominate, interfere with or assist the formation, existence or administration of a union.
- An employer may not discriminate against an employee for the purpose of encouraging or discouraging union membership.

Union Rights Under the PECBA

- An employer cannot refuse to bargain in good faith with the union.
- An employer cannot violate the provisions of any written contract or agreement entered into with the union or refuse to reduce to writing an agreement that has been reached.
- Unions have most of these same responsibilities and restrictions.
- The majority of these provisions ensure that a public employee won't suffer some adverse action as a result of engaging in union activity.
- An employer who is unaware of these protections may not recognize when they are getting too close to the line and may not realize if the union is asserting rights that don't really exist.

Pick Your Battles Wisely

No HR director or administrator wants to be a pushover with respect to the union. If you've never had a grievance or always retreat from potential personnel actions when the union gets involved, there will be a definite imbalance of power in the workplace.

On the other hand, supervisors who pick unnecessary fights with the union or the reps, push the limits of the law or take a hardline when there is no advantage in doing so become a frequent target.

So, how do find that sweet spot?



Pick Your Battles Wisely

Don't . . .

Try to dissuade employees from having a union rep present during meetings that could be construed as disciplinary or be overly rigid in the scheduling of those meetings.

Do . . .

Enforce legally supportable expectations around the proper role of the union rep, especially the expectation that they not try to speak for the employee.

Pick Your Battles Wisely

Don't . . .

Badmouth the union or union reps to your employees or otherwise try to dissuade them from being in the union.

Do . . .

Be clear that there is a difference between being an administrator and being a teacher and administrators are on the side of management; prevent them from blaming “the District” or otherwise avoid taking responsibility for tough decisions.

Pick Your Battles Wisely

Don't . . .

Refuse to grant timeline extensions for processing grievances when there is no obvious attempt to drag the process out; after all, you may need extensions at some point too.

Do . . .

Require the union and/or grievants to go through all steps of the grievance process, including the informal levels.

Pick Your Battles Wisely

Don't . . .

Target union reps for harsher discipline or try to seize on a fairly minor transgression to finally get back at that union rep who has been driving you crazy.

Do . . .

Issue discipline consistently and when warranted, even if that means disciplining a building rep at the risk of getting pushback from the union.

Be Consistent and Predictable

- Set clear expectations
- Address problems early and at the lowest possible level
- Treat similar situations in a similar manner
- Avoid personalizing issues
- Collaborate with HR and other supervisors to ensure that there is organizational consistency in addition to individual consistency.
- Develop standardized templates and forms so that disciplinary actions, investigation reports, grievance responses, etc. look similar regardless of which administrator they are coming from.

Be Consistent and Predictable

Key Area of Consistency: Severity of Discipline

- Are your supervisors responding to similar infractions with similar levels of discipline?
- What is the common response to things like attendance or appearing at work under the influence?
- Are you giving your “good” employees the same consequence as your “bad” employees?
- How are you and your administrators using letters of directive vs. letters of reprimand?
- Inconsistent disciplinary responses create problems if there is a just cause challenge. It also puts the union in the position of having to grieve.

Be Consistent and Predictable

Key Area of Consistency: Exceeding the Contractual Requirements/Providing Favorable Treatment

- Are your supervisors allowing employees to work from home or flex their day in certain situations even though the contract doesn't require it?
- Are requirements for taking personal leave ignored in some buildings?
- Is timeliness or attendance overlooked in some buildings?
- It's not necessarily a negative for administrators to provide more than the contract requires. However, failing to enforce rules or contractual expectations creates trouble for administrators who are not able/willing to do so in their buildings, as well as trouble at the bargaining table.

Documentation Is Your Friend

Why is it important in building a strategic labor-management relationship to document appropriately?

- People in key roles change and memories fade.
- Consistency - both as an organization and as the HR department - depends on knowing how certain situations have been handled.
- Union reps will create their own self-serving history of “handshake agreements.”
- Where the law or CBA requires notice be given, the costs of not being able to prove it are extreme.

Documentation Is Your Friend

The effective administrator/supervisor documents as necessary and keeps good records.

- Don't rely on verbal notice of rules and expectations.
- Send documents to the personal file as appropriate.
- Evaluate on time and with the regularity required by law/contract.
- Properly utilize letters of direction and other disciplinary tools.
- When agreements are made, reflect them in a written conference summary or even MOU/MOA.
- Use templates and make sure everyone in the organization is doing the same.
- Establish an environment where it is accepted that if there is no written record of something happening, it didn't.

Keeping the Union In Its Own Lane

Organizations benefits from allowing employees to have input into key decisions and changes that impact their work. Curriculum adoptions, the school calendar and even hiring decisions may be areas where there should be some shared decision making. There is a difference, however, between providing opportunities for employee input and allowing the union to have an oversized role in running the district. How do you maintain that appropriate balance?

Bargain Only When You Have To

When do I
have a duty
to bargain?

Is there a change in the status quo in a mandatory subject of bargaining?

Is there a change in working conditions caused by a non-employer factor?

Is there an impact on a mandatory subject of bargaining, such as health/safety or workload?

Do you have an MOU that requires re-opening negotiations?

When do I have a duty to bargain?

- If any of those factors exist, an employer has an obligation to bargain upon demand from the labor organization.
- The union's demand to bargain must come within 14 calendar days from the date the union was notified of the proposed change or the union knew/should've known of the change.
- If a timely demand is made, the employer (**usually**) must bargain for at least 90 calendar days before implementing the intended change. There is no required mediation as with successor bargaining.
- If the parties are in successor bargaining when notice of the change is given, the impact bargaining has to be wrapped into the successor bargaining.

Bargain Only When You Have To

What is a mandatory subject of bargaining?

- Referred to as “employment relations” in the law. (ORS 243.650)
- “Matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.”
- Does not include: school or educational calendar, standards of performance or criteria for evaluation, school curriculum, student discipline, or class size except at Title I schools.
- What are “other conditions of employment?”
- What is the status quo?

Bargain Only When You Have To

The majority of the situations regarding duty to bargain arise during the term of the contract. Typically, the district will receive a demand to bargain from the union.

- Change to the student schedule
- New legislation
- External conditions, such as during COVID
- Changes to a job description or new duties
- Creation of a new program

Bargain Only When You Have To

- Duty to bargain questions are often complicated - consult legal counsel and when in doubt go ahead and agree to bargain.
- There is no obligation to change your position during the 90-day bargaining position but you do need to provide the rationale for your position and likely some form of counter proposal.
- When the demand to bargain is ambiguous you can ask that the union clarify exactly what it is they are demanding to bargain over.
- If there clearly is no duty to bargain then don't; you can offer to meet and hear the union's concerns.

Avoiding Board Over-Involvement

The school board has a role in the collective bargaining and contract management process.

- The CBA is technically between the Board and union
- The board is often a step in the grievance process and is always a step in the complaint process
- The board must take action to dismiss licensed employees and serves as an appellate body for classified dismissals

When the board becomes over-involved, especially if it is to the benefit of the union, then the labor-management relationship gets thrown off. The union stops working with HR and administrators and instead makes an end-run to the board.

Avoiding Board Over-Involvement

- Is one or more board members having individual meetings with the union president?
- Why and on what topics?
- Is a board member making unsolicited comments during the board comments portion of the board meeting?
- Is a board member showing up at board meetings and behaving as if they were a member of the bargaining unit in the audience?
- Is a board member repeating union talking points and/or pushing the district bargaining team to give the union whatever they want?

Avoiding Board Over-Involvement

What can you do about it? The short answer is nothing, as there is no mechanism for disciplining board members or removing them. That said, try the following:

- Put a reliable board member on the bargaining team; board members who may be on the fence or easily swayed by the union are often influenced by a board member who is directly participating in the bargaining process.
- Get bargaining training for the board in advance of negotiations; remind them that their primary responsibility is to set financial parameters as opposed to nit-picking contract proposals.
- If you suspect a leak from executive sessions, have the superintendent engage in one-on-one conversations with board members or board leadership rather than updating the whole board. Or, reinforce board positions that you want to get leaked.
- Demonstrate the impact on students as opposed to focusing on the district's rights as the employer.





**LINK TO
SURVEY**



Sunday, September 29 at 1:00 pm

Hungerford Files with Brian Hungerford