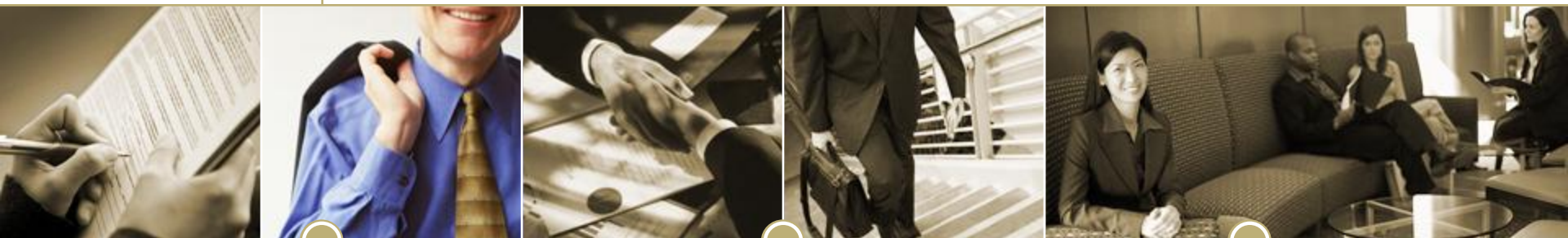




IPC HR-101 Workshop

Collective Bargaining

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Agenda

- Educational Employment Relations Act (“EERA”)
- Bargaining Process
 - Commonly used terms
 - Legally required steps
 - Meet and negotiate requirements
 - Duties of parties to provide information
 - Declaring impasse and its effects
 - Good faith bargaining requirements
- Mandatory and non-mandatory subjects within the scope of representation
- Violations of the collective bargaining process

Educational Employment Relations Act

Collective Bargaining

- EERA established collective bargaining in California's public schools (K-12) and community colleges.
- Codified in Government Code section 3540 *et seq.*
- “It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California. . . . ” (Gov't Code, § 3540.)

Bargaining Process

Commonly Used Terms

- Good Faith
- Exclusive Representative
- Impasse
- Negotiate
- Scope of Representation

Commonly Used Terms

Good Faith

A requirement that all parties to a dispute act “in good faith” to reach an agreement on matters within the scope of representation, comply and act in accordance with the provisions for collective bargaining, and carry out their obligations as agreed.

Commonly Used Terms

Exclusive Representative

The employee organization that has been voluntarily recognized by the employer or that has been “certified” through an election as the bargaining agent for the employees in an appropriate bargaining unit.

Commonly Used Terms

Impasse

When the parties have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile. Either party may declare that the negotiations have reached the point of “impasse.” Specific statutory provisions apply for procedures when “impasse” is reached.

Commonly Used Terms

Negotiate

Requires that parties who enter into negotiations over matters within the scope of representation make a “good faith effort” to come to an agreement on such matters.

Commonly Used Terms

Scope of Representation

Refers to the subject matters that are subject to the meet and negotiate requirements; includes enumerated matters and those which affect the enumerated matters.

Legally Required Steps in the Process:

- Sunshine Process
- Negotiations Sessions
- Tentative Agreement or Impasse
- Mediation
- Fact Finding
- At least one post-Fact Finding Negotiations Session
- Last Best and Final Offer; Union Rejects
- Board of Education Unilaterally Implements Last Best and Final Offer
- Union Strikes (worst case scenario?)

Legally Required Steps in the Process:

Sunshine Process

- Government Code section 3547
- Process:
 - Before meeting and negotiating
- One Board Meeting vs. Multiple Board Meetings
- Specificity



Legally Required Steps in the Process:

Negotiations Process

- Traditional vs. Interest Based
- Proposals:
 - Written
 - Clear and Concise
- Conduct at the table vs. in Caucus



Bargaining Process

Meet and Negotiate



Employers must meet and negotiate in good faith with the duly selected exclusive representative of its employees as to the subjects within the statutorily defined scope of representation.

Bargaining Process

Meet and Negotiate

- ***A duty to initiate negotiations arises when the district seeks to make a unilateral change with respect to any mandatory bargaining terms, or with respect to any issue affecting such terms, i.e., terms within the scope of representation.***
 - ***Before the district makes a firm decision:***
 - ***(1) Give notice of the intended decision to an official of the employee organization who has the authority to act on behalf of the organization; and***
 - ***(2) Provide an opportunity to negotiate.***

Bargaining Process

Meet and Negotiate

- **Example:**
 - *The District intends to **reduce compensation** for all unit members for the upcoming school year **and/or impose a reduction of work days with a corresponding reduction in pay.** Before recommending final action on this to the Board, if you wish to meet and negotiate please contact me immediately and by no later than February 5, 2015, to schedule a date and time to bargain.*
- Notice and opportunity to respond; A general publication of the board agenda will not satisfy the district's requirement to give notice, and constitutes inadequate notice.

Bargaining Process

Duty to Provide Information



- It is well settled that the union has a right to request information that is necessary and relevant to its representational obligations; however, such right is not without limitations.
 - Information requested that pertains immediately to a mandatory subject of bargaining is presumptively relevant.
 - If it is not, there is no presumption and the requestor must show that it is relevant and necessary.

Bargaining Process

Declaring Impasse



- Either the district or the union may declare that an impasse has been reached between the parties over matters within the scope of representation and may request PERB to assign a mediator to assist the parties in reconciling their differences and resolving the controversies involved.

Bargaining Process

Impasse Procedures

- The mediator, within 15 days after his or her appointment, assists the parties in effecting a settlement of their controversies and disagreements.
- At the conclusion of such time, the mediator may declare that a “factfinding” is appropriate to the resolution of the impasse. Either party, upon such declaration, may give notice and request that their differences be submitted to a factfinding panel.

Impasse

Are we at impasse?



- If no joint declaration of impasse, PERB may investigate and consider:
 - The number and length of sessions;
 - The period of time over which the sessions occurred;
 - The extent to which the parties considered counterproposals;
 - Extent to which tentative agreements on some bargaining issues have been reached; and
 - The extent to which issues are unresolved.

Impasse

Factfinding



The factfinding panel is composed of members selected by the parties, with a chairperson determined by PERB. If the parties are unable to come to a settlement as a result of the panel's factfinding, the panel will make a recommendation of settlement terms, which is advisory only.

Bargaining Process

Good Faith Bargaining

- The district and union have a mutual obligation to bargain in good faith on request of either party and to endeavor to reach agreement on matters within the scope of representation.
 - Implicit is that all parties act in “good faith” to arrive at an accord.
 - “Good faith” is the subjective intent of acting in good faith to reach an agreement based on the totality of circumstances.

Good Faith Bargaining

Indicia of “Bad Faith”

- The “totality of circumstances” in light of the following factors:
 - Frequent turnover in negotiators;
 - Negotiator’s lack of authority;
 - Lack of preparation for bargaining sessions;
 - Missing, delaying, or canceling bargaining sessions;
 - Insistence on ground rules before negotiating substantive issues;
 - Taking an inflexible position;

Good Faith Bargaining

Indicia of “Bad Faith,” continued

- The “totality of circumstances” in light of the following factors:
 - Regressive bargaining proposals;
 - Proposing predictably unacceptable counterproposals;
 - Repudiation of a tentative agreement; and
 - Conditioning agreement on acceptance of proposals to settle grievances, unfair practice charges, or agreement on nonmandatory subjects of bargaining.

Subjects of Negotiations

Scope of Representation

- The scope of representation shall be limited to “matters relating to wages, hours, and other terms and conditions of employment.”
 - See Government Code section 3543.2(a)
- The employer and exclusive organization must meet about mandatory subjects of negotiation but cannot require negotiation of nonmandatory subjects to point of impasse.
 - See *Chula Vista City School District* (1990) PERB Dec. No. 834.

Subjects of Negotiations

“Terms and Conditions”

- (1) Health and welfare benefits
- (2) Leave, transfer and reassignment policies
- (3) Safety conditions of employment
- (4) Class size
- (5) Procedures for the evaluation of employees
- (6) Organizational security
- (7) Procedures for processing grievances
- (8) Layoff of probationary certificated employees
- (9) Alternative compensation or benefits for employees adversely affected by pension limitations

Subjects of Negotiations

Scope of Representation

Government Code section 3543.2(a) goes on to provide:

“All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, except that this section does not limit the right of a public school employer to consult with any employees or employee representative organization on any matter outside the scope of representation.”

Subjects of Negotiations

The CA Supreme Court Test

- A matter is a subject of negotiations if:
 - (1) It is logically and reasonably related to wages, hours or an enumerated term or condition of employment;
 - (2) The subject is of such concern to management and employees that conflict is likely to occur, and the mediatory influence of the collective negotiations is the appropriate means of resolving the conflict; and
 - (3) The employer's obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the district's mission.

See *San Mateo City School District v. PERB* (1983) 33 Cal. 3d 850, 859-860; See Gov. Code, § 3540, et seq ; See also *Anaheim Union High School District* (1981) PERB Dec. No. 177].

Subjects of Negotiations

Mandatory Subjects

- There are subjects of negotiations, termed mandatory subjects, because they affect “wages,” “hours,” or “terms and conditions” of employment.
- There is no exhaustive list of these subjects, other than those which have already been recognized through application of the test for scope of representation.

Subjects of Negotiations

Non-Mandatory Subjects

- *All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating.*
 - This provision does not in any way prevent a district from consulting with its employees or with the union on such terms.
 - Such terms are nonetheless outside of the scope of representation, or non-mandatory subjects, and not subject to “meet and negotiate” requirements.

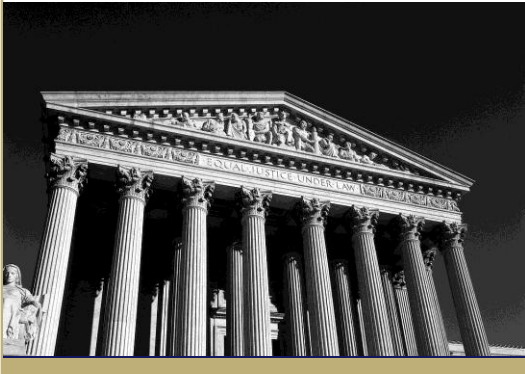
Subjects of Negotiations

Some Non-Mandatory Subjects

- Consultation right regarding affirmative action policy
- Copies of ALL reports by the district to government agencies
- Right to inspect funding and budgetary documents (intrusion on management responsibilities)
- Timely furnishing of supplies or furnishing a classroom
- Central location to securely store materials for teachers without an assigned classroom
- Number of staff development days
- Inspection of teachers' desks without prior notice
- Employee's right to object to inclusion of materials within personnel file (conflict with statute)
- Destruction of personnel records prior to statutory required time

VIOLATIONS OF PROCESS

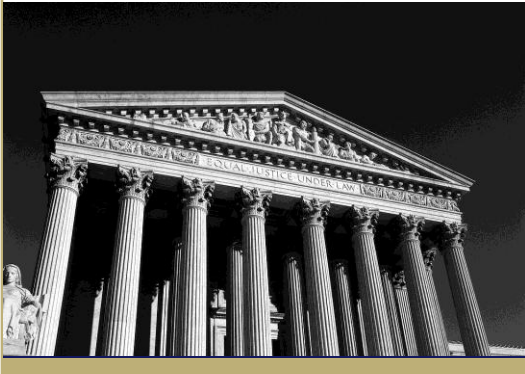
Restrictions on the District



- Impose or threaten to impose reprisals, discriminate or threaten to discriminate, or otherwise to interfere with, restrain, or coerce employees/applicants because of their exercise of collective bargaining rights under EERA;
- Deny to employee organizations EERA guaranteed rights;
- Refuse or fail to meet and negotiate in good faith with an exclusive representative;
- Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another; and
- Refuse to participate in good faith in the impasse procedures.

VIOLATIONS OF PROCESS

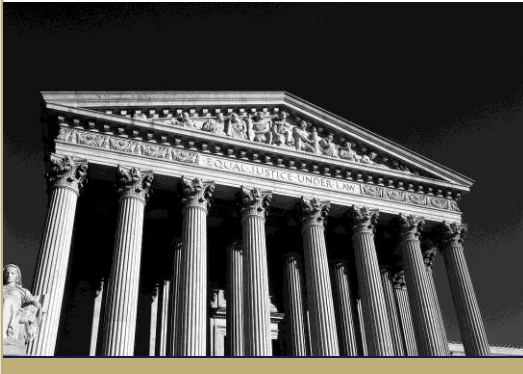
Restrictions on the Associations



- Cause or attempt to cause a public school employer to violate any of the above-outlined provisions;
- Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed through EERA;
- Refuse or fail to meet and negotiate in good faith with the district, the employer of the employees of which it is the exclusive representative; and
- Refuse to participate in good faith in the impasse procedure.

VIOLATIONS OF PROCESS

Per Se Violations



- Per se violations make either party liable for violating collective bargaining procedures. These categories include:
 - An outright refusal to bargain;
 - Refusal to provide information necessary and relevant to the employee organization's duty to represent bargaining unit employees;
 - Insistence to impasse on nonmandatory subject of bargaining;
 - Bypassing the employee organization's negotiators; and
 - Implementation of a unilateral change in working conditions without notice and an opportunity to bargain.

Drafting & Interpreting Contract Language



Six Rules for Drafting Contract Language

Rule #1

Write with clarity and precision.

- Always ask yourself: “If I was a stranger reading this language would I have a clear understanding of its meaning?”
- Bad language example: “Lunch and restrooms must be suitable and accessible to bargaining unit employees.”



Six Rules for Drafting Contract Language

Rule #2

Be concise & succinct. Avoid ambiguous language to minimize misinterpretation.

- Bad language examples:
 - “Overtime distribution opportunities will be distributed fairly.”
 - “A transfer shall not be denied arbitrarily.”



Six Rules for Drafting Contract Language

Rule #3

Present all proposals in writing. Avoid presenting oral proposals to minimize misunderstanding and confusion.

- Note: Include district proposals in writing even if the intent is to informally memorialize an off-record idea you want the union to consider. Include on the document, “off-record proposal.”



Six Rules for Drafting Contract Language

Rule #4

Define frequently used terms to avoid misinterpretation and confusion over the application of the same terms used elsewhere in the CBA.

- Examples:
 - Define potentially ambiguous terms such as “threatened” or “harassed” used in the “safety” article by referring to specific statutory definitions.
 - Define the term “protective measures” in addressing corrective action measures by referring to related district policies/regulations.



Six Rules for Drafting Contract Language

Rule #5

Don't include general, philosophical statements that may be subject to misinterpretation or misapplication.



Six Rules for Drafting Contract Language

Rule #6

Consider not including broad contract language if the issue can be addressed outside of the CBA administratively.

- It is important to remember that a CBA is a binding contract, and alleged violations of broad contract language will be subject to the grievance/arbitration provisions.



Team Dynamics



Teams

- Good teams:
 - Take group responsibility
 - Make group decisions
 - Are informal
 - Allow all to participate
 - Are flexible
 - Are self-evaluative
- HAVE CONSTITUENCIES!



A Good Team Member:

- **Demonstrates reliability**
- **Communicates constructively**
- **Listens actively**
- **Functions as an active participant**
- **Shares openly and willingly**
- **Cooperates and pitches in to help**
- **Exhibits flexibility**
- **Shows commitment to the team**
- **Works as a problem-solver**
- **Treats others in a respectful and supportive manner**

Question & Answer

Thank You

For questions or comments, please contact:

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