COLLECTIVE BARGAINING 101: THE NEGOTIATIONS AND IMPASSE PROCEDURE

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BACKGROUND OF THE ACT

• Important to know the law behind the requirements
• The 1992 Act (PEBA I)
  • Began collective bargaining in the public sector in NM
  • Affected cities, counties, school districts, colleges, and universities
  • Some grandfathered
  • Sunset on June 30, 1999

• The 2003 Act (PEBA II)
  • Resurrected collective bargaining over same entities
  • Slow growth
KEY PROVISIONS OF THE ACT

• Purpose
  • Employees right to representation
  • Good relations between the employee and the employer
  • Citizen/student right to orderly and uninterrupted services

• Union often focuses on first item only

• Management must focus on last item as priority
KEY PROVISIONS OF THE ACT

• Definitions
  • Appropriate bargaining unit
  • Confidential employee
  • Management employee
  • Supervisory employee
  • Fair Share
KEY PROVISIONS OF THE ACT

• Labor Board – State or Local
  • Local option part of PEBA I and PEBA II
  • Currently over 60 local labor boards
  • Three Members
    • Management recommended
    • Labor recommended
    • Neutral third
  • Jurisdiction of these boards:
    • Representation and decertification elections
      • Determination of appropriate bargaining units
    • Prohibited practice charges
      • Does not hear impasse issues
    • Unit clarifications and accretions
• Appropriate bargaining units
  • 8 occupational groups
    • Police
    • Fire
    • Blue collar
    • White collar
    • Technical
    • Professional
    • Paraprofessional
    • Corrections
• For schools typically certified and classified bargaining units
KEY PROVISIONS OF THE ACT

• The Representation Election
  • Need signatures from 30% to file
  • 40% must show up and vote
  • Simple majority of those voting determines election
  • Can agree to alternative method – card count

• The Decertification Election
  • Same procedure as above
  • Must wait one year from election to file
  • Must be filed in window period: 60-90 days before CBA expiration date or anytime after 3rd year of a 3+ year CBA
KEY PROVISIONS OF THE ACT

• Scope of Bargaining
  • Defines what is required to be bargained:
    • Wages
    • Hours
    • All other terms and conditions of employment

• Is there anything not covered?
  • Retirement Programs
  • Housing
  • Hiring incentives before employment

• Language negotiated cannot conflict with law
SCOPE OF BARGAINING

• Must negotiate dues deductions

• Must negotiate grievance procedure that ends with final and binding arbitration

• Agreements are contingent upon the specific appropriation of funds by the School Board and the availability of funds.
SCOPE OF BARGAINING

• The Right to Meet in Closed Session
  • Meeting by School Board with your bargaining team to discuss strategy
  • Negotiations
  • Impasse procedures
SCOPE OF BARGAINING

• Permissive Subjects of Bargaining
  • Not required to negotiate
  • If decide not to negotiate, do NOT give a proposal
  • If no agreement, they die on table

• Examples:
  • Fair Share
  • Bargaining unit
  • Ratification procedure
  • Anything dealing with non-bargaining unit employees e.g. confidential employees, hiring, promotions, retirees, etc.
PITFALLS IN BARGAINING

- Not being prepared
- Not knowing the PEBA and relevant laws or trying to restate the laws:
  - Title VII
  - ADA
  - ADEA
  - OSHA
  - USERRA
  - FLSA
  - FMLA
  - Voter Rights Act
  - Workers Comp Act
  - Inspection of Public Records Act
  - Anti-Donation Clause of Constitution
  - Random Drug Testing
  - ERA
PITFALLS IN BARGAINING

• Being disorganized
• Guessing when you don’t know the answer
• Putting forth a proposal as a take-it-or-leave-it
• Claiming to not have enough money
• Succumbing to the attacks
• Getting into a media war
• Not ensuring confidentiality
• Not having a strategy
• Not keeping the School Board informed
• Not conversing with your other constituents
PITFALLS IN BARGAINING

- Subjective Language
  - Reasonable
  - Every effort
  - Substantial
  - Equitable
  - Significant
  - As far/much as possible
- Losing Management discretion/responsibility
  - Collaboratively
  - With employee consent
IMPASSE PROCEDURES

• When an Agreement cannot be reached after true negotiations
  • Either party may request mediation
  • If no agreement during 30-day mediation period, either party may request arbitration
EMPLOYER PROHIBITED PRACTICES

• Discriminate based on Union membership or activity
• Interfere, restrain, or coerce employee in exercising rights under PEBA
• Dominate or interfere in formation or existence of a union
• Discriminate in regard to hiring, tenure, or a term of employment to encourage or discourage membership in a union
• Discharge or discriminate against an employee for signing an affidavit, petition, or testifying in a hearing
EMPLOYER PROHIBITED PRACTICES

• Refuse to bargain in good faith
• Refuse or fail to comply with PEBA
• Refuse or fail to comply with a collective bargaining agreement
• Circumvent the negotiating team
EMPLOYEE / UNION
PROHIBITED PRACTICES

- Discriminate against an employee with regard to Union membership
- Interfere with, restrain, or coerce an employee in exercise of right under PEBA
- Refuse to bargain in good faith
- Refuse or fail to comply with a collective bargaining agreement
- Refuse or fail to comply with PEBA
- Picket homes or businesses of elected officials or public employees
- Circumvent the negotiating team
NEGOTIATIONS
PREPARATION
AND
PROCESS
MATERIAL TO CONSIDER TO PREP

• Grievances or Problems
  • Language Problems
    • Bad language
    • Bad application
  • Decisions
    • Internal
    • External
• Process
  • Levels
  • Automatic Appeal v. Timeliness Issue
  • School Board involvement
MATERIAL TO CONSIDER TO PREP

• Issue Problems
  • Pay Administration
    • Overtime
    • Promotions
    • Performance Increases
    • Certification / Specialty Pay / Stipends
    • Labor Market competitiveness / Wage Salary Surveys
MATERIAL TO CONSIDER TO PREP

- Issue Problems
  - Attendance
    - Tardiness
    - Sick Leave
    - AWOL
    - Holidays
    - Return from Military Leave or FMLA

- Performance and Evaluations
  - Certified?
  - Classified: how often?
  - Subject to review or non-grievable
MATERIAL TO CONSIDER TO PREP

- Issue Problems
  - Assignments
    - Notice of Assignment
    - Transfers: voluntary and involuntary
    - Working outside of classification
    - Overtime: voluntary v. mandatory; rotating or discretionary

- Staffing
  - Recruitment / Labor market competitiveness
  - Retention and turnover
  - Absenteeism
MATERIAL TO CONSIDER TO PREP

• Issue Problems

• Discipline
  • Process
  • Clean slate approach – illegal?
  • Consistency or unique conditions
  • Assistance with initial prep and presentation
  • Administrative action v. legal action
MATERIAL TO CONSIDER TO PREP

• Issue Problems
  
  • Union Representatives
    • Work place visitation
    • Home addresses and telephone numbers
    • Solicitations / orientation meetings / staff meetings
    • Labor Management Committees and time off
    • Grievance Investigation, Prep, and Representation
    • Negotiations: team size and paid time
    • Bulletin board and material distribution
PROCESS AND CONTACTS

• Prepare management and School Board for opening position
• Concerns:
  • Quality of education and service
  • Right to manage
  • Employee concerns
• Approach:
  • Articulate management needs
  • Try to find common ground
SELECTING NEGOTIATING TEAM

• Supervisors of bargaining unit employees especially Union team members
• Finance person
• Human Resources person – administrator of the contract
• Person in training
• Lead Negotiator:
  • Important to have experience
  • Inexperience can be detrimental
  • Bad language in contract
UNION REPRESENTATION

• Union Organizers/Reps Contacting Employees
  • During Duty Hours
  • In Work Locations
  • At Home Residence
• Informational Tables
• Posting of Flyers
• District Mail and Email
• No Solicitation During Duty Hours
• No Employee Addresses
• No Changes in Wages and Working Conditions
• Facility Use requirements
IMPASSE PROCEDURES
DECLARATION OF IMPASSE

- Must have engaged in good faith bargaining
- Must present last best offer from both parties
- Must give consideration to last best offer
MEDIATION

• FMCS Mediator
• Free process
• Power of persuasion
• Can give offer in mediation that expires
• Can amend last, best offer through last date of mediation
ARBITRATION

- FMCS panel of seven (7) arbitrators
- Do research on arbitrators to make informed selection
- Strike until one (1) name remains – do not delay
- Scheduling of arbitration date
- Sharing exhibits?
- Stipulations
ARBITRATION

- Similar to Court hearing
- Sworn witness testimony
  - Prepare witnesses
  - Answer only the question asked
- Documentary evidence
- Objections
- Rebuttal
  - Expect the unexpected
- Post-Hearing Briefing
- Case law
QUESTIONS