

The Art of Labor Relations: Knowing Your Best Move

By Dixie M. Pope, Ed.D.



In many school districts, business managers—not superintendents—are the ones who deal with labor relations, negotiating or participating on the negotiations team. Business managers who oversee the human resources department may find themselves dealing with labor relations on a regular basis.

As a superintendent who also has the duties of business manager, I equate my labor and community relations responsibilities with a game of cards. From my perspective, the trick to labor relations is not to look at the cards I have been dealt by the employees, but to look at how I must play those cards to win, not only for myself but also for my district. During my first year in this dual role, I learned when I could play my hand alone and when I should “ask my

partner for help” (call in the experts) regarding an issue.

Labor Relations Strategies

In this card game of labor relations, the four strategies I became familiar with were (a) negotiation, (b) mediation, (c) arbitration, and (d) court injunction and declaratory judgment.

Negotiation, the most common method used to resolve differences, is a process by which the parties attempt to reach an agreement on issues about which they might disagree. The goal of negotiating an issue or issues is to reach an agreement that will positively influence the workplace. Negotiations give those involved—both management and labor—the opportunity to voice their opinions and to help develop a solution that benefits everyone.

A good negotiator should gather the facts, evaluate the situation, and focus on the issue, not on the person or position. My role as the board’s head negotiator for support staff negotiations was a win-win situation for the board and for me. Although this process was time consuming, I built a rapport with the support staff that ultimately led to the resolution of two outstanding grievances that I had inherited from my predecessor.

Mediation is negotiation with the assistance of a third party. The mediator does not have the power to decide the outcome, however. The effective mediator is a good listener and works from a sound, basic approach (Ray, Hack, and Candoli 2000). Both parties must agree to mediation as the means to reach a voluntarily acceptable resolution. The mediation process emphasizes problem solving and resolution.

Last year, I was in a position to resolve a parent–student issue regarding schools of choice. The family lived in our school district; however, as a result of some incidences, the mother chose to send her older four children to schools in another district. She wanted her youngest child (kindergarten age), who had special needs, to also enroll outside our school district. Because of the possible expense of the child’s needs, the other district was unwilling to absorb those costs.

I knew when to “ask my partner for help.” The mother and I met with a state mediator who facilitated our discussions. In addition, I invited the mother to meet with the elementary school principal and staff and visit

the building several times to observe instruction.

In the end, not only did she enroll her kindergartner in our district elementary school, she also enrolled her other four children in our district.

Arbitration is “a procedure in which an impartial third party actually renders a decision that can be binding or nonbinding in a labor dispute” (Geisert and Lieberman 1994, p. 63). Before turning to arbitration for dispute resolution, both parties must agree that mediation and negotiation have failed.

When I began my current position, I inherited four issues slated for arbitration and added another. Again, I turned to others for assistance. While continuing to have an open dialogue with the grieving parties, I also involved legal counsel. Three of the five issues were settled before the arbitration dates.

One of the arbitration issues would have, in my opinion, caused severe financial harm to the district. In that case, I knew when to “fold ’em” and considered the court injunction and declaratory judgment option available to employers. The 1932 Norris-La Guardia Act (29 U.S.C. § 101) limits the reasons courts can issue injunctions. The act states:

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

However, in the end, the issue was settled without going to arbitration or through the court injunction and declaratory judgment process because of the rapport that was established during the negotiation process.

Right of Due Process

Regardless of the strategy employers choose to resolve a dispute, they must

ensure that due process was followed and documented. The Constitution grants certain rights to all U.S. citizens. Included in the protection of citizens’ rights are their employment rights. The Fourteenth Amendment protects people by stating that government shall not deprive anyone of life, liberty, or property without due process of law—and employment certainly affects life, liberty, and property.

Employees are entitled to a procedural due process hearing before retribution or termination. The Fifth Amendment provides certain protections to people accused of an infraction. If due process is not followed, the plaintiff loses the case. Labor relations cases are no exception. If cases claiming a due process violation progress to arbitration or the court system, the arbitrator or court will determine whether the proper process for protecting employees’ rights was followed before terminating the employee.

School districts should ensure that due process procedures are incorporated into their policies and that those policies coincide with the constitutions and statutes of the federal and state governments. In employment master agreements with school district unions, it is best to have due process and just-cause procedures outlined so both parties know what to expect. In addition, the contract should outline what issues can be taken to arbitration.

Before having a case progress to an arbitration hearing, the employer should ensure that the traditional steps in disciplining the employee were followed. In most cases, the traditional steps include (a) an oral warning, (b) a written warning, (c) a written reprimand, (d) suspension, and then (e) discharge. Depending on the severity of the misconduct, some issues may require skipping a step.

Always add the following or a similar disclaimer to documented warnings and reprimands: “If further incidences take place, the district will

consider the infraction(s) and severity of the infraction(s) and it could result in further discipline that may lead up to and include dismissal.”

Be Prepared

Sometimes in the collective-bargaining process, an agreement is not reached without mediation, arbitration, or other form of dispute resolution. The district must determine which form of alternative dispute resolution will work for it for each issue.

If labor relations are normally collaborative, a dispute resolution forum of negotiation, facilitation, mediation, fact-finding, peer review, open-door policy, or early neutral evaluation may be the solution. If labor relations are more adversarial, a dispute resolution forum of arbitration or court injunction and declaratory judgment may be the best avenue.

The issue itself may determine the forum to be used. If the issue results from a grievance, one resolution strategy may be used; if the issue results from a First Amendment right, another resolution strategy might be employed.

With the shrinking funds available to school systems, it is important for all administrators, including business managers, to understand labor relations. Any administrator may be given the added duty of handling negotiations, parental concerns, and/or grievances.

References

- Geisert, G., and M. Lieberman. 1994. *Teacher union bargaining: Practice and Policy*. Chicago: Precept Press.
- Norris-LaGuardia Act, 29 U.S.C. § 101. <http://law.onecle.com/uscode/29/101.html>.
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