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SCHOOL NEGOTIATIONS WORKSHOP

Virtual Training
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"Effective Media Relations During Negotiations"

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I. Introduction

II. Media Relations

A. Cover all fronts.

1. Traditional media.

a. Traditional media sources filter information to employees, parents, and community at large.

b. Traditional media sources rely substantially on packaged information.

c. Packaged information generally originates from public relations/communications sources. It rarely is reported out in an objective manner.

d. You frequently will get the coverage you deserve.

e. Employee associations dedicate resources and manpower to influence news coverage.

f. Effective, well-timed publicity is a strategic tool in the negotiations process.

g. You cannot avoid news coverage – so why not try to influence it?

2. Social media.

a. Social media sources influence the news in a less-packaged, unfiltered manner.

b. Social media can create an instant news cycle.

c. Any person or entity can "create" social media accounts, including the traditional media, school districts, union members, watchdog groups, and anonymous individuals.

d. "Listening" to social media is important to ensure the District is aware of perceptions and to be aware of potential weaknesses within the union.

e. There are no journalistic "ethics" or "standards" associated with social media.

3. Traditional media and social media are becoming symbiotic. Traditional media's news coverage relies on social media as a source. Social media posts often occur as a result of traditional media coverage.

B. Consider the age and interests of the primary users.

C. Consider which social media platforms and news outlets are most popular in your community.

III. Be Proactive Rather than Reactive

A. Initiate traditional media activity to set tone and establish backdrop for future communication.

B. Establish social media and the District's website as a source for District information generally and negotiations updates. The number of followers of the District's social media accounts likely greatly exceeds the number of followers of individual teachers, or even the union. The District therefore often has the loudest voice.

C. Have one spokesperson communicate with the traditional media and post on social media.

D. Increase power by projecting to public that Board/Administration team is:

1. United.

2. Motivated by constructive change.

3. Committed to a positive outcome in spite of union tactics.

E. Develop a narrative which focuses on the following community interests:

1. Quality education for children.

2. Responsibility to taxpayers.

3. Fairness to employees.

IV. Should the Board "Go Public" During Negotiations?

A. Do not jeopardize the continuation of constructive negotiations.

B. When negotiations are (or are expected to be) tense and difficult, communications away from the bargaining table with the public, news media, and key constituencies may be desirable.

1. To condition the public for a long and even contentious negotiations process.

2. To let the public know the Board is not "giving everything away" and/or "taking everything away."

3. To influence news media coverage and editorial opinion on negotiations.

4. To educate reporters on the bargaining process.

5. To counter union misinformation that is made public.

6. To educate the public and muster support for the Board's priorities.

C. Rules for all communications away from the bargaining table.

1. Tell the truth and remain focused on the positive goals that have been established. Do not get caught in the vortex of union propaganda, hype, and spin.

2. Focus on issues, not personalities.

3. Refer requests for comment to spokesperson. Be disciplined in complying with this rule.

V. Means of Communication About the Bargaining Process

A. Social media.

1. Limit access to who can post to the District's social media accounts. Ensure that the District administration has access to the website/social media passwords/usernames. Be prepared to remove union members from accounts.

2. Before posting social media, review the post for content and tone.

3. Do not engage with individual union members by responding directly to social media posts or "re-tweeting" social media posts.

4. Social media is more likely to be seen and shared if it includes appropriate hashtags and/or links.

5. Avoid posting a "tweetstorm" or a series of related social media posts in quick succession.

a. Individual posts may be taken out of context by the media, the union, or third parties.

b. If the length of a proposed post is too long to be posted (e.g., on Twitter when a post is more than 280 characters), the post may be modified to include a link to the full statement on the District's website.

B. District website.

1. Include the date for each post.

2. Remember to update as changes occur.

3. Dispel misinformation through "Frequently Asked Questions."

4. Do not simply update old posts. Create new posts to highlight new information.

5. Use hyperlinks to prove the factual assertions that the District makes.

6. Consider embedding the District's social media accounts on the District's website.

7. Adopt policies concerning the use of the District's website and social media which are content neutral and consistent with the First Amendment. Posts that violate the District's policy may be removed on that basis.

8. If a post is deleted due to a violation of policy, explain why.

C. Press releases.

1. Authoritative source.

2. Brevity and clarity.

3. Accuracy.

4. Release to traditional media and post on social media.

D. Briefings with reporters.

1. Think before you speak.

2. Avoid jargon and acronyms.

3. Be brief.

E. Responding to reporter requests.

1. Obtain deadlines for response.

2. If possible, respond to questions in writing.

3. Ask for the story's "angle."

F. Discussion at public Board meetings.

G. Media consultant.

1. When to use.

2. Consistent messages avoid confusion.

H. Coordinate communication to avoid mixed messages.

VI. Negotiations Documents and Public Records Requests

A. Are bargaining documents public records, even during bargaining?

B. The Ohio Supreme Court has held that a draft of a collective bargaining agreement negotiated under the Bargaining Act, O.R.C. Chapter 4117, must be released on demand. State, ex rel. Calvary v. City of Upper Arlington, 89 Ohio St.3d 229 (2000). (But see dissent of Justice Lundberg Stratton).

C. Negotiations documents were held not exempt from disclosure under the Ohio Public Records Act. State ex rel. Strothers v. Rish, 2003 WL 21341411 (Eighth Dist. Ct. of App.).

D. Although the issue of a public records request for negotiations documents was not directly raised, the Ninth District Court of Appeals opined as follows on the importance of confidentiality in bargaining: "The legislature has manifested an interest in protecting the collective bargaining process through statutes that prohibit or limit public access to that process. * * * The very existence of a successful working relationship between labor and management is dependent upon the ability to negotiate freely in the spirit of compromise, toward which the collective bargaining process strives. Disclosure of the public employer's internal discussions concerning negotiations, including its strategies, options and proposals, whether accepted or rejected, could seriously endanger the success of pending negotiations or otherwise give an unfair advantage to the bargaining agent for the employees." Springfield Local School Dist. Bd. of Edn. v. Ohio Association of Public School Employees , 106 Ohio App.3d 855 (1995).

E. Without comment, the Ohio Supreme Court in 1997 dismissed a mandamus action filed by a member of the general public, seeking initial union and board negotiations proposals. State ex rel. Miyagishima v. Funk, 78 Ohio St.3d 1511 (1997).

F. Huron Education Association, OEA/NEA v. Huron City School Dist. Bd. of Ed. (05-ULP-04-0242). With negotiations underway, the *Sandusky Register* daily newspaper submitted a public records request for the bargaining proposals of the Board and the Association. The documents were delivered to the newspaper's offices after the newspaper had its attorneys set a written deadline to produce them or suit would be filed. Hoping to avoid misinterpretation of the bargaining proposals, the Board President reviewed them with a news reporter, and her comments were included in a news article about the parties' negotiating positions. The Association filed an unfair labor practice charge, claiming the Board President's quoted statements were misleading and that the Board was engaged in bad faith bargaining.

SERB dismissed the charge, stating that "the information provided to the newspaper was not a press release, but was the result of a public information request."

VII. How State Employment Relations Board ("SERB") Law Affects Media Relations

A. Parameters of communication with the public.

1. During bargaining, boards of education may release information to the public on the status of collective bargaining when no bargaining ground rules or contractual provisions prevent the release of information during bargaining.

2. The release of information pertaining to negotiations, including specific bargaining proposals and fact-finder reports, to the public and/or news media does not constitute an unfair labor practice. In re Norton City School Dist. Bd. of Edn., 19 OPER 1899 (10-24-02); In re Chesapeake Union Exempted Village School Dist. Bd. of Edn., 19 OPER 1585 (5-23-02); In re Portsmouth City School Dist. Bd. of Edn., 16 OPER 1398 (5-6-99); In re St. Clairsville-Richland City School Dist. Bd. of Edn., 12 OPER 1579 (6-22-95).

3. Where actual bargaining is not being attempted at a public board of education meeting, SERB precedent suggests that nothing in O.R.C. Chapter 4117 prevents a board of education, in public session, from discussing the status of collective bargaining among board members or with union representatives. Ohio Assn. of Public School Employees v. State Employment Relations Board, 138 Ohio App.3d 832 (10th Dist.

2000). Specifically, SERB held that R.C. 4117.21 (exempting collective bargaining meetings from Sunshine Law) does not restrict communications between a public body and the general public during negotiations. In re AFSCME, OAPSE, 9 OPER 1343 (8-22-91).

4. Collective bargaining note: Never agree, in collective bargaining agreements or bargaining ground rules, to restrict the release of information during bargaining. Unions can always communicate with their membership during bargaining; why should boards of education tie their hands in communicating with the public?

B. Parameters of communication with bargaining unit members.

1. Boards of education violate duty to bargain in good faith by sending information on collective bargaining directly to the members of the bargaining unit during the negotiations process or updating them on the status of negotiations. In re Vandalia–Butler City School Dist. Bd. of Edn., 7 OPER 7293 (5-25-89). However, a school board's publication of negotiations information in a public newspaper does not constitute direct dealing even when the information indirectly reaches bargaining unit members. In re Chesapeake Union Exempted Village School Dist. Bd. of Edn., 19 OPER 1585 (5-23-02). Rather, unlawful direct dealing occurs when the school board bypasses a labor union's designated bargaining representative and negotiates directly with bargaining unit members. Ohio Assn. of Public School Employees v. State Employment Relations Board, 138 Ohio App.3d 832 (10th Dist. 2000); In re Edgewood City School Dist. Bd. of Edn., 6 OPER 6603 (5-25-89).

2. "By dealing directly with the employees and circumventing their representative, the (board) not only breached the rules and terms of the relationship, but also undercut the status of the exclusive representative, potentially impairing (the union's) relationship and effectiveness with the employees it represents." In re Findlay City School Dist. Bd. of Edn., 5 OPER 5410 (2-18-88).

3. Huron Edn. Assn. OEA/NEA v. Huron City School Dist. Bd. of Edn., 22 OPER 303 (8-5-05). Prior to commencement of negotiations, the Superintendent of a school district in fiscal emergency wrote about the Board's bargaining priorities in a local publication called the *Community Beacon*. These included the need to reduce personnel costs and restore a balance between management rights and teacher rights. The union filed an unfair labor practice charge, alleging that the Superintendent's published commentary "deals directly with employees, and demonstrates that the Board predetermined the bargaining outcome."

SERB dismissed the charge, stating that the union failed to show how the *Community Beacon* article impaired it in preparing for negotiations. SERB also observed that "the disputed information was released before the parties began negotiations." A provision in the expiring Negotiated Agreement required mutual agreement on news releases during negotiations.

4. State Employment Relations Board v. Harrison Hills City School Dist. Bd. of Edn., SERB 2010-011 (8-12-10). SERB found that the Board committed an unfair labor practice when it communicated with bargaining unit employees concerning subjects of ongoing collective bargaining negotiations, but did not commit an unfair labor practice when the school principal had a conversation with bargaining unit members who were picketing.

The Board received an anonymous letter that indicated the union had recently misrepresented to its members certain terms of the Board's collective-bargaining proposals. In response, the Board posted on its website two press releases: the first stating that the union had misstated its position and the second asking the union to allow its members to vote on a tentative agreement or, alternatively, on the Board's last, best offer.

SERB held that the union need not prove actual interference with the exercise of protected rights; it is enough to demonstrate a reasonable likelihood of interference, restraint, or coercion. The union, however, must also demonstrate that this reasonable likelihood is not outweighed by any competing legitimate, managerial, or business interest of the employer. Applying this test to employer communications, SERB found that a complainant may establish a *prima facie* violation by presenting evidence sufficient to sustain a finding that a public employer more likely than not made communications with employees concerning wages, hours, or other terms and conditions of employment.

However, the employer has an affirmative defense. If it can demonstrate that it initiated communications with employees solely in response to, and for the limited purpose of, correcting a union's material misrepresentation of its proposals, it will not be liable. To prevail in this defense, the employer must satisfy the following conditions: (1) that the statement concerning its collective-bargaining proposals is untrue; (2) that it is of sufficient significance that it would reasonably be expected to influence the current bargaining climate; (3) that the misinformation materially interferes with the bargaining process; and (4) that before making the correction, the employer first notified the union of the error and provided a reasonable opportunity to correct the misinformation. Because the Board could not meet this affirmative defense, its communications constituted an unfair labor practice.

The second instance of alleged misconduct involved a discussion between a high school principal and a music teacher while the music teacher and other bargaining unit members were picketing. SERB found that the employer was not responsible for the principal's statements, because he was not acting as an agent of the employer. At no point in the negotiations did the principal participate in or act as a bargaining agent on behalf of the employer, nor did he act in such a manner as to reasonably appear that he had authority to act on behalf of the employer. The principal was not an agent of the employer and, therefore, his conduct could not be imputed to the employer

5. State Employment Relations Board v. Cleveland Metropolitan School Dist. Bd. of Edn., 2011 WL 7459773 (1-20-11). SERB found that the Board engaged in direct dealing and committed an unfair labor practice by releasing specific bargaining proposals to the public during negotiations where (1) the Board's proposed ground rules, which were rejected by the union, would have permitted the parties to communicate to external sources without fear of an unfair labor practice; (2) the Board's CEO sent a letter to the Board's stakeholders; and (3) the Board sent a newsletter to all employees and supporters explaining the state of negotiations, unresolved issues, and proposals and counterproposals made by each party.

6. State Employment Relations Board v. City of Elyria, SERB 2011-13 (2-3-11). SERB found that the City of Elyria did not commit an unfair labor practice when the mayor released specific bargaining proposals to the media during negotiations with the union representing firefighters. SERB found that the newspaper articles were hearsay and, therefore, were unverifiable by themselves, since the reporter did not testify at the hearing. Thus, SERB found that newspaper evidence should not be dispositive of an unfair labor practice, and only evidence testified to at the hearing should be considered. Consequently, SERB held that the statements that the mayor testified to at the hearing did not rise to the level of direct dealing, because they did not contravene the policies that underlie the ban on direct dealing. SERB distinguished this case from Harrison Hills by stating that the newspaper articles here were not directly distributed by the employer, but rather were drafted by a person unaffiliated with the employer and distributed to anyone to read. Moreover, general discussions of bargaining goals and matters of public record do not constitute direct dealing. Finally, the City and the union had no bargaining ground rules in place regarding public communications.

7. Challenge for Board: union leadership may or may not be accurately communicating the status of bargaining and the Board's positions to the rank and file membership. Therefore, the Board needs to find ways to get its message out to the public and indirectly to bargaining unit members.

C. Contract language that impacts media relations.

1. Many collective bargaining agreements contain provisions which limit the parties' authority to issue press releases concerning negotiations unless and until impasse is declared. These provisions are considered "ground rules" for bargaining.

2. SERB has repeatedly held that a party engages in bad faith bargaining within the meaning of R.C. 4117.11(B)(3) when it violates its own ground rules for negotiations. *See, e.g.,* OAPSE v. SERB (1993) WL 773577, affirming SERB's decision in In re South Euclid-Lyndhurst City School Dist. Bd. of Ed., SERB 92-005 (4-21-92). *See also* SERB v. OAPSE, Local 530, SERB 96-011 (6-28-96). Bad faith bargaining is an unfair labor practice.

3. Violating the terms of a negotiated agreement also provides a basis for the filing of a grievance by the union.

4. The union will likely issue a press release of its own concerning the Board's violation of the contract and the consequent filing of the grievance and/or its filing of the unfair labor practice against the Board.

VIII. Conclusion