Labor Negotiations Handbook for Municipal Officials

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Table of Contents

Chapter One: Getting Organized
A. The Extent of Unionization 1
B. A Brief History 1
C. Why Do Employees Want Unions? 1
D. Staying Non-Union 2
E. When Employees Form a Bargaining Unit 2
F. Unfair Labor Practices 4

Chapter Two: Bargaining Preparations 5
A. The Duty to Bargain in Good Faith 5
B. Getting the Negotiations Underway 5
C. Selecting a Management Team 5
D. Pre-Bargaining Research 6
1. Fiscal data 6
2. Economic data 7
3. Comparing wages and employee benefits 7
4. Bargaining unit history 7
5. Bargaining unit politics 8
E. Developing Management's Bargaining Goals 8
F. Strike Plans 9
G. Ground Rules 9
1. Place of meeting 10
2. Time of day of meetings 10
3. List of participants on each team 10
4. Meeting length and frequency 10
5. Press relations 10
6. Record keeping 11

Chapter Three: Negotiating the Agreement 12
A. Presenting proposals 12
B. Format of Proposals 12
C. Describing Proposals 13
D. Discussing Proposals and Issues 13
E. Explaining Your Viewpoint 13
F. Candor and Openness 14
G. Putting an Agreement Together 14
H. Presenting Package Proposals 15
I. Closing the Deal 15
J. Ratification 15
K. Special Bargaining Situations 16
1. First contracts 16
2. Act 312 unions 16

Chapter Four: Negotiation Dispute Resolution Procedures 18
A. Mediation 18
B. Fact Finding 19
C. Interest Arbitration (Act 312) 20
1. Description of Act 312 20
2. Petition 21
3. Act 312 team 21
4. Answer to the petition 22
5. Appointment of an arbitrator 22
6. Preparations 22
7. Presentation of the Act 312 case 23
8. Final offers 24
9. Panel meetings 24
10. Opinion and award 25

Chapter One: Getting Organized

A. The Extent of Unionization

In Michigan, most government employees are represented by unions. Nationally, the most well-accepted numbers show the public sector to be 37.5 percent unionized and the private sector around 10 percent or lower. In the early 1980s, the Michigan Municipal League surveyed its members, and found they were 85 percent unionized. There have been very few de-certifications of unions since then, so there is no reason to believe the numbers have changed much since the League's survey. It is safe to say that the overwhelming majority of cities and villages in Michigan with workforces of more than a few employees have to negotiate with and deal with unions.

B. A Brief History

Public employee unions began in Michigan in the 1930s in the larger cities. There were a couple of nasty strikes in Detroit, one in the middle 1940s and another in the early 1950s. But public sector unionism didn't really take off in Michigan until 1965 when the Public Employment Relations Act (PERA) was enacted. This law followed the earlier laws in Wisconsin and New York. It amended the anti-union Hutchinson Act passed in 1947 which banned strikes by public employees and imposed serious penalties on strikers. PERA, in 1965, preserved the prohibition against strikes but removed from the law all the penalties. The new law encouraged unionization and protected those who organized unions. It required good faith collective bargaining and specified unfair labor practices that were prohibited and established a state agency to administer and enforce the new law.

Right away there was a great flurry of activity organizing unions, converting old employee associations to unions and engaging in a great many strikes. As the State Supreme Court put it: strikes are still illegal, but because the penalties were removed from the law there exists a "de facto right to strike."

Among the rash of strikes were strikes by police and fire employees including the big police strike in Detroit in 1967. These led to the passage in 1969 of Act 312, the Police-Fire Arbitration Act. This law provides for a state-appointed arbitrator to decide the terms of a labor contract, if negotiations are unsuccessful.

The two laws, PERA and Act 312, are the basic labor laws covering municipal employees in Michigan. There were amendments in 1995 restoring strike penalties for school employees, but not for municipal employees. There have been a few minor police strikes since Act 312 was passed, but generally Act 312 has been very successful in eliminating police and fire strikes because it has become a very real windfall that police and fire unions do not want to jeopardize. It has made negotiations with police and fire unions very difficult, as we discuss later.

C. Why Do Employees Want Unions?

A generation ago, one of the great attractions of working for a government was job security and job stability. Business was steady. Layoffs of government employees were unheard of. It was also true that security-related employee benefits such as health insurance, life insurance and pensions, were much better in the public sector. But wage rates were lower. By the early 1960s, many public employees felt they had missed out on the post-war economic expansion because of their low wage rates. Many took on second jobs so they could provide a better standard of living for their families. The 1960's was a period of great expansion of unions of public employees, especially in Michigan. The main reason appeared to be a desire to "catch up" with the wage rates of other Americans. But the 1960s and 1970s also saw another change: local governments began having financial problems and layoffs of public employees began occurring. This break in the tradition of assured job security coupled with the desire of public employees to receive paychecks like those in the private sector, caused a great boom in unionization particularly in states, like Michigan, that had passed legislation favorable to the formation of unions.

After the big growth spurt of unions in Michigan's public sector in the late 1960s and early 1970s, union growth slowed to a steady process of smaller groups of employees deciding to form or join unions. These employees were people who had been non-union and something changed their minds. Almost always there was a pattern: 1) something about the job became unsatisfactory; 2) there was a sense of not having

any way to deal with the dissatisfaction; and 3) somehow they became convinced that a union could address the problem and perhaps solve it. The most common dissatisfaction was a concern about job security. Another common concern has been the perception that employees are not treated fairly in such things as vacation schedules, promotions, or assignments. Most union organizers will tell you that their successes in convincing people to unionize are often due to some management person who is inaccessible, unfair, or paternalistic.

D. Staying Non-Union

If your employees are non-union and you'd like to keep it that way, you must remove one of the three ingredients that lead to forming unions. The one over which the employer has the most control is the second one, the one about the employees feeling they have no way to deal with problems in the workplace. An open door policy is a good place to start. In large organizations it can be useful to institute a formal written grievance procedure. Of course, the employer must do more than just listen to the employees; the employer must act to solve the problem. If the brakes aren't working on the truck, they must actually get fixed. Talking about the brakes isn't enough. Some employers work very hard at keeping employee dissatisfaction to a minimum. They have very active programs to make sure the workplace is safe and even pleasant to work in and they try to provide benefits that compensate employees well and deal with their needs. When these efforts are combined with access to management people who can and will solve problems, the employees will usually not join or form unions.

However, in local government in Michigan, the horses are mostly out of the barn. The unions have been organized and the vast majority of the employees are represented by them. Keeping a workplace non-union is easy; getting rid of a union is almost impossible.

E. When Employees Form a Bargaining Unit

A bargaining unit is a group of employees of one employer who have joined together to bargain collectively regarding wages, hours and other terms and conditions of employment through representatives they have chosen. Usually the representative is a union. A union is a voluntary association of people that usually have something in common such as a common trade or a common industry where they work. A person can be in a bargaining unit represented by a union and still choose to not be a member of the union.

There are two ways a union or other representative can become the official representative of employees in a bargaining unit: 1) by being voluntarily recognized as the representative by the employer, or 2) by being certified as the representative by the Michigan Employment Relations Commission (MERC).

MERC is the state government agency that enforces the state's labor laws covering all local governments including counties, townships, cities, villages, school boards, public universities and colleges, district libraries and special authorities.

A would-be bargaining representative can petition MERC to be certified. If the petition is accompanied by a "showing of interest" and if the employer has no objection, MERC will conduct a secret-ballot election to determine if the employees in the bargaining unit want to be represented by the petitioner.

A "showing of interest" exists when 30 percent or more of the members of the bargaining unit have signed a statement that they wish to be represented by the petitioner. If there is a showing of interest, MERC will hold a conference with the employer and the petitioner to ask the employer if it agrees to an election among the employees. This is an important point in the process. The petition filed by the union has in it a description of the desired bargaining unit. This description may say something like "All employees of the Village . . .", or "All employees in the City's Police Department . . ." This description may not be to the employer's liking. You might want to exclude part-time employees, or the city manager's secretary, or supervisory employees. It is during the election conference that the employer has the best opportunity to amend the description of the bargaining unit. The employer can refuse to consent to the election, and has no obligation to state a reason. This refusal will trigger a hearing before an Administrative Law Judge and will inconvenience the union petitioner. But if you say that you will consent to an election if the bargaining unit description is modified, you'll find most unions willing to agree to reasonable modification. If you wait and try to amend the unit description after the union has won the vote and has been certified, you'll find most unions

will not be so reasonable but will demand some concessions in exchange. The management representative should be prepared to state the bargaining unit description that management would prefer and have it in written form to be used in the pre-election conference. Even if the conference is a telephone conference call, be ready.

The preferred bargaining unit description states clearly, by job classification title and by department, just who specifically is in the unit and then states who is not in. An example of an acceptable unit description is: "All regular, full-time equipment operators, heavy equipment operators, mechanics, laborers, and water distribution system workers in the Department of Public Works; BUT EXCLUDING all executives, supervisors, clerical employees, temporary employees, part-time employees, casual employees, confidential employees, and all other employees . . ." If you see a unit description like this one, you can bet that the original petition probably said something like "All DPW employees," but an alert management person got it modified.

If there's a dispute regarding what is the appropriate bargaining unit, MERC will decide. There will be a hearing and, although it's not legally required, the employer very definitely should be represented by a lawyer who specializes in public sector labor law.

There is a lot of case law regarding what constitutes an appropriate bargaining unit. MERC will allow supervisors to be in bargaining units but not the same units that include people they supervise. MERC does not allow one-person bargaining units. Act 312 eligible employees will not be included in units with people that are not Act 312 eligible. There are a number of situations where, by mutual agreement of a union and management, these rules are not followed, but MERC will follow them if it is deciding the composition of the bargaining unit.

Either by agreement and consent of the union and the employer, or by order of MERC, the bargaining unit description will be established; and, if there is a showing of interest an election will be scheduled. Frequently, these are conducted by mail, with MERC sending out the ballots, and then receiving the responses and counting them. If a majority of those voting choose the union, the union will be certified by MERC as the exclusive collective bargaining representative.

Over the years, most public employers in Michigan have not resisted their employees organizing or joining unions and have not campaigned to try to persuade employees to reject a union. This is in stark contrast to employer behavior in the private sector. There are rules governing the behavior of employers including all its officials and management representatives while a union is attempting to organize the employees. Violations of these rules are either called unfair labor practices, or they can cause a new election to be held if the union loses. If you choose to campaign to try to convince employees to vote against the union, you should obtain advice from a labor attorney. The general rule of thumb is you cannot promise or threaten anything either directly or indirectly. You must not say that if they vote for the union, you'll have to look into privatizing the operation or if they reject the union, they'll get a big raise. You can indicate that you, or the city council, don't feel a union is a good idea.

After the election, if the petitioning union wins, MERC will certify that the petitioner is the exclusive representative of the employees in the described bargaining unit for purposes of collective bargaining relative to wages, hours and other terms and conditions of employment, which is sometimes referred to as the "scope of bargaining", or as "mandatory subjects of bargaining." By "exclusive representative" we mean literally that only the representative stated in the certification can negotiate on behalf of these employees. The employees themselves can no longer make their own deals. If one of them says to the boss "I want a raise", it would be an illegal unfair labor practice for the boss to discuss it with him.

Another point to remember: the employer should not increase or decrease wage rates or improve or reduce benefits between the time the representation petition is filed and the time of the election because it may be interpreted as an improper interference with the election. If such changes are important, get advice from a labor attorney as to just how and when such changes can be made. After the election, and after the MERC certification, no changes can be made regarding any mandatory subjects of bargaining without the expressed agreement of the union. The union will contact the employer about setting up a meeting to commence negotiations. The union has the right to ask for, or "demand" that its proposed wage and benefits improvements be retroactive back to the date of

the MERC certification. As with any union demand, the employer does not have to agree.

F. Unfair Labor Practices

Section 9 of the Public Employment Relations Act (PERA) states: "It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice."

Section 10 of PERA lists a number of possible activities of both employers and unions that are prohibited. These are called unfair labor practices. A summary of them is:

1. Employer unfair labor practices that are prohibited

a. To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed in Section 9.
b. To initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization.
c. To discriminate in regards to hire, terms or conditions of employment in order to encourage or discourage membership in a labor organization.
d. To discriminate against a public employee because he or she has given testimony or instituted proceedings under PERA.
e. To refuse to bargain collectively with a representative of the public employees (subject to Section 11 which allows an individual employee to present and settle a grievance if it doesn't violate the contract between the employer and the union and if the union representative was given the opportunity to be present when the grievance was adjusted.)

2. Union unfair labor practices that are prohibited

a. To restrain or coerce public employees in the exercise of the rights guaranteed in Section 9 or a public employer in the selection of its representatives for the purpose of collective bargaining, or the adjustment of grievances.
b. To cause or attempt to cause a public employer to discriminate against a public employee in violation of subsection 1-C above.
c. To refuse to bargain collectively with a public employer.