



Local Government Academy Newly Elected Officials Course



Public Sector Human Resource Management 102

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of
tation:

- Collective Bargaining
- Personnel Policies
- Performance Evaluations

Bargaining Unit

- A group of employees who share a community of interest.
- Represented by a single union in negotiations over working conditions, pay, and benefits.
- Employees can be in a bargaining unit without being in a union.

Community of Interest

- Requires similar functions.
- Does NOT mean identical job duties.
- Public works and administrative employees may be in the same unit.

The Legal Framework

- The Pennsylvania Employee Relations Act (“PERA” or “Act 195”)
- Policemen and Firemen Collective Bargaining Act (“Act 111”)
- Employees have the right to form and join unions AND to refrain from such activity.
- Right to engage in collective bargaining and other protected, concerted activity.
- The Pennsylvania Labor Relations Board (“PLRB”)
 - Enforces both Act 195 and Act 111.

The Legal Framework

- Acts 195 and 111 protect employees' right to join union or refrain from joining union.
- Neither union nor employer may “coerce” employees.
- Unfair Labor Practice or “ULP.”
- Decision to have union is determined under by PLRB-supervised, secret ballot election.

Act 111

- Policemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth shall, through labor organizations or other representatives designated by fifty percent or more of such policemen or firemen, have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

Act 111

- Applies only to police and fire.
- Generally excludes managerial and supervisory employees.
- No explicit exclusion for confidential employees, but law recognizes managerial exclusions.

Act 195

- It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

Act 195

- Law excludes certain individuals from the term “public employee” and, consequently, from union representation:
 - Elected officials;
 - Management-level employees;
 - Confidential employees;

Understanding the Collective Bargaining System

- The differences between Act 195 and Act 111 are important and set the foundation for bargaining with either group.
- In most situations, the employer has the upper hand in Act 195 bargaining. The same is not necessarily accurate for Act 111 groups.

What do you have to bargain over?

- Act 111 – “terms and conditions of ... employment, including compensation, hours, working conditions, retirement, pensions and other benefits...”
- There is no managerial right expressly provided under Act 111.



What do you have to bargain over?

- Act 195 – matters subject to bargaining include “wages, hours and other terms and conditions of employment”
- “Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include ... areas of discretion or policy as the functions and programs of the public employer, standards of service, its overall budget, utilization of technology, the organization structure and selection and direction of personnel...”

What is the difference between a mandatory subject and a managerial prerogative?

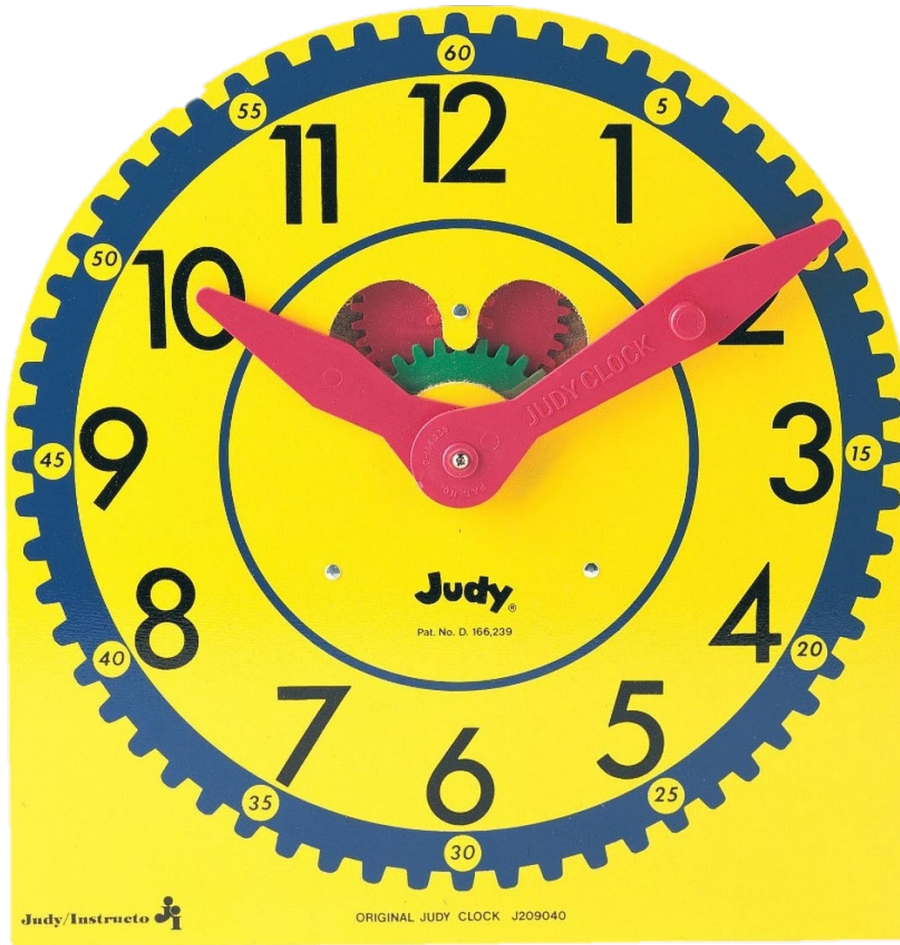
- Act 111 – Rational Relationship Test
- Borough of Elwood City v. PLRB (2010)

“...once it is determined that... the topic is **rationally related** to the terms and conditions of employment, i.e. germane to the work environment, the proper approach is to inquire whether collective bargaining over the topic would **unduly infringe** upon the public employer’s essential managerial responsibilities...”

What is the difference between a mandatory subject and a managerial prerogative?

Act 111 Examples

- Light Duty
- Physical Examinations
- Outside Employment
- Court
- Dress Code
- Video Camera
- Time Clock
- Pension Manager
- Test Requirements
- Scheduling
- Work Rules
- Post-Retirement Benefits
- Locker Size



What is the difference between a mandatory subject and a managerial prerogative?

- Act 195 – “balancing test”
- Examples:
 - Code of Conduct
 - Time Clocks
 - Dress Code
 - Work Rules

- Management rights language permitting staffing and complement determinations, ability to layoff and reduce in force.
- Force majeure emergency language permitting emergency changes to work hours, staffing, shifts and work rules.
- Eliminate all minimum manning or shift manning language and any restrictions on layoffs or reductions in force.
- Do not be shy about seeking cost efficiency changes. If scheduling limitations create unnecessary costs (e.g., snow removal or “weekend work”) identify it, quantify it and eliminate it.

GRIEVANCE PROCEDURES

- Review the definition of “grievance.”
- Raise arguments at first step or risk waiver.
- Timeline adherence is paramount.

JUST CAUSE

- Seven Factor Test
- General principles for establishing just cause for discipline.
- Different arbitrators assign different weight to different factors.

SENIORITY

- Seniority is benefit specific; check what CBA provisions require it.
- “Inherent seniority” arguments may arise in grievance arbitration.
- Break-in-service provisions result in termination once seniority is broken; independent from just cause, generally.

Layoffs and Furlough Legal Analysis

- Public employers may have the right to:
 - Layoff employees
 - Furlough employees
 - Subcontract or transfer work
- In the past, some employers agreed to full or modified no layoff clauses.
 - Such clauses have presented an operational issue for many municipalities in the past.
- Employers should careful review all such language in their CBAs and do what is necessary through bargaining to regain those rights.

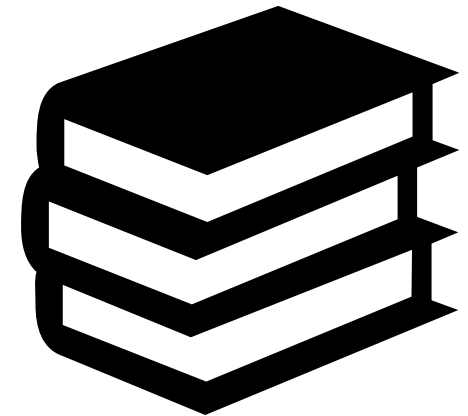
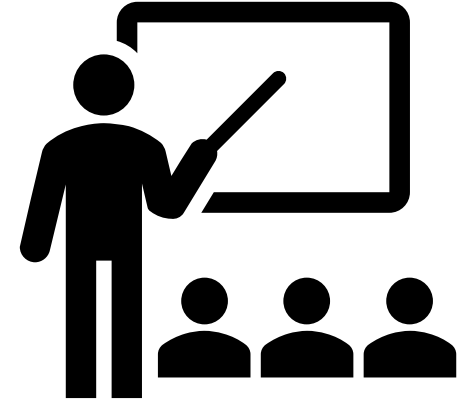
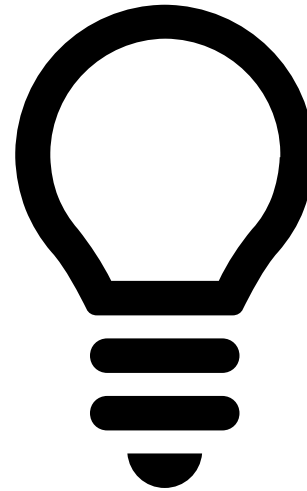


Preparation, Preparation, Preparation

- You have the ability (somewhat) to control your fate. Know your timelines.
 - It will be important to determine who is on your bargaining team and their role
 - Equally important is the work performed to identify your issues/proposals
 - It is not enough to generally describe your issues as “cost containment” – need to be specific
 - Do your homework – know who is comparable to your community and who is not (and why)

Develop Defensible Positions for Bargaining

- Establish realistic goals
 - Wages and Health Care (other benefits)
 - Tiered benefit system
- Cost out Union's proposal
- Educate the other side – explain and provide justification for your proposals and make the Union do the same



Past Practice

- Most misused/misapplied term
- Can use past practice in limited circumstances
- How do you know when one exists?
 - Over period of time/course of conduct
 - Mutually recognized
 - Consistent



Past Practice

- How do you deal with them?
 - Bargain out
 - Agree to comprehensive list?
- Effectiveness of “zipper clause”?



Personnel Policies

PERSONNEL POLICIES

Why Bother?

- It's the law!
- Policies describe work rules for employees.
- Provide guidance to supervisors so that similarly-situated employees are **treated similarly.**
- Explanation of **complaint procedures** so that issues of harassment or discrimination can be **raised and addressed.**

INTRODUCTORY STATEMENT

- Policy manuals apply to union and non-union employees alike.
- Introductory language should be included stating that to the extent any part of the manual conflicts with a collective bargaining agreement (“CBA”), the **terms of the CBA will prevail**, and that if the CBA is **silent on a non-bargainable issue**, the provisions of the manual will apply.

INTRODUCTORY STATEMENT

- Poorly-worded language in an employment manual can create due process issues and give employees expectations of a contract.
- Introductory language should be included stating that the manual **is not a contract** and may be amended at any time.

POLICY ADOPTION

- Personnel policies do not need to be adopted by ordinance.
- The governing body may, if it chooses, adopt the manual by resolution.
- The employee manual should be well organized and easy to use.

SIGNED ACKNOWLEDGMENT



Maintain a signed acknowledgement form in every employee's personnel file!

Personnel Policies

Must Have Policies include:

- EEOC Policy
- Sexual Harassment
- ADA
- FMLA
- FLSA – Safe Harbor
- Pregnancy Discrimination
- Military Leave
- COBRA



Personnel Policies

Postings Required by Pennsylvania Law:

- Child Labor Act & Hours of Work for Minors
- Minimum Wage Law
- Right to Know Law
- Unemployment Compensation
- Workers' Compensation
- PA Clean Indoor Air Act (smoking)
- EEO & Fair Practices
- Allegheny County Sick Leave Ordinance

(PA Department of Labor & Industry guidance provides information & postings.)

Personnel Policies

Essential (but not required)
policies include:

- Drug & Alcohol
- Computer hardware, software, internet, email and social media
- Leaves of absence
- Pay practices
- Violence in the workplace
- Employee personnel file access
- Ethics Act/Conflicts of Interest

PERSONNEL FILE MANAGEMENT

- Employee medical information must be maintained separate from employee's regular personnel file under ADA and FMLA regulations.
 - How separate?



- Depends on facilities limitations. Separate filing cabinets are preferred, but not mandated.

PERSONNEL FILE MANAGEMENT

Why keep employee medical information separate?

- It is required under the ADA and the FMLA for most employee medical information (e.g., pre-employment and post-employment medical examination results).
- Physical separation helps limit access and maintain confidentiality of the information (ADA and FMLA limit to whom information can be disclosed and why – supervisors when necessary to accommodate disability and leave situations).

Performance Evaluations

Are Performance Evaluations Right for Your Municipality?

Evaluate the Workforce

Look at Each Department

Does the Municipality Have the Manpower
to do the Evaluations Correctly?

Will the Supervisors be Honest and Fair?

Performance Evaluations

Pros (if performed correctly)

- May be an effective tool to prompt employee growth
- Advises employee of deficiencies and provides a “record”
- May be used to restructure or reassign work to create efficiencies

Cons (if performed incorrectly)

- Used to facilitate legal action alleging improper termination
- Provide false sense of competency
- Contain broad statements without sufficient detail to support the conclusion
- Fail to consider absences, discipline or other disruptive workplace conduct

How to Create an Evaluation System

- Identify objectives, develop and communicate guidelines
- Train supervisors performing evaluations
- Use job description as guide for competency
- Include discipline, attendance and other work place matters that may fall outside of the job description
- Monitor for thoroughness, consistency and content

Performance Evaluations



Rarely evaluate an employee's true value, skill set, etc.



Usually contain vague, subjective statements



May not be a priority and/or assigned to untrained supervisors



May create significant liability or may interfere with a legitimate legal defense



Can be more trouble than worth

ACCOUNTABILITY IS KEY

- Supervisors must be held responsible for shortcomings in the process
- Cultivate an atmosphere where goals are known and commonly understood
- Adhere to the values and mission statements of the municipality, and measure performance against those standards
- Identify leaders in your organization and cultivate their growth



EVALUATION CRITERIA

Evaluation criteria should be

- Objective, job-related, and explained fully
- Within the control of the employee being evaluated
- Communicated to the employee
- Based on behavior rather than general traits
- Defined



REVIEWING THE EVALUATION WITH THE EMPLOYEE

- Review the entire evaluation with the employee, not just the positive aspects of his or her performance
- After review, have the employee sign to acknowledge it has been read and reviewed with the employee
- Evaluations should be reviewed by at least one other supervisor or HR representative prior to being issued to the employee to ensure accuracy and compliance with the employer's process
- Review established goals with the employee
 - Every substandard finding should include specific goals for improvement
- Create a plan of action to achieve set goals



Questions?

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