Labor relations plays a significant role in the day-to-day management of many public agencies. In order to effectively lead in such an environment, supervisors and managers must have a fundamental understanding of the external and internal regulations that surround labor relations. The Meyers-Milias-Brown Act (MMBA), local ordinances and the negotiated agreement all frame the labor-management relationship and it is incumbent on labor relations specialists to ensure that their management teams are aware of these regulations and contract provisions. This paper will serve as a guide in training public sector supervisors and managers on labor relations.

The training will cover the following topics:

- Major laws governing public sector labor relations for municipalities
- Duty to bargain
- Elements of a negotiated agreement
- Supervisors/Managers role in negotiations

Major Laws Governing Labor Relations

*Meyers- Milias-Brown Act (MMBA)*

This act became effective in 1969. The MMBA requires that Cities and Counties recognize public employees’ rights to form and join labor groups to represent them with respect to “all matters relating to employment conditions and employer-employee relations.” The MMBA mandates the duty to bargain on matters within the scope of representation. Typically, these matters deal with wages, hours and working conditions. The MMBA requires such matters to be bargained in good faith.

When bargaining over mandatory subjects, good faith requires management and labor to maintain the terms and conditions of employment that are the subject of bargaining until agreement is reached or impasse declared. Under the MMBA, following completion of the impasse procedure, a public agency may unilaterally implement its last, best and final offer unless the local rules require binding arbitration. The MMBA requires advance notice of any proposed change in a mandatory subject of bargaining. The notice must be timely and adequate. The agency’s notice obligation is fulfilled when the appropriate union representative receives the notice. The requirement applies to each ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation. An agency must also give the Union an opportunity to bargain on such matters if the Union requests it.
In 2000, the MMBA was amended by SB 739. Under SB 739, enforcement of the MMBA came under the jurisdiction of the Public Employment Relations Board (PERB). Complaints alleging violation of the MMBA or local rules are processed as unfair labor practice charges by PERB. The act also directs PERB to oversee and enforce agencies’ existing or amended local rules. SB 739 requires that unit determination and representation elections be determined by local rules consistent with the MMBA. Lastly, SB 739 changes the way agency shop agreements are reached in that an exclusive representative may impose agency shop by petition and vote.

Similar to the National Labor Relations Board, (NLRB) which governs private sector labor relations, PERB is a five-member panel appointed by the Governor. The board oversees PERB administration and hears appeals. Prior to issuing a formal complaint, board agents serve as the first point of contact with agencies, employees, and unions to evaluate the complaint and amend or dismiss the charge. If a formal complaint is issued, it is heard by an Administrative Law Judge (ALJ). First, an informal settlement conference is held in an attempt to resolve the dispute. If that is unsuccessful, a formal hearing is conducted and a decision is made by the ALJ. This decision may be appealed to the full board which may modify, uphold, or reverse the ALJ’s decision. Board decisions establish precedent for agencies and employees covered by the law. The decisions and orders by ALJ’s are binding only on the parties involved in the specific case.

An unfair labor practice is a complaint alleging a violation of the MMBA or of any rules or regulations adopted by a public agency pursuant to the MMBA. Unfair labor practice allegations differ from grievances in that they do not include alleged violations of provisions contained in negotiated agreements. Examples of unfair labor practices by an agency or employee include:

1. Interfering with, intimidating, restraining, coercing or discriminating against public employees because they exercise their rights under the MMBA, or local rule, to organize and be represented by employee organizations;

2. Denying employee organizations the right to represent employees, to secure reasonable release time for employees participating in representation matters;

3. Refusing or failing to meet and confer in good faith with a recognized employee organization;

4. Dominating or interfering with the formation or administration of an employee organization;

5. Failing to exercise good faith while participating in impasse procedures established in MMBA or local rule.
An employee organization may be committing an unfair labor practice when it:

1. Causes or attempts to cause a public agency to engage in any activity that PERB defines as an unfair practice or that local rule prohibits;

2. Interferes with, intimidates, restrains, coerces or discriminates against public employees because they exercise their rights under MMBA or local rule to join, form, and be represented by an employee organization;

3. Refuses or fails to meet and confer in good faith as required by MMBA;

4. Fails to exercise good faith while participating in impasse procedures established by MMBA sections 3505 and 3505.2 or any local rule.

State agencies and educational institutions have been under PERB jurisdiction for some time, creating a large body of decisions covering unfair labor practice charges. These decisions provide a useful reference to draw upon when reviewing unfair labor charges under the MMBA. An exception to coverage under PERB was also established by SB 739 which excluded peace officers from PERB jurisdiction. Disputes or unfair charges relating to peace officers remain under local rules or by filing a lawsuit and appealing to the court.

**Binding Arbitration**

Though the state mandated binding arbitration for local safety members has been deemed unconstitutional, many municipalities have local ordinances requiring binding arbitration. Though supervisors and managers should be aware of the specifics of the local ordinance for their agency, generally speaking, binding arbitration requires that unresolved issues in the negotiations process are subject to arbitration. Typically, a party can compel arbitration only after impasse has been declared. Depending on the local ordinance, a single arbitrator or an arbitration panel reviews the disputed items and makes a binding decision on the parties.

When reviewing the unresolved issues, the arbitrator or panel will likely consider the following in the decision making process:

1. The agency's ability to pay;

2. The interest and welfare of the public;

3. The stipulations of the parties;

4. Market comparability within the scope of arbitration of other agencies providing similar services; and
The Duty to Bargain

Under the MMBA, the agency and employee organization must bargain in good faith on wages, hours and working conditions. Also referred to as the "duty to bargain" these broad categories cover a plethora of employment issues. Within these broad categories are the following items which fall within the duty to bargain:

1. Wage matters such as overtime, merit and differential pay
2. Group insurance and retirement benefits
3. Work hours
4. Classification
5. Disciplinary procedures
6. Work Load
7. Vacancies and promotions
8. No-strike clauses, representation rights, organizational security
9. Drug testing

Whenever a supervisor or manager has the desire to change any of the aforementioned areas of employment, the supervisor or manager should consult with the agency’s human resources or labor relations office.

Elements of a Negotiated Agreement

The labor contract, often referred to as a Memorandum of Understanding (MOU), contains the agreements reached during negotiations. Typically, the MOU includes standard language on aspects of labor relations such as: dues deductions, maintenance of membership, conditions for deductions, use of agency facilities, equipment, bulletin boards, list of employees, right to representation and advance notice procedures including notification of discipline. There are other provisions of the agreement that should be carefully crafted to protect the agency, union and employees. These areas are:
1. Stewards and Official Representatives - this section of the MOU clarifies the designation of union representatives and the procedure by which the agency will be notified of the identity of these representatives. Also covered here are activities prohibited during business hours such as solicitation of membership, activities concerned with the internal management of the employee organization, holding membership meetings, and campaigning for membership.

2. Separability Clause - this covers any provision that may be found to be illegal. It stipulates what will occur if a provision is found to be unlawful and means either that the entire agreement is unenforceable and must be renegotiated, or the remainder of the agreement, with the exception of the illegal provision, continues in effect.

3. Zipper Clause – this clause waives the obligation of an agency to meet and confer on any items that are not included in the negotiated agreement. Broader than a management rights clause, a zipper clause is not specific to certain terms and conditions of employment, but rather a generalized statement that applies to all issues associated with collective bargaining.

4. Management Rights Clause - one of the critical aspects of the negotiated agreement, this clause preserves the right of management to act unilaterally on issues contained in the clause. The management rights clause protects the employer’s rights to exercise its managerial prerogatives.

5. Wages and Benefits – the salary and benefit provisions are two of the most important parts of the agreement. These areas cover the wage agreements that were reached in negotiations and how salary increases will be handled during the term of the agreement. The same is true of any of the agreed-upon benefits. The agreement should clearly spell out the benefits that will be awarded to employees covered by the agreement, including paid leaves.

6. The Appellate or Enforcement Process – this section assures the proper administration of the agreement through an appeal process to resolve disputes regarding the provisions of the agreement. This includes the grievance and/or arbitration procedure.

7. The Term of the Agreement – this area of the agreement specifies when the agreement is in effect and when it expires.

8. The Relationship Between the Parties – this section memorializes the relationship of the parties and is a mutual recognition of each other’s rights and responsibilities.

9. Working Conditions – usually included in the same section as wages and hours, working conditions cover such things as probationary periods, layoff procedures and other policies associated with employment.
10. Continuation of Wages, Hours, Working Conditions and Benefits – this clause prohibits the agency from making any changes to the negotiated agreements on wages, hours, working conditions and benefits. This section is usually requested by the Union.

**Supervisor's Role in the Negotiations Process**

Typically the period in which a contract is being negotiated is one of anxiety and uncertainty for work groups and managers alike. No matter how well the process is going, employees may be preoccupied with negotiations and impending changes to their wages, benefits and/or working conditions. This may distract them from their core functions as well as create a contentious environment outside of the formal negotiations setting. Likewise, supervisors may also be worried about the impact negotiations will have on the workforce, productivity and the labor-management relationship. In order to assuage the impact, supervisors should familiarize themselves with the "do's and don’ts" during contract negotiations:

**THE DO'S**

- As negotiations begin, prepare a list of operational proposals to submit to agency negotiator
- Remain focused on the work that needs to be done
- Maintain "business as usual"
- Communicate with the Agency negotiator on any employee feedback regarding the negotiations
- Listen to employees concerns and assure employees that the agency is committed to reaching agreement or resolving any issues - without making any promises or commitments
- Maintain a positive and optimistic outlook
- Respond timely to the Chief negotiator’s questions and inquiries
- Accommodate the Union members who serve at the negotiations table

**THE DON'Ts**

- Never make proposals directly to the union outside of the formal negotiations process
- Do not agree to union proposals outside of the negotiations process
- Don't tell the union membership what they should or shouldn't do in negotiations
- Do not interfere with employees’ rights to bargain
- Do not intimidate, coerce or threaten employees involved in the negotiations process
- Do not talk down the agency negotiators or the agency's position in negotiations
- Never advocate for or against proposals

With the Public Employment Relations Board (PERB) now enforcing MMBA and adjudicating unfair labor practices, it is more critical than ever that supervisors and managers operate within the law. It is also underscores the importance of ensuring the leaders within each agency are aware of
their role in the negotiations process as well the local ordinance that governs labor relations in the agency.

Managers and supervisors should understand the duty to bargain and be familiar with the contents of the negotiated agreement. What may seem like an innocuous policy change to a manager could have significant ramifications if it violates the terms of a negotiated agreement. It is the responsibility of every labor relations and/or human resources professional to ensure their management team understands the terms of the agreement and see that the terms are implemented and administered appropriately. Training for supervisors and managers should be conducted whenever a new agreement takes effect. That, coupled with the information contained in this report, will help agencies stay in compliance with both the internal and external regulations that govern the complex area of labor relations.

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**REFERENCE DIRECTORY**


CalPELRA Advanced Labor Relations Academy V - *MMBA Under PERB Jurisdiction* (2001)