Negotiating Personnel Rules
By: L. Jean Bracy

Introduction

In late 2007, management decided it was time to revise the agency Personnel Polices and Procedures (referred to here as, Rules). These rules included terms and conditions of employment, therefore were in the scope of bargaining and subject to meet and confer. The next round of contract negotiations was scheduled before the labor contract expired on June 30, 2009.

The renewal of the labor contract with the employees’ association came after two five-year agreements and in the middle of the worst economic conditions in more than thirty years. In the two prior negotiations, wages and benefits were the main topics. The Rules had not been substantially revised since their contentious adoption in 1995. Opening the fifty-eight page document with its fifteen rules was certain to unleash unpleasant memories and emotions and require a great deal of hard work.

This paper briefly describes the agency’s organizational structure and culture, why the Rules needed to be revised, beginning the meet and confer, recommended revisions, recommended tips, and lessons learned to improve the project plan in the future.

Organizational Structure and Culture

The District was converted from a county department to an independent special district by a 1993 statute in the California Health and Safety Code. Approximately forty-five employees were terminated from the County and re-employed with the new agency. By Resolution and statute, the newly created Governing Board “intend[ed] to continue, as nearly as possible . . . employee benefits enjoyed by the former employees of the County . . .”¹ This implied promise set the stage for continuous wrangling while this new agency tried to match the human resources system of the county’s 12,000 employee base. In doing so, policy systems were adopted verbatim without regard to proportionality or appropriate application to a much smaller organization. As they had at the County, a group of employees organized and selected the union that represented most of the bargaining units in the County.

Today, the District has thirty-eight full time employees; twelve are exempt and are not represented. An Exempt Compensation Plan (ECP) covers the benefits, terms and conditions specific to exempt employees. Twenty-six employees are in positions assigned to the General Unit; however, only eighteen employees have chosen to join the Association. A negotiated Memorandum of Understanding (MOU) covers the benefits, terms and conditions specific to the represented employees. The District’s Governing Board has historically granted to the exempt employees benefits negotiated for the General Unit.

¹ Resolution 93-03, Mojave Desert Air Quality Management District, adopted July 1, 1993; California Health & Safety Code §41212.
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Why the Rules Needed to be Revised

The agency’s jurisdiction encompasses nine cities and portions of two counties. The fourteen-member Governing Board is comprised of representatives of each of the jurisdictions within the District’s boundaries. The first meeting of the District in July 1993 included actions to adopt resolutions activating the new agency, approve policies, and implement procedures. As the District was preparing for its inaugural meeting, a new representative from one of the member agencies questioned the proposed policies, particularly those related to employees organizing for representation, and the personnel rules.

Over the next two years several versions of proposed personnel rules were presented to the Governing Board. When finally adopted, the Personnel Policies and Procedures contained a mix of policies from the county, from a local municipality, and some legalese addressing predominant personnel-related issues. Only one of four employee groups chose to organize and the final Rules tried to encompass issues for the represented and unrepresented groups of employees.

When I came to the District in late 1997 management refused to open the document for discussion with the Association during contract negotiations scheduled for the next year. Subsequent revisions to the Rules were only made to implement negotiated changes to wages and benefits. The document retained spelling and grammatical errors, inconsistent format, unconnected references, and incomplete procedures. Interpretation of the Rules was dependent on those with corporate memory to explain the policy and its intent. It was an awkward collection of policies and procedures; adequate, but a challenge to implement for day to day operations.

District management changed in early 2006. Top officials were in conflict with the Board and their separation was under consideration. In dealing with this situation, problems with the Rules became more evident. As former County employees, these positions had not been under contract and were exempted from the Rules. As a result, separating these officials was difficult and costly. It became clear that it was time to revise the Rules.

Beginning the Meet And Confer

In our agency, the employees’ association has a low profile. There is general agreement between management and the employees that the District is a good place to work, the salary and benefits are reasonable and the working environment is tolerable, if not ideal. Labor and management do not meet frequently and those occasions are generally agreeable.

Management developed a “wish list” of policy revisions, collected sample language, and identified spelling and grammar issues. Karen Nowak, the agency District Counsel, joined me in spearheading the project. The list contained thirty plus items and included simple tasks such as consistent use of acronyms and a complete overhaul of the disciplinary policy and procedures. We decided such a complex project would be best served with a task force and broad guidelines.
The goal for the task force was to develop recommended changes to present to the negotiating team. The task force would review the Rules line by line and determine three types of changes:

- **Type 1**: Administrative: such items as typographical errors, consistent use of terminology, formatting, outlining, punctuation, and grammar.

- **Type 2**: Non-Substantive: such as moving and re-arranging sections, transferring sections to other policy documents, language and construction revisions with no substantive changes.

- **Type 3**: Subject to meet and confer: items requiring negotiation.

Three employees from the General Unit and three from the exempt group were enlisted to work on the task force. At the December 2007 meeting of the Labor Management Task Force, I put the matter on the table for discussion. The new Association representative rejected the proposed plan stating that represented employees participating on the task force should not meet without representation present. Despite the tension, we agreed to experiment with the task force subject to review, if needed.

On April 9, 2008 the task force had its only meeting. Notes from the meeting showed that it was a productive session. Using the guidelines, we progressed through several items on the “wish list” and felt we had made a good start.

In the following weeks we abandoned the task force. The Association’s representative lodged a complaint because of a report about an alleged incident. Although the complaint did not appear to be related to the project, it forecasted possible rough times ahead. The project reverted back to me and District Counsel to craft proposed changes that management would take to the negotiation table.

Management began negotiations by submitting proposed revisions to the Rules. Each item was presented in written form on a separate page using a template (Fig. 1). Language, as stated in the Rules, was printed on the proposal form in redline format to highlight recommended changes. In the early stages the form was used to track the discussion and record the last position of each side. Although this became burdensome for each meeting, we did use the form for agreement sign-off on the final version of the agreed language.

Throughout the negotiations some of the topics discussed were probably outside the scope of bargaining. In our District, labor and management has not always adhered strictly to these boundaries. In pursuing these discussions, we learned more about management’s rights and employee’s benefits and obligations.


**Recommended Revisions**

- Identify which acronyms were useful, which were not, include them in the definitions section. Identify routine and generic matters, use a simple outline style. His/her, he/she, himself/herself would be neutralized wherever possible to “employee.” Use consistent agency subdivision references, i.e., “department,” or “division”, or “section.” We defined Probationary Employee.

- Cross reference policies or conditions. In the “Overtime section,” unauthorized overtime is subject to discipline, yet it was not included on the list of actions subject to discipline. In sections referencing possible disciplinary action, we cross referenced the Employee Conduct and Discipline Rule and removed extraneous language that might lead to conflicting interpretations.

- Remove sections, such as credit union membership, that were no longer necessary, or sections duplicated in other policy documents, such as the recruitment procedures.

- Create a section for Administration of Personnel separate from Terms of Employment and rearrange sections for clarity.

- Revise language where other policies provided necessary protections. Our policy on Infectious and Communicable Diseases was nearly four pages long and was developed during the early hysteria over AIDS/HIV. We acknowledged that the Americans with Disabilities Act and the Family Medical Leave Act provided most of the necessary protections.

- Reinforce policies with additional language, such as the Policy Prohibiting Employee Harassment. We added the employee obligation to participate in periodic harassment training and included the statutory requirement that supervisors participate in legally mandated bi-annual two hour training.

- Rewrite sections relevant to performance evaluations. The language in this section was brought from the County. In addition, the District attempted a “pay for performance”
program thirteen years ago that failed. When the pay for performance program was officially ended during negotiations, certain practices remained and the Rules were unclear as to the District’s performance evaluation system. In rewriting this section we untangled the history of work performance evaluations (county practice), pay for performance, merit increases, and step increases. We ultimately agreed that the work place culture was divided as to whether a performance evaluation constituted a merit increase or a step increase. In this contract, we settled for language that ended some of the confusion about scoring evaluations and granting step increases.

- Remove sections that pertained only to a certain group of employees. The Rules contained provisions that affected any of four groups of employees, yet only one had formal representation. For example, one area was Overtime and Night Shift Differential which applied only to the General Unit. When we recommended removing the section from the Rules and placing it in the MOU, the Association questioned the District’s practice of adjusting work time to prevent the payment of overtime. Management used the opportunity to explain that the Fair Labor and Standards Act and its application to District employees allowed this.

- Refine the language regarding vacation earning formulas and caps. The Rules described the earning formula per month and the MOU described it per payperiod. In addition, each used a different combination of measuring by hours or by days. The resulting difference in accrual earnings was minimal (four decimal places) except for two situations. First, when payperiods occur in alternate weeks (26 per year), an additional payperiod occurs in the calendar year about every eight years. When calculating the formula by the month there is no difference in the total amount to be accrued. However, when the accrual is calculated per payperiod, the total earning is off by the amount of the payperiod accrual in the year with the 27th payperiod. In our case, the extra payperiod occurred in the year just before the start of negotiations. Second, employees with fifteen years or more of service have accrual rates that increase incrementally each year through twenty years of service. We discovered that an increasing loss occurs in accrual amounts for those employees when the calculation method is based on per month rather than per payperiod. Management conceded to use the per payperiod method of calculation and transferred the accrual formulas from the Rules to the MOU to prevent further conflict.

- Reconstruct the Employee Conduct and Discipline Rule. This rule was heavy on describing offenses and details of actions, unclear on due process and conspicuously silent on exactly how to conduct a disciplinary action.

The Association agreed to management’s recommendations for written procedures including management discretion for the application of the described progressive actions. In exchange, management agreed to reduce the punishment for major discipline from five days suspension to two. Evidentiary hearing requirements for minor discipline were removed and notice requirements prior to disciplinary action were clearly articulated. In the end we believe we crafted a workable policy that describes management actions and what employees should expect in the event those procedures are required.
Generally, it is advisable to broadly state discipline policy and procedures. Overly detailed procedures have the tendency to tie management’s hands and prevent expedient handling of employee conduct problems. We firmly believe the new structure is an improvement over badly formed structure.

**Five Recommended Tips**

1. **Take time to understand the source of the rules.** Research what circumstances may have brought about the rules. The historical context should help to shed light on the current culture. Then, hold this understanding as a reminder that your work will someday bear the same scrutiny. Think carefully about removing a rule just because it was crafted for a specific event or circumstance. Revising the rule to remove emotional baggage may prove its usefulness for a future situation.

2. **Balance expediency against “paralysis by analysis.”** Hasty decisions cause careless construction just as no decisions create a vacuum. Consult legal counsel for potential pitfalls that may result in certain language constructions or by inserting, or deleting, whole policies.

3. **Read at least one manual about how to develop personnel rules.** Invest time and effort in learning the essentials of policy development. It may seem as though anyone might be able to write a “do not” rule, but a well written policy manual is useful and enduring.

4. **Do your own careful review.** Do not rely on others to produce policies or procedures without your involvement. Practice implementing the rules with case studies. Our careful examination of language provided by the Association for the Employee Conduct Rule uncovered a skillfully worded discipline process that would have required evidentiary hearings for all levels of discipline.

5. **Review carefully language developed by consultants.** Well crafted language does not always translate to good implementation. We were often prevented from addressing difficult areas because some Rules had been developed by a well known labor attorney. It was wrongly assumed that professional expertise was perfect.

**Lessons Learned**

**Plan for the next revision.** Our hard work produced a much improved and shorter policy document. We purged many “ghosts” from the past. We noted areas to address next time in addition to areas that we left untouched but we are keeping our “wish list.”

**Don’t work alone.** A project of this magnitude requires more than one person. Those assigned should possess above average reading and comprehension skills, training in policy development, and have experience in personnel management. As with all things policy related, management agreement on the project importance is required to devote necessary time and resources. Also, it is crucial that management support the revised product.
**Maintain version control.** Establish version control and guard the number of copies produced, both hard and electronic copies, to prevent older versions from becoming confused as the revised product. We were able to control the document until the very end, but then we began to apply minor edits and lost control over the “latest” version.

**Regularly Update Policies.** Agency policies should be monitored and reviewed periodically for currency and accuracy. Reviewing and revising the governing personnel document may require up to a year. We believe a comprehensive review should be conducted after four years, subject to any laws that might require immediate amendment of the document.²

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² Karen K. Nowak, District Counsel, Mojave Desert Air Quality Management District contributed to the content of this article.