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Workshop: Training on Organizing and Negotiating for Academic Labor

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COLLECTIVE BARGAINING

DEBORAH WILLIAMS, J.D.

NEA DEFINITION OF COLLECTIVE BARGAINING

"Collective bargaining—a mutual exchange of positions followed by agreement—enables a group of employees with a "community of interest" to negotiate a binding written contract with an employer. It gives workers a voice in their workplace and has become a respected approach, valued by employees and employers in the private sector and throughout various levels of government."

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NATIONAL LABOR RELATIONS ACT OF 1935

- Passed by Congress in 1935, the National Labor Relations Act (NLRA) established the practice and procedure of collective bargaining in the private sector.
- The Act declared that "protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest."

NATIONAL LABOR RELATIONS ACT OF 1935

This groundbreaking statute encouraged "practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees."

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History

In the decades that followed, many states passed similar laws to regulate organizing, bargaining, and settling disputes for public workers, including educators. Collective bargaining offers an organized and transparent system to raise interests and resolve disputes. Currently, teachers in 34 states and the District of Columbia have the legal right to bargain; education support professionals in 32 states and the district have that right, as do most higher education faculty in 28 states and the district. Bargaining in public education is prohibited in only six states.

Collective Bargaining is Good Public Policy

Effective bargaining is based on ideals that resonate with both workers and employers, such as working together to solve problems and treating each other with respect. Parties can exchange the frank views of their constituents as they explore and resolve the issues being bargained. *When labor and management can come to agreement on salary and benefits while also improving teaching and learning conditions, everyone benefits.*

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Benefits of Bargaining

In a non-bargaining environment, workers can only preserve agreements on wages, hours, and working conditions through relationships with managers, legislative lobbying, or employer-written policies and handbooks.

Through collective bargaining, however, such arrangements are written into a binding contract, *outlasting union and management turnover*.

Overheard last year at a recent NEA Higher Education Conference

"My working conditions are my students' learning conditions."

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Employment Contracts are "living documents"

A negotiated union contract is not a set of permanent work rules carved in stone. Any section can, by mutual agreement, be discarded or revised during the talks over a successor contract. And in the healthiest education environments, *good union-management relations is a continuous process—often carried out monthly through a joint labor-management committee* (i.e. the original Collegial Steering Committee at JCCC; Current Leadership Committee has potential)*

Collective Bargaining is an Exercise in Freedom

In a 2007 decision, the Supreme Court of Canada expressed that ideal eloquently:

"The right to bargain collectively with an employer enhances the human dignity, liberty, and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work.…Collective bargaining permits workers to achieve a form of workplace democracy and to ensure the rule of law in the workplace."1

In this country, Martin Luther King Jr. credited the labor movement with creating a better society.
"The labor movement," said King, "was the principal force that transformed misery and despair into hope and progress. Out of its bold struggles, economic and social reform gave birth to unemployment insurance, old age pensions, government relief for the destitute, and above all new wage levels that meant not mere survival, but a tolerable life. The captains of industry did not lead this transformation; they resisted it until they were overcome. When in the thirties the wave of union organization crested over our nation, it carried to secure shores not only itself but the whole society."2

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Bargaining: Step by Step

Collective bargaining is a process through which employee union and employer representatives exchange positions, mutually solve problems, and reach a written agreement. That approved contract binds both groups.

The following slides show the collective bargaining process typically unfolds in public education (there are many local variations):

Preparing for Bargaining

- *Both sides form bargaining teams* and gather information. The union panel usually is selected through a process outlined in the union's constitution and by-laws, while the management team is designated by the employer.
- Each party may meet with its constituents and/or *conduct surveys* to *identify and then prioritize issues*. During this assessment phase, each team also analyzes the current collective bargaining agreement to spot additional needed changes

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Determining the Bargaining Style

- During this initial period, the parties discuss the style of bargaining to be used during this round of negotiations, most often either proposal bargaining (traditional) or interest-based bargaining.
- Either can be used effectively.

Traditional v. IBB

- **Proposal bargaining** is a style in which each team drafts written desired changes to the contract to present to the other side. Based on these proposals, the two bargaining teams engage in discussions until there is agreement on the proposed changes.
- **Interest-based bargaining** does not start with written proposals. Instead, both sides identify issues that are important to them and discuss why. The "why" is considered an "interest." Both parties explore options to resolve their issues and accommodate each other's interests. The parties agree on standards and procedures to evaluate all options. Both sides discuss the options until there is mutual agreement on a solution. Once the agreement is reached, a subgroup drafts the actual contract language.

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Starting negotiations

- Once the bargaining style has been determined, the teams prepare based on the style selected, agree on ground rules, meet at an agreeable location, and start negotiations.

- State law and court cases determine the mandatory, permissive, and prohibited subjects of bargaining.

Reaching a Tentative Agreement

When both bargaining teams are satisfied with the changes, they sign a "tentative agreement." It is only tentative until it has been formally approved (ratified) by the union's members and the employer's governing board.

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Impasse

If the two teams are not able to reach agreement, they can pursue impasse options provided in state law that may lead to a settlement. There may be four impasse options, depending on state law, and one or all could be used to settle a dispute:

Impasse Options

1. **Mediation.** An impartial neutral person facilitates dialogue between the parties to help them create and reach a resolution.
2. **Fact-finding**. A neutral third party hears presented evidence from the parties and makes a formal nonbinding recommendation to the parties. The parties can either accept or reject the recommendation.
3. **Interest arbitration.** A neutral arbitrator conducts a formal hearing, analyzes the information presented, and makes a formal binding decision.* ☐
4. **Strike** (not available if statutorily prohibited as it is in Kansas*) The union engages in a concerted collective action, through which its members withhold services in order to achieve a settlement. With thousands of education employee contracts bargained each year, fewer than ten, on average, result in a strike (*According to NEA)*

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Ratifying the Contract

- When the union and employer teams have reached a tentative contract agreement, they review the proposal with their respective constituency groups.
- If the tentative agreement is ratified by both sides, then the parties have a new (or successor) agreement. If the tentative contract agreement is not ratified—by either party—the teams usually go back to the bargaining table and continue negotiations. They negotiate until they are able to bring back a new tentative agreement for a vote.* Option for Management to unilaterally impose existing contract terms for one year.

Changing or Clarifying the Contract

- With the agreement of both parties, any section of a ratified contract can be revised during the term of the contract.* *(i.e. our RIF provision; potentially the chair compensation if structure not complete within negotiation time frame).* Can mutually agree proactively to reopen a section for future negotiation.
- In many districts, representatives of labor and management also meet regularly during the term of the contract to talk about and resolve issues of mutual concern. In addition, either at the bargaining table or during the life of a successor contract, the parties can create memoranda of understanding (MOUs). The benefit of the MOU is that it gives the parties an opportunity to reach a temporary agreement on an issue that is important to both the union and the employer.* **You must keep track of these agreements!!** *(i.e. Peer review).*

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Discussion: Robert Ufberg's article on Negotiation Styles

Which form will you Negotiations Take?

- Art
- Drama
- Combat
- Symphony

Communication is essential!

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Questions?

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