LABOR RELATIONS

INSTRUCTOR

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COURSE OBJECTIVES

At the completion of this session, participants will be able to:

1. Understand the historical and legal basis for unionization and collective bargaining.
2. Explain how labor unions function in general and also specifically within the venue management industry.
3. Discuss what venue functional areas are most often unionized
4. Explain the collective bargaining process
5. Describe the techniques needed to manage unionized employees.
6. Evaluate a venue on its past and current management-union relationship

Introduction

Labor relations involves the interaction between employer and employee on a daily basis. This relationship can be "individual" in nature or can be "collective" such as in a situation where a group of employees have formed a union or collective bargaining unit to act as their representative in labor relations with the ownership of a company. The process whereby management and a union negotiate is called the collective bargaining process through which the parties work to reach a collective bargaining agreement (CBA). The agreement will be written down to create a "labor contract" that will govern such areas as working conditions, how the parties will interact during the course of the contract, and of course, what compensation will be provided for various functions performed by the the grievance process.

Note that throughout this chapter legal concepts are discussed. Readers should seek advice regarding the application of employment laws in their country, state, county and county. In the United States, the federal government grants extensive power to the states regarding some aspects of collective bargaining, resulting in different laws in different states. Readers should know and correctly apply the laws that are applicable to their situation.

Successful facility management requires a close understanding of the principles involved with the labor relations process. It also requires that management have sensitivity to the needs of all its employees and subcontractors. An environment where all employees or subgroups of employees are represented by a union will likely change the management – labor interaction and it is vital that facility managers understand the legal and managerial issues associated with labor relations to be an effective leader.

History of United States' Labor Relations

As the United States was industrializing in the latter half of the 19th century, a greater percentage of the population began to move from rural to urban areas. The development of factories and other businesses that employed hundreds or even thousands of workers – many of them of

limited skill and education – created a situation where the power of the individual in the workplace was often not particularly strong. By the early 20th century, some American businesses employed workers in dangerous industries, such as coal mining, steel working, and large-scale construction, where unsafe working conditions and relatively low pay due to a ready supply of unskilled replacement labor willing to work was the
norm. In many cases, workers realized that individually complaining or even withholding services in an effort to receive greater compensation or better working conditions would not be highly effective. Workers began to organize to increase their strength in bargaining with management. Initially, unions encountered some legal problems as antitrust laws effectively prevented most unions from forming since one of the usual goals of a union is to gain strength through numbers whereby the "best" or most productive workers often give up some of their potential earnings to collectivize their efforts.

It was not until 1935 when the National Labor Relations Act (also known as the Wagner Act) was passed that union activity was legally permitted. The Wagner Act permitted private sector employees to organize into trade unions that could then engage in collective bargaining for enhanced wages or other demands such as better working conditions.

Collective Bargaining – process by which employees, through their chosen representatives, meet with representatives of their employer to discuss and attempt to reach an agreement on changes in condition of employment such as salaries, fringe benefits, and working conditions.

The Wagner Act also legalized the right of unions to engage in strikes, whereby labor would withhold its services. The National Labor Relations Board (NLRB) was established as part of the Wagner Act. The NLRB investigates claims of unfair labor practices and generally works as an agency that is available to unions who feel they are not being treated fairly by management. A variety of labor laws have been passed since the Wagner Act, most notably the Taft-Hartley Act of 1947 which further defined permissible United States union activities and provided some restrictions on union actions. The Taft-Hartley Act attempts to balance the rights of both unions and management.

In the late 19th and first half of the 20th century, a considerable portion of the U.S. labor force was uneducated and generally unskilled. A great percentage of jobs required little formal training, which meant that workers often needed a union to protect their interests. Since the height of union membership at over 30% of the U.S. workforce in the early 1950s the percentage of Americans working in union jobs had decreased to just over 10% by 2019 (Greenhouse, 2011 & U.S. Bureau of Labor Statistics, 2019). The reasons for the drop-in union membership are many. Primarily, the U.S. workforce is much more educated and skilled. As the U.S. economy has shifted from primarily a manufacturing economy to an information technology and service economy, the need for low-skilled labor in the United States has diminished as those jobs have often been relocated in foreign countries where wages are considerably lower. Most American workers are employed in jobs where they can usually effectively negotiate their wages as an individual. In addition, the modern American worker is much more mobile, with most workers not expecting to work at the same job doing the same thing for 35-40 years of their career like many in the early 20th century. In the modern American economy, new jobs are created, and old jobs become obsolete much more quickly than 60 years ago. In most U.S. industries, most workers expect there to be changes and anticipate having to be responsible for much of their career trajectory, diminishing the need for vast unionization.

The one area of the American economy where the percentage of union membership has increased over the past 20 years is in government. Interestingly, though President Franklin D. Roosevelt was a champion for private sector unionization and worker's rights, he was adamantly opposed to government unions because they essentially bargained with the taxpayer, not a private business (Sherk, 2011). In the private sector, if union demands are too great for private business to meet, the business will likely seek a new location or will utilize another method to complete the job requirements (such as by investing in automation). When government workers bargain with politicians, the result is often a much higher rate of pay, paid by the taxpayer, not the negotiating politician.

Unions in Facility Management

In the facility management industry, leaders must be aware of different employees and their union status, as it may impact relationships and workplace interactions. Though one would rarely see unions representing facility employees working in marketing, finance, or public relations, it is not uncommon to have unionized labor working in various areas of operations such as riggers, stagehands, plumbers, and electricians. Facility managers must be aware that certain local or state laws require some employment areas to be unionized, especially when managing a

publicly owned or publicly financed facility. In addition, many facility management companies have agreements with unions that all of their facilities will utilize unionized labor for certain job functions. For instance, if a company that manages venues across the country acquires the right to manage a new venue, they might have to seek electricians for their "new" building from an electricians' union. The facility has some assurance that the "assigned" electrician knows the craft, but there will likely be a set wage and work rules and expectations that the facility must follow when managing the electrician.

Forming a Union

Unions are created when a majority of employees elect to form a union and follow the legal steps necessary to be certified as a certified bargaining unit. There are strict rules (governed by the NLRB) concerning what management can and cannot do when employees are contemplating forming a union. For instance, management may not engage in acts of intimidation to discourage union formation. Since forming a union can have a dramatic change in management-worker relations and can have disparate impacts upon different workers, there are strict rules governing how unions are formed. Recently, with the drop in overall union membership in the American economy, a variety of unions have been lobbying for the U.S. government to pass the Employee Free Choice Act (also known as "card-check"). Under this proposed law, employees would no longer be allowed to vote via secret ballot, but instead could simply form the union once a majority of workers signed a petition saying they wished to form a union. Proponents of the bill note that it would speed the unionization process while critics of the bill argue for the sanctity of the secret ballot and that a process whereby only a petition that is signed publicly can establish a union presents the opportunity for intimidation of workers by union organizes and/or other workers (Bergan, 2009).

In most unions, collectivizing workers' efforts is designed to show strength through unity, however, a union can have detrimental effects on a highly productive worker's salary. For example, in most facility management union contracts, a set rate of pay and standard working conditions are established. Generally, in exchange for "strength through numbers" unionized employees are willing to take less pay if they are highly productive. If there is not a union, the most proficient plumber may be able to bargain for a higher wage for better performance than his or her peers. However, in most union settings, the most effective plumber would receive the same pay rate as the other plumbers.

Negotiation Process

Once a union has been established as a certified

> *"To obtain a just compromise, concession must not only be mutual – it must be equal also.... there can be no hope that either will yield more than it gets in return."*

bargaining unit, management will need to negotiate terms of employment. Despite what some may believe, the main goal of negotiations is to reach an agreement that is mutually advantageous to both parties. It should not be designed to extract a "victory" from the other party or to "destroy" the party across the table in negotiations. If management "wins" the negotiation, the workers who are now underpaid are likely to resent the situation and hope to "get even" during the next negotiations. Conversely, if workers "win" and management is not able to generate enough net revenue from facility operations, there is a strong likelihood that the company could go out of business, resulting in a loss of jobs for everyone. The best deal to make is the one that insures that everyone will want to continue to make future deals. The goal is to create win-win results where every party is not necessarily "happy" but is content that their needs have been met and an environment for success has been created. Facility managers should remember that the Union deserves their respect both during and after negotiations are completed.

Much of the negotiation process actually begins "before" the negotiation. Management and workers interact all the time, not just at the bargaining table. Unfortunately, too often day-to-day operations result in workers feeling devalued by management or management sensing workers are disinterested in achieving maximum results. How management and workers interact daily can have a dramatic impact at the bargaining table, particularly if angry feelings have been fostered since the last negotiation. There will also likely be numerous opportunities for

informal meetings between the negotiating teams. Some of history's greatest negotiations have occurred in informal settings where individuals were able to talk to one another away from the rancor of the formal bargaining environment. Typically, whether negotiations occur "on the record" in a formal session or "off the record" at an informal gathering both parties should seek areas of agreement and continue to move the negotiation toward a resolution.

From management's perspective, an initial decision is to create a negotiating team. It could be comprised of in-house employees, contracted negotiators, or a mixture of both. Whatever the final makeup of the negotiating team may be, it is imperative that the final decision-making authority is not a part of the negotiating team. This final decision- maker can be one individual or committee, board, etc. The reason for this is negotiations conducted even under the best of circumstances can be long, arduous and emotional processes.

It is optimal to have negotiated terms be presented to the decision makers in a setting removed from the bargaining table so that logical decisions can be made free of fatigue, anger or other negative emotions.

Negotiating Tip – Pretend you are representing the other side before beginning formal negotiations. This will help you see the entire situation and better understand how to reach a mutually agreeable deal.

Before beginning the negotiations, each side should prepare their strategy and have a thorough understanding of what they need to accomplish in the bargaining process. It is important for the negotiating team to know what terms and conditions will create a successful agreement and an effective working environment. If an outside negotiating team is employed, they should spend considerable time researching the general facility industry and then learn the unique aspects of the facility or facilities they will represent. Though "micro" issues unique to the facility or the facility management industry are of prime concern, negotiators should also understand the "macro" issues that affect the industry such as the overall state of the economy, the unemployment rate, and the rate of inflation. The more knowledge a negotiating team has, the more likely a successful agreement can be reached.

While bargaining, negotiators should have a thorough understanding of projected costs and the impact of various outcomes on the financial bottom line of the facility. This will enable negotiations to proceed more efficiently since most collective bargaining agreements involve multiple areas, each with their own impact on the financial bottom line. The overall goal of the collective bargaining agreement is to create a deal that works for every party, not to "win" each small battle along the way. Compromise is an expected and necessary part of any negotiation. Far too often negotiations have dragged on for extended periods of time as negotiators have fought over details that may have a minimal impact on the overall deal.

It is also imperative to understand that much of the negotiation may be focused on non-financial issues such as overall working conditions and management – labor

Negotiating Tip – Upon receipt of the union's proposal evaluate the outcomes as if everything that they asked for was provided. This will provide an overall perspective of the impact of the requests. In addition, as the negotiations continue you will be familiar will all aspects of their request, as the most important items may not be revealed early on in the process.

interactions. Certainly, it is easy to see the importance of the financial aspect of a deal, but often the non-financial matters are just as pressing to one or both parties. In many negotiations, one side "digs in" on matters of limited financial importance because they feel restricted in other areas. For example, the difference between a $.25 or a $.50 per hour pay increase may be minimal to the overall financial outlook of the facility, but workers may demand the full $.50 increase even if their real goals are for management to let them help design new uniforms since the old ones are uncomfortable. By focusing solely on the financial issue of the pay increase, management may miss an opportunity to save some money and create a happier work environment.

In most collective bargaining negotiations, management and workers conduct extensive negotiations well before the previous CBA has expired. Ideally, the negotiations will proceed smoothly, and necessary changes will be made and agreed to long before they "have to." However, in some cases, negotiations may proceed at a pace that results in the previous contract expiring before a new one is in place. If this occurs, then both sides have a potential dilemma. Certainly, prior to the expiration of the current agreement, either side could threaten the other with a drop-dead date. Though usually not advisable, in some instances, a hard deadline can spur both sides to reach an agreement. If no agreement is in place, a short- term extension of the previous agreement may be executed. In other cases, management may elect to "lockout" the workers or the workers may elect to withhold their services through a "strike." In either of these situations, the operation of the business will likely halt or be severely diminished. In most cases, the threat of a lockout or strike is much more powerful than the actual lockout or strike. Once a party has "pushed the last button" then there is nothing more to do than stand on principle and wait for the other party to accept stated demands or succumb to the other party's demands after losing valuable time that could have been spent in operation. There have been countless examples of management or labor scuttling a business over a specific demand only to later accept the other party's last offer before the shutdown. Negotiating teams must understand the bargaining position of each party before a work stoppage occurs, especially since lost days of work and wages can usually not be replaced.

In certain highly contentious negotiations, one side may accuse the other of not bargaining in good faith or of engaging in illegal tactics. Ideally, this situation should never occur. However, every negotiator must adhere to the applicable laws and must be vigilant to observe the behavior of

> *"My feeling is never count on an arbitrator or courts, ... You may think you know how it will come out but don't count on it. A strike you can count on because you only call a strike when you know you can win."*
>
> *Marvin Miller*

their negotiating counterparts. Engaging in illegal activity is a serious offense that will be punished by appropriate authorities if discovered.

Bargaining Styles

A variety of excellent bargaining manuals have been written that discuss details regarding bargaining styles (see suggested readings for additional reading options). Ultimately, everyone brings their own individual style to the bargaining table. Some negotiators are more glib than others, some more humorous, more contentious, or more analytical. Although changing one's basic personality is difficult, certain guidelines regarding negotiating style should be observed. As a member of a facility negotiating team some things you should consider include:

> *"There is a time to be tough, a time to be adamant, a time to be open to compromise, and a time to reach agreement."*
>
> *Jimmy Hoffa*

1. Be firm without challenge. Let the employee organization know early in the bargaining process on which issues the employer has little or no flexibility and why.

2. Explain the employer's position as thoroughly as possible, both in response to employee proposals and in presenting the employer proposals. Concentrate on issues where the employer has flexibility.

3. Be friendly and keep up the conversation at the bargaining table.

4. Be flexible. Every negotiation is difficult and may require a modification in style.

5. Try not to show too much anger, although an occasional and mild display may emphasize the company's firm conviction on an issue or dissatisfaction with the lack of progress in negotiations.

In the 1998 movie, *The Negotiator*, Samuel L. Jackson's character famously tells an inexperienced police investigator "Never say no to a hostage taker." While collective bargaining negotiations are certainly never going to involve life or death decisions, the use of language can play a critical role in a negotiation. Negotiators need to be careful what they

say at the bargaining table. Statements such as “We are not interested,” may alienate the employees. Phrases like “deal breaker,” “take it or leave it,” or “that's nonnegotiable” can put your negotiation counterparts on the defensive and negatively impact the ability to get a deal consummated. In addition, if the term “that's nonnegotiable” is uttered and then that point is later negotiated, the validity of any future statement by the negotiator will be questioned.

Ultimately, the bargaining style that one employs should adhere to their personality but should have enough flexibility to adapt to changing environments. Every negotiation is unique and has specific ebbs and flows. Ideally, the goals of both parties will be achieved through the collective bargaining process and a collective bargaining agreement will be reached that permits every party to maximize their opportunities for success.

Managing Under a Collective Bargaining Agreement

Once a collective bargaining agreement has been signed, it must be put into practice. Most CBAs will have specific items addressing all aspects of the work environment including compensation, working hours, working conditions, reporting relationships, reward structures and grievance procedures. As a member of a union, employees typically have rights non-unionized employees do not and often will have assistance if management imposes disciplinary action. Union contracts will all have grievance clauses, complete with procedures.

Grievances, morale, and disciplinary action are all closely intertwined. Most grievances (in the union contract sense particularly) occur as a result of disciplinary action taken against an employee. There is often a correlation between morale and the need for disciplinary action. The purpose of disciplinary action, from the point of view of the organization, should be to correct an unacceptable action or behavior. While it involves chastisement, and possibly more severe penalties, such as the economic consequences of suspension or termination, its goal is not to punish. Punishment may be a means but is not the end goal.

Disciplinary action needs to be fair and consistent. In some cases, a union contract will stipulate what punishments may be imposed for certain offenses. Intelligent managers apply common sense and are pragmatic in dealing with situations while working under the labor agreement. If two workers are late, a good manager will analyze the circumstances before imposing punishments as there may be different reasons for the employees’ behavior. Ideally, the negotiated CBA will permit a manager to administer different punishment if the reasons for the tardiness are not the same. In some cases, management might elect not to punish for certain behaviors, but this decision must adhere to the CBA.

In situations where employees feel that they have been treated unfairly and their initial concerns are not met, the union will help the employee file a formal grievance. In many cases, the CBA will mandate that a third-party arbitrator adjudicate the dispute. In more serious cases of alleged misbehavior and punishment, such as management terminating an employee for continued failure to perform necessary job functions, legal action may be initiated. In most labor unions, the union will assist with some or all the resources needed to pursue the case. In many situations, unions have been criticized for "helping" employees who have clearly been negligent in their job duties, while in others the union has successfully pursued action against an unfair imposition of punishment by a misbehaving member of management. Ultimately, the union will fight to protect the rights of all of its members, much like an American citizen is provided a fair trial with legal representation even when initial evidence appears to indicate a law was broken.

Though most people first think of the limits on negative action toward misbehaving employees, union contracts will often have limits on rewards for highly performing employees. Since many union contracts have specific compensation plans in place, a facility employee who performs a task above and beyond the call of duty can usually NOT be rewarded with something that was not provided to other unionized employees. Under most facility CBAs, individual or small group bonus pay is not permitted. In situations where pay or work position (such as where in the facility one works) are determined solely by seniority, highly productive workers may not be rewarded by management. This is a typical problem in many stadiums and arenas in the U.S. where highly structured union rules are in place. A facility manager who simply provides a team's tee-shirt to an employee could be violating a component of the CBA if every other employee is not also provided a similar tee-shirt.

Conclusion

Ultimately, whether employees are members of a union or not, it is the responsibility of management to maximize the effectiveness of its human resources. Though beautiful and highly functional facilities are impressive to customers, the lifeblood of any facility, regardless of its age and condition, is its employees. In situations where workers are members of unions, management needs to adhere to the components of the CBA, while not forgetting to utilize common sense and human decency.

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