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Labor's Lessons

By Gregory J. Dannis

I have often said every school district is unique — that each one is a different country with each bargaining table representing a distinct subculture within. I still believe this, but I am awakening to an awareness that all districts share some common traits and “truths” regarding negotiations and labor relations.

I believe these truths are universal, but they are apparently inconvenient as well, since most are known but rarely spoken aloud. I call these truths “Labor’s Lessons,” and my purpose is to expose as many of them as possible.

One note of caution: As I proceed, please be mindful of Mark Twain’s warning, “Every generalization is dangerous — especially this one.”

The Negotiated Contract

The negotiated contract is the employer-employee relations bible. I have negotiated agreements with as few as 50 pages and as many as 400; yet common ground exists in all of them.

Lesson 1: There is a connection between the length of the contract and the strength of the labor-management relationship.

Every contract describes a “code of conduct” for the work place — what the employer or employees or the union should not or cannot do, or are encouraged or required to do. If each party believes it knows what the other will or will not do without the need for a written rule, fewer rules are needed and a shorter contract results. If both parties feel assured that each will not invade the other’s sphere of authority and influence, fewer subjects need to be included.

There are exceptions to this truth. A large organization might run inefficiently with generic work rules. Such a district might need articles addressing elementary and secondary education; specialist positions; pre-school and adult school; regional occupational programs, and more. A big district might need specific sections addressing support services such as transportation, food service, clerical and instructional assistance, maintenance and operations, and technology.

Even so, the lesson still applies to all districts: The stronger the relationship, the shorter the contract.

Lesson 2: The two longest articles in every contract are about not being at work and complaining about work when you are there.

The lengthiest articles in every contract are “Leaves of Absence” and “Grievance Processing” — one describing the many reasons for not being at work, and the other prescribing how to lodge complaints when you are present.

Leaves of absence. In one of my contracts, this article is 22 pages long, single spaced with 9-point font. After covering preliminary matters such as definitions, eligibility, return rights, restrictions, application, notification, cancellation, and expiration, there follow approximately 20 kinds of leave! These include: bereavement, pregnancy and disability, paid disability, optional unpaid disability, child care, illness, catastrophic illness, industrial injury or illness, personal necessity, personal, sabbatical, exchange, military, witness, jury, conference and convention, substitute, half-time, reduced workload, family care, and medical.

It is entirely possible for a full-time employee to work half-time, or even “no-time” given the plethora of available leaves. And we haven’t even talked about vacation! Perhaps a more efficient approach might be to dispense with the leave of absence and vacation articles, and substitute one that simply says, “Please show up when you can. We’d really appreciate it!” Fortunately, the vast majority of public school employees show up for work every day, every year, and do not avail themselves of the many opportunities to be absent.

Grievances. Most contracts have a three- to five-step grievance process that includes levels such as informal, superintendent/designee, mediation, school board, and binding or advisory arbitration. There are time lines for each step, and if one is fortunate, his or her grievance will reach a final decision within a year after the process commenced.

The irony of the lengthy grievance article is that the number of grievances filed has little or no relation to whether the employer is good or bad, or friendly or hostile when it comes to contract enforcement. Rather, the number of grievances filed is more about the nature of the labor-management relationship and how the parties choose to resolve disagreements.

Even in the “best” district, any union worth its dues could file dozens of legitimate grievances every day. Why? Because districts have multiple sites with dozens if not hundreds of site and department-level supervisors making daily workplace decisions “on the spot” and “in the moment.” Despite the contract’s purpose of furthering consistent practices and working conditions, site-level administrators — and employees and union representatives — often want local control and flexibility. This results in contract non-compliance with the tacit approval of all concerned.

When this elasticity stretches too far, or adversely impacts someone or some group of employees, or disturbs someone’s sense of fairness, or when it poses the threat of becoming a past practice and a precedent, one of two things will happen: (1) the parties with a good relationship will resolve the problem informally, or (2) the parties with a bad relationship will battle it out through the grievance process.

There is also a “chicken and egg” strategy in which labor sometimes uses the grievance process to organize. For example, if difficult negotiations are likely or already occurring, the union will file multiple grievances over matters it normally would not in order to put pressure on the employer in negotiations — “Accept our demands and we will stop filing.” — and to rouse a disengaged rank and file by showing them the relevance and necessity of a strong and vigilant union to protect them against an unfair employer — “Look at all the grievances we’ve had to file.... You need us!”

Lesson 3: Contract sections can be traced back to individual employees.

Every treatise on labor law waxes poetic on how the negotiated agreement is a majestic “broad brush” that governs working conditions for all employees in the unit. The contract truly represents the exclusivity of the “exclusive representative,” for the employer must “talk only to the union,” and not with individual employees.

Despite this truism, unions and employers spend an inordinate amount of time discussing, negotiating, and writing contract language for “singleton” issues. This makes it possible to put a name to many sections of the contract! For example:

* That limit on the length and frequency of faculty meetings? Yes, that was because of Vince Verbose, the principal who used to hold two hour meetings three times a week.

* That restriction on involuntary transfers? Sure, that was because of Suzie Sourpuss. She alienated everyone at every site and kept getting moved every year (usually at the confidential request of her peers!).

* That reclassification of bus drivers, custodians, and school secretaries five years ago? Of course! That was the year the union president was a bus driver, the bargaining chair was a custodian, and three secretaries were on the bargaining team!

Maybe if the parties knew in advance they were required to put employee names after the “singleton sections,” they would concentrate on broader, “collective” concerns and not waste time on such narrow issues.

The Negotiations Process

There is a rite of passage the parties must endure to produce a contract. What are Labor’s Lessons regarding the negotiations process?

Lesson 1: Negotiations alter the space-time continuum, changing the very measurement of time itself.

I always believed in the immutability of time — until I experienced negotiations. Bargaining is unreal in so many ways, but I did not anticipate the altered measurement of time itself! This time warp can be calculated between ratios of about 2:1 to 6:1 depending on the activity at hand. For example:

* When the parties agree to take a one-hour lunch break, in negotiations time this signifies an interlude of two hours — a 2:1 ratio.

* “We just need a five minute caucus” in bargaining reality means a half-hour — a 6:1 ratio.

* “We will respond to your proposal at the next session” may in fact mean you will not see a counter proposal for months, if ever. I cannot even calculate the ratio for this.

Even more astounding is how units of time can be compressed. An eight-hour session can metamorphose magically into six and even four hours! This phenomenon rarely happens in the opposite direction, however, in which the parties actually stay beyond the established ending time.

Lesson 2: There are indices, criteria, and other assessments in negotiations that do not exist in the real world.

In negotiations, the parties are always measuring or assessing something. How much does this cost? How does this compare? Is this fair? Is this affordable? How much money do they have? How much do they work and can they do more? Will this help us? How will this help students? Can I sell this to the members/school board?

This constant appraisal applies to the substance and the process of bargaining. Are they telling the truth? What are they hiding? Why are they so silent? What do they really want? What are they afraid of? What are we afraid of? Why can't we talk like normal people and just say what we want and what we fear?

Some of these indices and criteria include the following:

Fiscal health of the district (or the union). One need never look at a budget or auditor's report to discern the health of the district, nor does one need the list of dues paid to discover the union's prosperity or poverty. Instead, the following indicators are universal and foolproof:

- * Quality of the coffee

- o District: Terrible! Oily, black as ink, cooking for days. Chemical white powder has no impact or effect. (District is poor.)

- o Union: Gourmet! Multiple blends, a machine that brews individual servings, real cream.

(Union is flush!)

- * Computers, hardware and software

- o District: Computers 10-years old with black and white monitor screens. Loaded with Word 2000; the only game is Pong. (District is working with FCMAT.)

- o Union: Wireless everywhere plus cloud technology. Sleek lap tops loaded with programs that can dissect the district budget 10 different ways at the speed of sound. (Union's interest earnings exceed district reserves.)

- * Facilities and furnishings....Don't even ask! But if negotiations heat up, anticipate being accused of extravagant and wasteful spending on the 50-year-old district office with its original furniture and carpeting!

Effectiveness of the bargaining process. Are the parties communicating and making progress? These are some tell-tale signs:

- * The Caucus Time/Table Time Ratio. The more time spent away from each other in caucus, the worse the process is working.

- * The “Post-It Index.” At some tables, only the spokesperson is allowed to talk, and team members

may contribute only by sending post-its back and forth. In this case, the more post-its that are “flying,” the more trouble you are in.

Feasibility of proposals. What factors do the parties consider to measure the chances for ratification? How do they judge what they can and cannot agree to? A few criteria are:

* The “Fear Index.” In recent negotiations, both sides unfortunately are compelled to assess what each might lose unless agreement is reached, leading each to inquire inwardly, “How afraid are they?” Management assesses union and employee fears of lost wages, benefits, and employment to determine whether concessions will be achieved. Labor measures the employer’s fear of qualified or negative budget certification, state takeover, and the public’s reproach to predict what alternative measures the district might take to avoid these outcomes if the union refuses to “give back.” In effect, each wonders about the other, “What is their Fear Index?”

* The “Kill Factor.” A corollary to the Fear Index, the Kill Factor gauges whether and to what degree union leadership might get “killed” figuratively by membership, and district administration by its governing board (and perhaps the district community). This inquiry requires both parties to confront whether leaders are willing to face the wrath of constituents by supporting an odious agreement which they nevertheless believe is necessary to safeguard the continued viability of both organizations.

The absurdity algorithm. An algorithm is a logical sequence of steps for solving a problem. Although bargaining is inherently a problem-solving process, often it is neither logical nor sequential, hence the Absurdity Algorithm (the “AA”), examples of which are as follows:

* No good deed goes unpunished. As oxymoronic as it sounds, this AA is almost always true, at least from the employer’s experience. If the rules are “bent” just once, even at the union’s request, you have established a new rule to which you will forever be held. If an employee is given that “one extra chance” out of a sense of concern and empathy (usually at the union’s request), you have expanded the steps of progressive discipline that you will be demanded to apply to all who come thereafter. If you offer an early retirement incentive to mitigate layoffs, you may be confronted with a counterproposal to allocate some of the savings to remaining employees through wages, benefits, or restoration of furlough days, thereby defeating the very job-saving purpose of the incentive.

* If you think you’ve seen it all, you haven’t. Never assume it cannot get any more absurd, because it will. Recently, when a district proposed furlough days for classified employees, the union resisted as expected, but finally assented when the district promised to negotiate impacts and effects. The district expected to see proposals on timing of the days to minimize the impact of lost wages, and contingencies for restoration based on improved finances. Instead, the union proposed to add new holidays equal in number to the furlough days, in effect requiring the district to pay for the unpaid days!

* In another AA, a classified union spent hours decrying the abysmal working conditions under which employees were suffered to work. The district finally convinced the union to move on to discuss its priorities. The union responded by demanding increased longevity pay since the vast majority of its members had worked for the district more than 20 years!

Negotiations have always included a little theatre of the absurd, but as economics continue to stress the system and the parties, what used to be a one-act play is becoming a full-scale production.

Politics and the Public

We negotiate the delivery of public education to six million students, and we debate the expenditure of millions of dollars approximating 40 percent of the annual revenues for the seventh largest economy in the world. Our core mission still harkens back to Thomas Jefferson and Horace Mann, who thought public schools could be the great equalizers between classes. With this mixture — education, children and money — how could our negotiations not be infused with politics and public pressure?

One commentator noted, “It’s hard to say ‘school’ in America without saying ‘reform’ right after it. For more than a half century we have had one magic potion after another.” These education elixirs include child-centered education; open school; discovery learning; compensatory education; team teaching; new math; new physics; new biology; phonics; math facts; more homework; less homework; bigger high schools; smaller classes; merit pay; magnet schools; direct instruction; computer-assisted instruction; testing and exit exams; no social promotion; vouchers; charter schools; KIPP; Success for All; Accelerated Schools; national standards; common core standards; and No Child Left Behind.

There will always be a new and better idea to cure the ills of public education, which according to many is always near death. However, as Will Rogers was supposed to have said, the schools were never as good as they used to be.

Since education and politics have always been inseparable, can there possibly be any new Labor’s Lessons? I believe there are several.

Lesson 1: Negotiations no longer occur out of the public eye.

We work behind closed doors to discuss and agree to contract terms that impact our most cherished institution. We work in secret, and what we say is rarely revealed. This is no longer acceptable. Parents and taxpayers want to know what the parties are proposing and accepting because the resulting working conditions fundamentally affect teaching and learning conditions. They are demanding more information than ever before.

A recent *Sacramento Bee* headline declared: “Parents Band Together to Support California Schools.” The lead paragraph stated: “Once upon a time parents helped with homework, made cupcakes for bake sales and ushered kids to campus in carpools. They left the rest up to politicians and educators. Not anymore.” After two years of massive budget cuts and reductions in programs and personnel, parents “are no longer satisfied to sit on the sidelines.”

Parents have come to believe that the education establishment — employers and unions — are motivated by self-preservation, and while they literally have seats at the table, parents do not. Unhappy with larger classes and unsatisfactory teachers, parents are organizing to change the system because as one said, “Parents never had a voice. There are many that have an interest in the status quo. Parents are the outliers.”

Regardless of a district’s size, wealth or demographics, a single board meeting dedicated to “sunshining” the parties’ initial proposals is woefully insufficient for the degree of “public notice” now being demanded.

Lesson 2: Traditional political alliances are shifting as public demands for quality education increase.

Consider the following:

- * Twenty-one percent of California students drop out of high school, and the rate is even higher among Latinos and African Americans. Some estimate the drop out rate in Los Angeles Unified is 50 percent or more.

- * According to one report, despite these numbers and low test scores, districts nationally rate less than 1 percent of teachers as “unsatisfactory.”

- * The National Education Association held its first conference in 1887. The first item on the agenda was tenure.

- * In 1976, the National Education Association endorsed Jimmy Carter and has endorsed every Democratic presidential hopeful since then.

- * Recently the mayor of Los Angeles declared the teachers union for which he used to organize to be “one unwavering roadblock” to school reform. He said, “At every step of the way, when Los Angeles was coming together to effect real change in our public schools, UTLA was there to fight against the change and slow the pace of reform.”

- * Union leadership responded that they are not “the villains of education” and denounced the idea that they are “defenders of the status quo.”

- * The union simultaneously announced it would oppose any linking of teacher evaluations to student test scores and criticized a court settlement that dispensed with the requirement that layoffs would be according to strict seniority in adversely impacted low-performing schools.

- * Alice Huffman, president of the California NAACP, is a Democratic Party activist who worked for the California Teachers Association for 12 years and describes herself as a strong believer in labor rights. She opposed CTA in supporting recent legislation regarding parental power to change low-performing schools, including dismissing teachers and converting to charters.

- * Stating that she was looking out for the best interests of black and Latino children, Huffman commented: “It’s a people’s movement, in a way, from groups like the NAACP saying ‘enough is enough.’ We’re all saying you have to do something about our young people here. You can’t just leave them hanging year after year. I’m not trying to destroy the union, but sometimes you have to make a choice in life and right now, the education of our young people is more important than the union.”

These seemingly disparate points yield a cohesive result: The Democratic Party-organized labor coalition is breaking down as parents, especially those in inner cities, demand more local control, more school options, and better outcomes. As one politician put it, the trouble in California schools is no longer an “elephant in the room, it’s a donkey in the room.”

According to many, this shift dictates a change in union strategy. A recent letter to the New York Times by a professor of industrial relations put it succinctly:

Public workers select and join unions to have bargaining power, to increase compensation and to tighten work rules, but they can’t always be moving forward; in hard times a few steps backward in collective bargaining are necessary to save jobs.

Public employees gain their bargaining strength and legal status from public and political support.

But if the public becomes irritated by union stubbornness in an economic downturn, support will be withdrawn and public officials, instead of currying favor with unions, will show everyone how tough they are by fighting unions.

So, what can the public sector unions do? Understand that they live in a paradox. Thrive by bargaining hard in good times, and being flexible in hard times, and know what the members want (to keep their jobs) and what the public wants (for no one to come through hard times unscathed).

The growing chorus of parent, politician, and taxpayer voices shouting that education is racing to the bottom and waiting on a superhero for its rescue cannot be denied. Relationships once taken for granted are shifting and disappearing before our very eyes. An inevitable byproduct is the allocation of blame and the search for a scapegoat.

The Parties

In the labor-management power equilibrium, control of the budget (money!) and the continued viability of the enterprise reside in the employer. The negotiations table is the one forum in which there is an uneasy yet equal power sharing. This fragile stasis depends largely on support for labor from the public, politicians and the rank and file. When this foundation wavers, labor becomes a prime target for blame.

Lesson 1: The escalating criticism of public sector unions should concern public employers, especially education employers.

Newspaper headlines say it all: “Public Workers Face Outrage as Budget Crises Grow.” “Public Workers: The New Scapegoats?” The words are even more specific when it comes to California schools: “Is California the First Failed State?” “Waiting for Teachers’ Unions to Change.” “The Time for Teacher Accountability is Now.”

After years of being called unfair and disrespectful, and superfluous bureaucrats, I bet that some on the management side for at least a fleeting moment have thought, “Finally! The public is finally seeing the bullies we’ve had to deal with for years! They realize at last that union demands are only for the benefit of its membership regardless of the harm to programs or student achievement! The public has finally seen through the sheep’s clothing to the wolf we’ve known for years!”

This feeling of “at long last, some equal treatment” might feel good for awhile. But as the late, great diplomat and negotiator Richard Holbrooke said, “There are limits to the pleasure one can take from other people’s distress.” Indeed, when one scratches below the surface, it is not just public employee unions being attacked, it is all public employees — teachers and management. As one letter writer put it to the New York Times, “[Teachers are] not the problem. The bureaucrats (including school administrators) are. My outrage is not directed at the government workers on the front line. I am outraged by the bloated bureaucracy and those who enable it.”

Unions and their membership are often thought to be separate, e.g., “It’s the union’s agenda but our good teachers do not support it.” Sometimes this disconnection is intended to drive a wedge between the union and its members. The court of current public opinion, however, is blurring this line by

asserting our problem is the union, the employees they represent, and the system that enabled what we now conclude has been very bad behavior.

This verdict convicts all parties, and employers should be concerned about mounting criticism, which has begun to take on the aspect of “piling on” labor and management in equal measure.

Lesson 2: Management and labor must jointly acknowledge that change is needed even while challenging assumptions.

We are our own worst enemies. As one politician commented: “We can’t keep saying ‘no’ to every effort to reform and transform our schools. We’ve got to support our teachers, but we also have to hold teachers accountable.”

Another writer was more direct: “Teachers can badmouth [the documentary] ‘Waiting for Superman,’ boycott it, and hunker down. Or they can recognize they’ve reached a pivotal moment in the life of their union — and reform before it’s too late.”

We should not, however, allow this evolving criticism of labor to divide us into separate camps. We should not tolerate the creation and perpetuation of a culture of blame. Instead, we should search together for truth in the midst of the finger pointing. This is not possible, however, if we fight with each other. As Aeschylus, the father of Greek tragedy said, “In war, truth is the first casualty.”

Consider, for example, the heated debate over the “value added” approach of using student test data in teacher evaluations. Even supporters admit the data is flawed for a multitude of reasons, including the random (or deliberate) assignment of students, and the absence of measuring social skills that are crucial to early learning.

All too often however, school administrators and union leaders have defeated any attempt at teacher measurement partly by pointing out such limitations. But the politics of education have changed. When confronted with the prospect of teachers being misjudged, one commentator responded, “On whose behalf do you want to make the mistake — the kids or the teachers? We’ve always erred on behalf of the adults before.”

When the public sees the fierceness of the attack against any new methodology, it hears that it is impossible to quantify the ephemeral elusive “art” of teaching. The public hears the education establishment asserting that, unlike every other profession, teacher performance cannot be measured at all.

Labor’s Lessons teach us that this is how public education loses credibility and support. Instead of sending a message of “back off — we can’t be judged,” the education establishment should concede that the current system is failing many students and jointly pursue meaningful change, even if the path to reform runs through the bargaining table.

The Final Lesson: The Language of Negotiations

Labor’s Final Lesson is being taught across our country even as we meet because of a recent tragic event. We see a nationwide discussion over the power of words and the value of civility. It is time to

rededicate ourselves to the civil exchange of viewpoints in negotiations, especially when all parties share an abiding interest in resisting the dismantling of our public school system.

We should avoid speaking in anger, for as one educator said, “Speak when you are angry and you’ll make the best speech you’ll ever regret.” As our resources continue to shrink, emotions can run high and tempers can flare in negotiations that focus on nothing but cuts and take-aways. But consider this: it will not always be this way, and when the moment to “add back” arrives, how will the parties make the most of it? If the relationship has been ruined due to the exchange of too many angry words, when things turn around, how will the parties be able to shake hands if both have clenched fists?

It is even more damaging to abuse and overuse words to the point they are drained of all meaning. We have so many complex and critical issues to confront, and for most of them, our best chance of success is through cooperation and agreement. We do not have time to waste by casually tossing out words like “respect” and “disrespect,” “business necessity,” “State takeover,” “attract and retain,” “a well-paid employee is a happy employee and a better employee,” and finally, “it’s all for the kids.” These words are designed to distract and are the weapons of choice for issue avoidance. We do not have time for empty words.

We have grave problems to conquer, and if we heed Labor’s Lessons, we can be jointly victorious without either side seeking to be triumphant. We need to reject rigidity and embrace flexibility. For, perhaps the greatest Labor’s Lesson of all is this: The most successful people are those who are good at Plan B.

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