Fostering Collaboration between Management and a Union

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Labor unions are legally recognized as representatives of workers in many industries in the United States including the medical field. Their activity today focuses on collective bargaining over wages, benefits, and working conditions for their membership, and on representing their members in disputes with management over violations of contract provisions. Management works closely with human resources to serve the goals of the company and ensures that the company attains higher productivity at low cost. Union and management relations historically are based on mistrust, conflict of interest, and ingrained adversarial attitudes. On May 17, 2010, I began employment with the University of New Mexico Hospitals (UNMH) as a Senior Employee Relations Specialist. This paper will focus on some of the challenges and learning opportunities I have had working in this organization where unions represent a majority of employees.

As a Senior Employee Relations Specialist, I provide professional and administrative advice, guidance and services to assigned areas. I serve as a primary point of consultation, coordination and/or as a liaison for the hospital’s managers, supervisors and employees on a range of employee and labor relations policy, contract interpretation and procedural issues, plus assist in the resolution of workplace disputes and grievances. I assist in contract negotiations and labor-management committees as required for my areas of assignment. The position requires that I adhere to Federal and State Employment Laws as well as Hospital and departmental policies and procedures. Our Employee Labor Relations Department is comprised of five Senior Employee Relations Specialists, a Director of Employee Labor Relations, and a Human Resources Administrator. The Employee Labor Relations Department is supported and valued within the organization. The respect for this department has been established because of the expertise and knowledge it provides to support management and employees. It is imperative we have a thorough knowledge of our policies, the three collective bargaining agreements covering hospital employees, and all applicable state and federal laws. Senior Employee Relation Specialists are required to obtain a Certification as a Labor Relations Professional (CLRP).

On January 25, 2012, I attended Academy I: The Foundation of Labor Relations in Phoenix, Arizona. This Academy covered statutes that govern the public sector’s duty to bargain, management’s rights clause, and additional checklists for negotiations, grievances, arbitrations and resources. I enjoyed the exercises in Academy I, particularly the exercises regarding contract language. The scenarios were similar to issues that I provide advice on a regular basis, such as filling vacancies and application of seniority. The context of this Academy was an overview of subjects that are the fundamentals of labor relations.
On March 20, 2011, I attended Academy II: The Grievance Arbitration Process in San Diego, California. The Academy provided a background on the history of grievances, the importance of investigation and constructing a response. This Academy covered “past practice,” a subject which I found particularly insightful for me in my current position. The Academy defined “past practice” as the way things have been done that have become so consistent and a matter of reliance that it becomes a term of the contract. Such practice does not have to be written in a contract, but can arise on the basis of regular, repeated action or inaction by management. As I focused on learning the contracts and policies, I became cognizant that I also needed to understand how past practice could be used as setting a standard for a discipline. It also made me realize how difficult it can be to change a “past practice.” “Management cannot unilaterally change an established and accepted ‘past practice’ unless the practice is contrary to law, government regulation or unclear and unambiguous contract language. Management would need to provide notice to the union about the change and give the union the opportunity to negotiate the impact of the change it may have on bargaining unit employees.” (NPELRA, Academy II training material, San Diego, California) This concept was imperative for me to understand because I did not want to be setting bad “past practices”. I needed to gain a better understanding of how past practices could impact my advice and coaching to management. The need to support and advise management on grievances is a key component of my position. The Academy provided me knowledge of the importance of thoroughly investigating the response and union position before the issue escalates to a higher step in the grievance process or to arbitration. The ability to analyze rules, contracts, interpret contract language, past practice, and advise management on issues is imperative to gain credibility with all parties.

On January 19, 2011, I attended the Academy III: The Grievance Arbitration Process in Phoenix, Arizona. Prior to Academy, I attended three negotiation meetings, so I had a general understanding of my organization’s process. The Academy clarified the fundamentals of negotiations with unions including the importance of both parties’ willingness to give and take, the basic elements of the bargaining process, the necessity to prepare for negotiations, and conducting negotiations.

UNMH has three collective bargaining agreements: one contract with Communications Workers of America and two contracts with District 1199NM Union of Hospital and Health Care Employees. Employees who are not represented by a collective bargaining agreement follow the general hospital policies. A challenge that I faced upon taking this position was to become familiar with each contract and understand which employee groups were covered in each collective bargaining agreement and which employees were covered by the general policies. I learned quickly that the collective bargaining agreements take precedence over the general policies. My prior experience was working with only one policy and it was a relatively easy
process if management wanted to make a change in policy. In an environment with union representation, changes to the bargaining agreements must be negotiated and a mutually satisfactory agreement is necessary to implement the changes.

Senior Employee Relations Specialists provide support and assist management in determining appropriate discipline for employees, but when working in a union environment there are additional complexities. In a private sector organization without union representation, management can discipline an employee as they deem reasonable and appropriate. The employee has an option to respond with a rebuttal but generally the issue requires no further action. In the public sector with union representation the approach required differs substantially. Prior to meeting with the employee, management must issue advance notice of a disciplinary meeting. The discipline notice should include the alleged violation of misconduct and the supporting documentation. The employee is issued a "proposed" discipline with due process to respond, before a "decision" letter is issued. An employee may request to have a union representative present at meetings that may result in discipline. Employees then may file a grievance to claim a violation, misrepresentation, or misapplication of a specific and express term of the collective bargaining agreement.

There are many benefits to establishing a good working relationship with the union. My role requires me to help foster collaboration between management and the union. Improving communication between the union and management may result in fewer grievances being filed. Dialogue and conversation between the grievant and management can bring forth concerns and specify contract terms at issue. Involving the union in employee issues and concerns can help when an employee feels management is being unfair or unreasonable. In one area where a union delegate worked, he often complained, filed grievances and the overall department’s morale was poor. Senior management officials met with the union representative and the parties agreed that they would conduct ad hoc meetings quarterly to discuss issues and concerns jointly. As a result, there was less friction between the union and management. This allowed more time and resources to be directed towards focusing on quality patient care.

Building collaboration between management and unions is an ongoing process. I recognized early in my role that before I could expect management to build a working relationship with the union, I must lead by example. It is important to be approachable, reasonable yet firm. I continue to convey my values and integrity to the union and to management. I encourage management to be fair, consistent, and treat employees with dignity and respect. When possible, I look for win-win situations. There are certain issues of which I am not able to be flexible. I take a strong stance when it comes to patient care and advise
management that it is our responsibility to hold employees accountable even when this means making difficult or unpopular decisions.

Experiences with Grievances Applying Collaborative Labor Management Skills

The following four cases are examples of challenging employee situations that required management and union collaboration. Three of the cases resulted in successful resolutions between the parties. The fourth case is an example of when management and the union were not able to reach an agreement and the union referred the case to arbitration. These cases involved Mental Health Technicians (MHT) or a Mental Health Associates (MHA) who worked in a behavioral health facility. The primary responsibility of these positions are to provide a safe, caring, supportive, and nurturing environment where children and adolescents can feel comfortable and receive appropriate treatment. These patients are children who may be suffering from depression, could possibly be psychotic and often have often suffered abuse. The hospital maintains a policy against harassment of any kind and expects employees to be courteous and respectful to all employees, patients, and patient families.

Case 1- Sexting in the Workplace

Richard was an employee who worked as a MHT in UNMH’s Children’s Psychiatric Hospital. Several patients brought forth allegations regarding Richard making inappropriate comments to patients or showing them inappropriate websites and messages on his personal cell phone. Each complaint was investigated but there was inconclusive evidence to substantiate the allegations. Richard was counseled on taking proactive measures to avoid being alone with patients and that he needed to follow the hospital’s electronic device policy which prohibited the use of cell phones in patient care areas.

Three months later three co-workers brought forth concerns regarding Richard’s interaction with a patient. Richard was issued a written reprimand for his actions. The union filed a grievance and proposed that the employee be placed on a performance improvement plan (PIP). Although management could have insisted issuing a written reprimand as discipline, it had been difficult to prove the misconduct. Management agreed to the union’s proposal and placed the employee on a PIP. In accordance with the PIP, management met regularly with the employee and provided the employee with additional training on appropriate behavior and boundaries with patients. Richard was advised that any further incidents could lead up to and including termination.

Approximately two months later, a patient made an allegation that Richard had written a message on an electronic device and showed her the message which asked if she had particular body parts pierced. The incident was investigated and Richard was discharged. In accordance with the collective bargaining agreement, the union followed the grievance process
and filed grievances at Step I, Step II and Step III. All three grievances were denied; however, the union did not refer the grievance to arbitration.

Approximately six months later, Richard filed a charge of discrimination with the New Mexico Human Rights Bureau alleging that he had been sexually harassed. The charge was determined to have no probable cause and was dismissed. A valuable lesson I learned while advising on this case was the importance of being familiar with the collective bargaining agreement, conducting a thorough investigation, properly issuing discipline, following the grievance process and documenting each step. Six months had lapsed before Richard filed a discrimination charge and having solid documentation was crucial to management’s ability to respond with factual information, with the end result being a no finding for the charge.

Case 2-Behind Closed Doors

This case involved two MHT’s Jack and Cindy. Cindy alleged that while she was in a linen closet, Jack walked in behind her and grabbed her “butt.” During the investigation, Cindy was adamant that Jack intentionally grabbed her, that is was not a brush or accidental touch. There was no video footage taken inside the linen closet, but a video showed that she had entered the linen closet and shortly thereafter Jack had gone into the linen closet. Cindy reported the allegation to management and I was assigned to conduct the investigation. I met with Cindy and her union steward; she was visibly shaken by Jack’s alleged actions. Cindy claimed that on a prior occasion during her training period Jack had made a suggestive comment to her, and she told him that the comment was unwanted and Jack stopped the behavior. Cindy stated that she had been scared to report the first incident to management because she had just started the job, but added that there had been no problems since she told him to stop. She elaborated that they had become friends and on a few occasions sent text messages to each other. The text messages were casual conversation. Cindy never went on a date with Jack and had not shown him any romantic interest. Cindy was adamant that this current incident was unprovoked and unwelcome. She was worried about retaliation which I assured her would not be tolerated.

Later that day I met with Jack who was accompanied by his union steward and his supervisor. Jack struggled to make eye contact and denied the allegation that he had inappropriately touched Cindy while they were in the closet. During the interview, Jack requested a caucus with his union steward. The supervisor and I agreed to step out of the room. When we returned, I continued with my questions and Jack continued to deny the allegation. I understood that without sufficient proof of Jack being inappropriate to Cindy that this incident had become more of a he-said, she-said situation and would be difficult to proceed with a recommendation of termination. Jack was placed on paid administrative leave and reminded that retaliation would not be permitted. Shortly after the investigative interview, I
met with the union steward and together we reviewed Jack’s personnel file. I shared the supporting documentation which substantiated that Jack had a history of documented performance issues.

For example, eight months prior to this incident Jack had been transferred to a new position. On the first day in his new position he reported to work impaired. As a result of his behavior, his new manager did not want Jack to continue in his new role and his prior manager allowed him to return to his former unit. During the meeting with the union steward, it became apparent that Jack had not been truthful to the union steward when asked about his work history. The union steward openly shared his disappointment with Jack and even commented on Jack’s nervous behavior during the interview. Soon afterwards, the union steward met with Jack and encouraged him to resign rather than be terminated. In the end, Jack did resign and no grievance was filed.

Establishing a working relationship with a foundation of trust with the union steward helped to resolve this case amicably. The union steward personally worked with this employee (Jack) and the employee who had alleged the sexual harassment conduct (Cindy). Although there had been no formal discipline issued to Jack for unprofessional behavior, he was not a star performer and neither management nor the union was disappointed that Jack had chosen to resign. This case demonstrated how sidebar conversations can be beneficial in resolving a case.

Case 3-De-escalating a Violent Situation

Fred was a MHA about whom management had concern and believed should be considered for a “fitness for duty” evaluation due to his disruptive behavior towards management. There was also concern that he could become violent in the workplace. Fred was a long-term employee and his behavior, to some degree, had been accepted by others since that is “just how Fred behaves.” On multiple occasions he disputed his performance evaluations where he was rated as “acceptable.” He wanted to know why he had not been given the highest ratings in every category.

For many years Fred was an effective MHA whose responsibilities included working with children, adolescents and families. As time progressed, it became more apparent that his relationship was his supervisor was deteriorating and he struggled to accept any criticism or feedback regarding his work performance. He began to challenge his peers, management and the clinical director. He isolated himself and became suspicious of everyone around him. Fred filed numerous complaints of unfair treatment with the union, upper management, and Human Resources. Each allegation was investigated but there was no substantial evidence discovered to indicate he had been treated unfairly. During a clinical team meeting, the medical director
requested that a patient’s treatment plan be changed. Fred thought the change was a reflection on him for not doing his job and challenged the judgment of the medical director, thus disrupting the entire meeting. As a concern for safety, a decision was made requiring Fred to attend a fitness for duty evaluation. Management recognized that Fred would be very upset over the fact that he was being required to attend the evaluation.

I contacted the union steward and requested him to attend the meeting when management informed Fred that he must undergo a psychiatric evaluation by an independent psychiatrist. The union steward agreed to attend the meeting and appreciated that we had taken the initiative to contact him in advance. The union representative was able to assist in calming Fred during this meeting when he became aggravated and began questioning management’s decision. The union steward quickly asked to speak alone with Fred. They stepped out of the meeting for about 10 minutes. When they returned to the meeting Fred agreed to attend the evaluation.

Fred was evaluated by an independent psychiatrist and was deemed to be fit for duty; however, the psychiatrist provided suggestions to help deescalate potential violent situations. Before returning to work, Fred, accompanied by a union steward, was provided notice that his pattern of discourteous behavior was unacceptable, and if he continued to behave inappropriately it would result in discipline. Within a few months Fred became uncooperative with his supervisor, failed to follow his instructions and was formally disciplined.

Fred filed a grievance; however, the union agreed not to take this case to arbitration and informed Fred that if he wanted to proceed he could seek his own legal counsel. Fred’s grievance was heard at Step I, but Fred did not refer the grievance to arbitration. In this case, management and the union worked collaboratively in the best interest and for the safety of patients and employees. Effective communication with all parties was pivotal in handling a situation with a potentially violent employee.

**Case 4-Uncompromising Standards**

The final case involves a termination. There was no compromise between the union and management and the case went to arbitration. Lucas was a MHA working in the Children’s Psychiatric Center (CPC) from 2009 until his termination in 2011. The hospital maintains a policy against harassment of any kind and expects that employees be courteous and respectful of other employees, patients, and patient families.

The incident leading to the termination of Lucas involved a 16 year old patient who had a history of disruptive disorder, attention deficit hyperactivity disorder, and depressive disorder. As a “prank” Lucas had left the patient’s room in disarray. Lucas had unfolded clothes, rearranged personal items, and thrown the patient’s mattress off of the bed frame.
The patient had been playing basketball with other patients and during the game he was hit in the face by another player and was already upset before returning to his bedroom and finding it disheveled. The patient was visibly upset and it took some time to calm him down. Lucas’ supervisor was notified of the incident. The supervisor informed Lucas that his behavior would not be tolerated.

While this incident was being investigated, other staff members brought forth concerns that Lucas had made negative comments about women, patients and their sexual orientation. The staff stated that they were intimidated by him and concerned both for their safety but the safety of patients. This behavior clearly created a hostile environment in violation of the Hospital’s harassment policy and Lucas was terminated as a result of his misconduct.

The union pursued arbitration after the grievance was denied at Steps I, II, and III. The union stated that the penalty was too severe because Lucas had no prior disciplinary record. The union argued that progressive discipline had not been followed and termination for one single incident was too severe. The arbitrator ruled that the hospital had just cause to discharge the grievant because he violated hospital policy by mistreating a patient and progressive discipline was not warranted in this circumstance. Lucas’ work record did not constitute a mitigating factor. The grievance was denied.

The hospital and I believed that the arbitrator’s decision protected our staff and patients. It was important to me that management staff not be boastful or gloat in regard to the arbitrator’s decision. I was concerned that this could damage the positive working relationship with union representatives. To avoid this, management held a debriefing session after the arbitration.

The Executive Director set a tone for moving forward and fostering positive working relationships between the staff and union. Achieving a careful balance was necessary following the decision. Professionally, staff had an opportunity to work closely with me and this helped them to better understand my role in the organization. This case reinforced that I was there to support them and the organization’s mission to provide quality safe patient care.

**Conclusion**

This paper has focused on some of the challenges and learning opportunities I have had working at UNMH as a Senior Employee Relation Specialist. The NPELRA training I received covered statutes that govern the public sector’s duty to bargain, management’s rights clause and additional checklists for negotiations, grievances arbitrations and resources as well as an overview of the fundamentals of labor relations. The Academy also provided a background on the history of grievances, the importance of investigation and constructing a response. Finally, in the training attended from the Academy regarding the Grievance Arbitration Process I gained
insightful information and clarification in the fundamentals of negotiations with unions including the importance of the basic elements of “give and take” in the bargaining process to include preparation and conduction of and for the negotiation process. The training helped me to sharpen my skills in a variety of areas to provide a better overall experience. These newly acquired valuable skills included: contract language as well as dealing with on-going issues such as filling vacancies and application of seniority. I also was able to finely hone my skills regarding “past practice” which has ensured consistency and reliance in my daily endeavors. And finally, with a union represented environment I am more confident to face the challenges of my position and become better acquainted with each contract in which employees are covered by collective bargaining agreements and general policies.

A major role of a Senior Employee Relations Specialists is to provide support and assist management in determining appropriate discipline for employees, but when working in a union environment there are often additional complexities. In the private sector, an organization without union representation, the management can discipline an employee, as they deem reasonable and appropriate. The employee has an option to respond with a rebuttal but generally the issue requires no further action. The approach however, differs substantially, in the public sector with union representation. An employee may file a grievance to claim a violation, misrepresentation, or misapplication of a specific and express term of the collective bargaining agreement. Despite the fact that unions and management may have adversarial beliefs and differences of opinions, it is sometimes possible to assist the two parties to work through their differences in an amicable manner. When this happens, time and energy can be placed on reaching the organization’s mission and goals. Through many years of a collaborative effort, UNMH has been successful in establishing cordial working relationships between management and the union that in turn allows our employees to focus their time and energy to provide quality patient care and support a hospital that performs “miracles” every day.

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