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Institute for Law and the Workplace

Fall 2001

Vol. 18, No. 4

William K. Strycker
Madison Area Technical College

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Strycker, William K., "Vol. 18, No. 4" (2001). *The Illinois Public Employee Relations Report*. 78.
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Illinois Public Employee Relations



REPORT

Autumn 2001 • Volume 18, Number 4

Labor Management Cooperation: Key to Organization and Employee Success

by William K. Strycker

I. Introduction

For quite a few years the term Labor Management Cooperation (LMC) has been mentioned as a strategy in numerous employment relations settings. The term means different things to various individuals and organizations. For some it represents hard feelings and animosities. For others, it represents a turning point in relationships and organizational effectiveness. I define LMC as a variety of ways employees and managers work together on issues of mutual interest for the benefit of all.

Approximately twelve years ago the Wisconsin Employment Relations Commission (WERC) began a pro-active program to improve labor management relationships throughout the state. After initial training, through the Department of Labor, the WERC conducted six regional conferences throughout the State. These LMC overviews attracted over 550 participants representing numerous public and private sector employers and labor organizations. It was clear from these initial programs that both labor and management were interested in improving relationships in the workplace.

This article will focus on the author's personal experiences and observations as a WERC Commissioner, an employment relations consultant and a management advocate. It will cover benefits and objectives of beginning an LMC effort and will explain interest-based strategies. It will provide examples of how groups actually have applied the strategies and suggest how to begin an LMC initiative.

II. Why Parties Consider LMC

Some parties consider LMC initiatives because they are tired of doing business in the old way. Confrontational environments have not benefited either labor or management. Antagonistic environments have resulted in numerous grievances, arbitrations, job actions, and litigation. For example, one medium-sized employer and its union decided to improve relationships after leadership changes occurred. For many years they had experienced sixty to seventy grievances annually. These typically resulted in fifteen to twenty arbitrations each year.

Other organizations and employee groups have encountered crises, which have necessitated improved relationships. One Wisconsin city faced a major plant closing that caused many layoffs, greatly reduced the tax base and challenged its ability to continue city

services at a satisfactory level. This crisis served as the motivation to work together, improve relationships and productivity. This cooperative environment has continued for over ten years.

Technical innovations have also necessitated changes in the employment relationship. One employer was involved in a modernization plan that cost in excess of \$2 billion. Rather than perpetuating what had been a rather challenging relationship, labor and management worked together to retrain existing employees and negotiate transition agreements necessary to make the new technology and process systems work effectively.

In other situations, parties have begun LMC initiatives because labor and management leaders have realized the value of improved cooperation. Leadership may have recognized that improved effectiveness is in the best interest of both labor and management. Leaders have sometimes been exposed to these concepts at conferences, programs, or through conversations with colleagues. Still, others reap LMC benefits by exercising common sense and good judgement.

III. Benefits of LMC

Whatever the precipitating reason or reasons that move parties to improve

INSIDE

Recent Developments	9
Further References	11

relationships, labor and management generally hope to realize one or more of the following benefits.

Improved Productivity and Effectiveness: Labor and management have understood that the worker knows the job best and can provide significant contributions. When employees are given the opportunity to participate in meaningful workplace design decisions, effectiveness and productivity increases have generally followed. The insights of the person actually doing the work are invaluable. Meaningful input has a tremendous impact on the individual's commitment to ensure that changes are effective.

Improved Employee Morale: The opportunity to make meaningful contributions can be very motivating. People take great pride in seeing positive results occur because of their efforts. Morale can also increase because of the positive impact of teamwork. Most LMC gains are a direct result of improved team functioning. Making important contributions and doing meaningful work positively impacts employee morale.

William K. Strycker is the Vice President of Human Resources at Madison Area Technical College, Madison, Wisconsin. The college provides a comprehensive curriculum of technical, liberal arts, business and life enrichment studies to approximately 50,000 students annually. Prior to this position, Governor Tommy Thompson appointed him to a 6-year term as Commissioner with the Wisconsin Employment Relations Commission. The WERC administers the State's labor law and provides mediation, arbitration and labor management cooperation services. Before the commissioner appointment, he provided representation for organizations in human resources and labor relations areas. Questions regarding this article can be directed to Will at 608/246/6901, wstrycker@madison.tec.wi.us.

Improved Work Environment: LMC efforts often result in the redesign of tasks and functions. As such, work may become less fatiguing and result in fewer injuries. For example, a road crew involved in a work redesign project changed the way in which patching material became available to fill potholes. Rather than reaching up and into the back of a truck bed with a shovel, a tray was installed on the back of trucks so that the patching material was delivered to the workers at knee level. This change decreased the time needed to do road repairs. More importantly, the number of back and shoulder injuries dropped dramatically.

In addition to job redesign, labor and management can work together to address general safety issues. The traditional approach of management independently implementing safety rules and procedures is extremely shortsighted. For example, one employer used this traditional approach in unilaterally implementing confined entry work rules. The employer identified a lengthy list of employees subject to the confined entry regulations, decreed that these employees were subject to physicals and cardiopulmonary examinations and prohibited facial hair for individuals who may have been required to wear a respirator. In this "act and react" labor management relationship, the union filed a grievance arguing that the work rule created by management was overbroad, unreasonable and violated the contract. After a lengthy and expensive proceeding, an arbitrator concluded that the work rule was unreasonable and violated the collective bargaining agreement.

With this "set back" the employer decided to discuss the matter with the union. With the union's input the employer learned of several job classifications that should have been covered by the work rule. Further, the union identified other job classifications that would not be involved in confined entry type work and therefore, should be

excluded from coverage. Working together the parties created appropriate rules and procedures. Labor and management also developed and provided extensive safety training for the impacted employees. The joint training and revised rules were well received and accepted by the staff. While this initial experience was painful for both the union and management, it served as a turning point in their relationship because the importance and value of cooperation became very clear.

Improved Communication: When the parties work together effectively, the communication generally improves because there is a tendency to share information. Early and open discussion can help reduce future problems. The previous example of the confined entry safety issue demonstrates how improved communication is beneficial for everyone involved. Another example of how LMC can lead to improved communication involved a school district school business manager. He, along with members of the school district management and union leaders, participated in a two-day LMC training program. At the conclusion of the training, participants were asked to identify the most significant outcome of the program. The business manager identified the opportunity to meet and work with one of the second shift custodians as the most significant outcome for him. He explained that for over five years he had been passing her in the hallway, as he left for the day, normally just uttering a "goodnight – see you tomorrow." As a result of the time they spent in training, he learned that she had tremendous ideas and insights. He looked forward to working with her in the future, recognizing that she could make many positive contributions to the organization.

IV. Necessary Elements for Success

LMC cannot be mandated or decreed. Both parties must voluntarily enter into

this process. If one or the other believes that they are forced, only problems can result. While the enthusiasm for LMC may vary between the groups, the crucial point is that both parties enter the process on a voluntary basis.

If the parties decide to adopt a cooperative strategy, it is vital that key union and management leadership be fully committed. With any cooperative relationship or initiative, there are bound to be problems and difficulties. If the leadership of each group is not committed to the success of the effort, it will likely languish and eventually fail. For example, two mayors of nearby cities were interested in improving their cities' labor relations environment. After the election, the mayor of the first city spent time in planning the LMC effort with department heads and union leadership. This mayor informed department heads of his expectations, attended all of the training and served on the LMC steering committee that coordinated the initiative. The other mayor, while endorsing the LMC initiative, was not "available" to plan the training or the program. When the training occurred, he only attended a brief portion of the program. After the initiative was begun, he shifted his attention to other areas of city government. Department heads were not provided sufficient direction or held accountable by the mayor. A system was not developed to monitor progress. The lack of the mayor's support was obvious from the beginning. Needless to say the LMC initiative in the second city was not nearly as successful as that in its neighboring community.

Successful LMC initiatives also require balanced groups of labor and management. Groups that are dominated by one group or the other cannot be successful. While being balanced, it is also important to ensure that necessary areas of the organization are represented. The richness of people's backgrounds helps the group arrive at better decisions. Diverse experiences help lead

to effective conclusions. Successful labor management groups need to receive input from all impacted areas of the organization.

It is also important that LMC groups operate in a consensus decision-making format. The true value of this process is that all members are able to share perspectives regarding various problems and issues. The process of reaching consensus helps the group develop better solutions. Consensus is reached when a group finally agrees on a single alternative. It does not mean that each group member overwhelmingly embraces the decision. Rather, it does mean that each group member can say, "I believe you understand my point of view and I believe I understand your point of view. Whether or not I prefer this decision, I will support it because it was arrived at openly, fairly, and it is the best solution for us at this time". In the process of addressing participant concerns and reaching consensus, a stronger, more effective result is achieved.

In order for an LMC initiative to be effective, individuals must communicate openly and honestly. If individuals withhold information or feelings, the group will not grow and the process will not be effective. Many times individuals need to take risks, even though being open and honest, in some instances, can be threatening and uncomfortable.

LMC groups need to know the limitations under which they are operating. Is a group going to provide an advisory recommendation to another body? Is the LMC group responsible for recommendations, as well as implementation? Are there cost limitations identified with a particular project? Knowing the structure and restrictions under which a group is operating is crucial for success.

For an LMC initiative to be successful, parties need to understand the basic elements. Parties need to be clear on what constitutes reaching consensus. Also, practicing group decision-making skills in a non-adversarial setting is

important. Developing ground rules that parties agree to follow is also important. Oftentimes, parties find it helpful to discuss and address prior problems they have experienced so that the mistakes are not repeated.

V. Interest-Based Process

Many organizations that experience LMC success rely upon a systematic, consistent process to deal with issues and problems. The interest-based process that will be described provides structure and predictability to the relationship. If problems develop as parties apply the process, they can always refocus on the appropriate step of the process. Also, following an interest-based approach helps remove the emotion from the issue so that objective solutions can be developed.

To understand this concept, it is important to clarify some important terms. An *issue* is a subject that is under discussion or in dispute. An issue should be stated clearly and objectively. While both parties are likely to have some experience with or some understanding of the issue, it is important that background be provided so that the issue is fully understood by all.

Perhaps the most important term to understand is interest. An *interest* is one party's concern, need, desire or goal behind an issue. An interest should be expressed broadly. Another key term is position. A *position* is one party's solution to an issue. Often a position is exaggerated and very specific. Other times a position is not totally responsive to the issue.

An example may help clarify the differences between an interest and a position. Often health insurance becomes a heated topic of discussion during negotiations. Frequently employers will take the position that employer paid insurance contributions should be capped. Often, unions will respond by taking the position that members should not experience any increased

costs or reduced benefits. These are concepts with which we are all too familiar.

In using an interest-based approach, we would look at what underlies those positions. The employer actually has an interest in controlling the employer's health insurance cost. Further discussion might also lead to the recognition that the employer also has an interest in having a competitive benefit program to attract and retain quality employees. In looking at the union positions, an underlying interest would likely be to have an effective benefit program that meets member needs. Another union interest might be to insure that employee health insurance contributions remain at a reasonable level.

When parties deal with each other on the basis of positions, effective problem solving becomes very difficult. Very often, if one party attains a position, it is at the expense of the other party. Also, satisfying a position may not actually be the best solution in the long run.

Focusing on interests, however, provides a positive climate for group problem solving. Interests are broader and, therefore, there are more alternatives that may satisfy the interests. In the health insurance example, things such as redesigning aspects of the health insurance plan, changing cost components of the plan, could help address each party's interests. Often when groups identify interests, they are amazed to discover the many similarities. Obviously, if parties focus on the similar interests, resolution is more likely. Shifting from a position-based to an interest-based environment can be very challenging.

A successful interest-based approach involves several specific steps. It is important that the steps be followed sequentially and completely. Often parties will get into trouble by trying to short circuit the process and leap toward the answer. Invariably, when the steps are omitted or not fully completed, solution quality suffers and problems develop. While steps must be followed

sequentially, often it is necessary to review prior steps to further refine and clarify them.

Step 1 is to define the problem or clarify the issue. This can be a deceptively simple step. Often parties begin the process without a clear understanding of the actual problem. In addressing a scheduling dispute within a community college, the parties framed the issue as "addressing equity matters related to a change from an 18-week semester to a 16-week semester." To meet the needs of several different programs, the college had compressed certain program offerings from an 18-week format to a 16-week format. The parties recognized the need to make this change in order to be responsive to the students and accrediting agencies. The employees were very concerned that some colleagues would be receiving additional time off after the courses were completed. While addressing this problem in an interest-based format, the parties began discussing the background and the need to make the change. Concerns about equity and workload among the faculty were generally discussed and understood. It became evident during these discussions that the major problem was the perceived inequity caused by some staff having two additional weeks of "vacation" after the 16-week classes ended.

The college president was able to clarify that faculty working in a 16 week format would be asked to perform other college service during the 2-week period. The parties discussed the possibility of providing academic advising services, student recruitment assistance and curriculum design. After this meaningful discussion to "clarify the issue," the parties realized that equity related to the scheduling change was truly not the issue. Rather the parties concluded that the issue related to effectively communicating the implications of the schedule change to faculty and staff. Again, what appeared to be a deceptively clear issue in the beginning, turned out not to be the issue at all.

Step 2 is to identify the interests of each group. As stated before, this requires moving beyond traditional positions and responses to the problem. Parties have greater success in resolving issues if the interests are broadly stated. Broader interests provide greater opportunity to generate mutually acceptable options that satisfy true concerns.

In one case, two parties were dealing with concerns relating to probationary periods for new employees. The employer wished to expand the length of the probationary period to provide more time to review performance. The union, on the other hand, wished to reduce the probationary period so that the new employee could enjoy the full protections of the labor contract and the union could begin collecting dues.

Traditional employer positions relating to this matter could include extending the probationary period by six months and allowing for probationary period extensions as determined by management. Traditional union positions could include reducing the current probationary period by forty-five days and providing total contract coverage after thirty days of employment.

Following an interest-based approach, the employer's interests included: being able to evaluate performance on all aspects of the job, providing a fair chance to learn the job, extending the probationary period only when necessary, having a good fit between the people and the jobs, and having the employees and department working well. The union's interests included: providing adequate training for new employees, insuring that employees received informal feedback regarding performance, involving the union in performance appraisals, insuring that the employer provided workable tools and equipment, insuring that probationary period extensions were appropriate, and providing contract protection as soon as possible.

Analyzing the parties' interests makes it clear that both wanted to promote employee success, insure that

individuals had a fair opportunity to learn the new jobs, and insure that quality performance occurred. Focusing on common interests is very helpful in satisfactorily resolving the issue. Parties are often surprised that they have many common interests.

Step 3 involves developing options. An option is a potential partial solution for an issue. Participants should use brainstorming techniques and be encouraged to be creative. All participants bring unique perspectives and important ideas. This diversity of input helps groups build stronger solutions. The parties addressing the probationary period issue developed a wide range of options concerning how and when to extend probationary periods, training, feedback, union and co-worker involvement.

Step 4 is to evaluate the various options. Often parties use standards to evaluate options. Standards are yardsticks against which to measure the various brainstormed options. Standards that some groups have used effectively include that the option be: *fair, affordable, workable, and promote or maintain quality*. When parties apply the standards to each option, valuable discussion occurs which helps clarify and explain the meaning of the option. During the evaluation process, additional options can be added. Using standards helps provide some degree of objectivity. Some groups have used various ranking techniques to reduce the number of options to be considered as part of a final solution. While a ranking process helps parties eliminate less viable options, ranking reduces conversation that may be helpful in reaching a more satisfactory decision.

Step 5 is to agree on a tentative solution. Often, categories (groupings) emerge that are helpful in reviewing the feasibility of options. For example, several categories proved helpful for organizing options for the probationary period issue. These categories included training for new employees, probationary period timeframes, evaluation/ap-

praisal process and probationary period extension. The parties placed options that satisfied three or more of the standards into one of these various categories. After these options were grouped in the categories, the team reviewed the categories and reached consensus regarding each. After consensus was reached within each category, the following solution was created:

Contract Language

Length of Probation

All newly hired employees shall be considered probationary for the first 66 days worked. This probationary period may be extended by mutual agreement of the employer and the union. Probationary employees shall not have recourse to the grievance procedure if dismissed during the probationary period.

Completion of Probation

Continued employment beyond the probationary period shall be evidence of satisfactory completion of the probationary period.

Letter of Understanding (not to be placed in the contract)

- Modify probationary employee evaluation form.
- Add a reference to probationary period extension option.
- Add Instructions to form.
- Include scheduled meeting date and a statement that the Union may attend as an observer.
- Supervisors should be encouraged to regularly provide performance feedback to new employees.
- Provide an area on the form to identify additional training needs.
- Create a new document to accompany employment confirmation letter.
- Encourage early meeting to review duties.
- Mutually develop training plan.
- Identify Human Resources support staff and union as a resource. District will advise union of new hire.
- New employee committee will

contact new employee, welcome, mentor, provide assistance where needed.

Step 6 involves developing an implementation plan for the agreed upon solution. This involves answering several basic questions. Who? What?, When?, Where and How? It is important at this point to capture what will be done, when it will occur and who is responsible for insuring that it happens. Groups feel frustrated if ineffective action occurs after the hard work of addressing the issue. A thorough implementation plan with specific accountabilities helps guard against inaction. Often a part of the implementation plan is to report progress to the group that developed the solution. This can be part of an ongoing assessment of the result.

Regarding our probationary period example, individuals with specific responsibilities were identified and timetables established for each activity. The forms to be developed were scheduled to be reviewed by the negotiating committee at a future meeting. Other deliverables were also to be presented to the committee. The group also decided to review the results one year after implementation in order to make needed modifications. By creating this implementation plan, the group was assured that the appropriate follow through would occur.

Step 7 is to evaluate the results. As was mentioned earlier, the definition of consensus involves the understanding that the solution reached is the best solution for us at this time. As such, it is important to recognize that the results need to be reviewed and potentially modified in the future, if necessary. Many times, a solution will yield unanticipated results. As such, there needs to be a way to address the problems. Often times minor fine-tuning can dramatically strengthen the decision. It is important that consensus, once again, be reached within the group to authorize these modifications.

The parties working on the probationary period issue were pleased with the

results that provided the following:

- Reduced concerns about absenteeism, as days absent did not count towards the completion of probation.
- Probationary period extensions needed mutual agreement which helps insure that management takes evaluation responsibilities seriously.
- A modified evaluation form which covered many important areas.
- Union representatives attendance at evaluation sessions.
- A training plan for each new employee.
- Assurance that all important components of the job were evaluated.
- A new employee welcoming committee that provided mentoring and technical assistance.
- The group agreed to meet 6 months after the implementation to review the results. The parties agreed to make necessary changes prior to the next round of negotiations.

The job market had become very difficult which made the retention of new employees even more important. The welcoming committee and the use of mentors are good examples of how an interest-based process can provide unanticipated dividends. While the parties initially focused on the probationary period issue, it became obvious that improving employee retention benefited everyone and was crucial for organizational success.

While the steps of the interest-based process seem simplistic and clear, parties need to exercise great judgement and control in working through the process. Often there is a temptation to skip ahead in the process. This invariably causes problems and reduces the quality of the decision.

VI. Labor Management Cooperation Applications

Labor management cooperation strategies have been instrumental in improving productivity and quality in a number of organizations. Several examples follow.

One nursing home was experiencing a large number of absenteeism and sick leave abuse problems. This increased overtime costs and necessitated employees working in "short-staffed" situations. Interestingly, labor representatives initially raised this issue. The union identified that sick leave abuse was posing a tremendous problem for conscientious employees. While some overtime was appreciated, the excessive amount had become a burden. The union was concerned about providing due process for potential offenders. The union was also concerned that conscientious employees not be disadvantaged.

The parties jointly analyzed the problem. It was clear that absence rates were higher among new employees than seasoned veterans. It was also clear that many of the new employees were working the third shift and weekends. Working together, the parties improved the new employee orientation process, stressing the need for regular attendance. Further, a new employee mentoring program was put in place. In this program, veterans were matched with new employees so that the newcomer had a ready contact in the event problems developed. The parties believed that this positive peer influence would be helpful in a number of areas, in addition to attendance.

A point system program for absences was developed on a trial basis. Like other point based systems, absences resulted in the accumulation of points. At specific levels, warnings and other discipline occurred. The union and management were able to build in safeguards that helped protect employees who were experiencing "legitimate" problems that caused absences. Economic incentives for good attendance were also introduced. Union and management felt that it was important to meaningfully recognize good attendance. The effectiveness of this absence reduction program was due in large part to the cooperative approach utilized by labor and management.

ment representatives jointly implemented the program, trained employees and took a united position against absenteeism while protecting individuals with legitimate attendance issues.

The parties also focused on the increased absences on third shift and weekends. By creating alternative scheduling options using part-time employees, the burden of working excessive overtime amounts and operating short-staffed was reduced.

In another instance, the sanitation department of a large municipality was heavily criticized because of rising costs. Management had retained the right to subcontract this work and it appeared to many that this might be the only way to meaningfully reduce costs while maintaining service. Prior to implementing a contracting alternative, labor and management met to discuss the problem. It became apparent that the higher costs were directly related to the use of three or four employees per truck.

On a trial basis, the parties agreed to automate aspects of the process. One area of the city eliminated the use of garbage cans and substituted carts. The wheeled carts could be positioned and dumped through an automated lifting process. With this new equipment, the size of the crews was reduced to one or two employees per truck. While there was some initial equipment expense, it soon proved to be a money-saving venture. In addition to the staff reductions, injuries were greatly reduced.

Management had agreed at the onset of the cart program that current employees would not be laid off if it proved successful. The commitment to adjust staff based on attrition was necessary to gain membership support. After the initial success of the program, it spread to other areas of the city until it was fully implemented. Employees liked the new aspects of the job, including the reduced physical burden and fewer injuries. While union membership was reduced, it occurred through attrition leaving a secure group

of employees. The alternative would have been to negotiate severance and layoff benefits prior to the elimination of all positions. This agreement to modify the process worked to the benefit of everyone involved including the taxpayers.

The Building Inspection Department of a large municipality began a labor management cooperation effort as a result of suggestions provided by employees. It was felt that there were numerous areas in which labor and management could cooperate for the benefit of all. Code enforcement had been an area of frustration for both parties. By working together, a process was created that helped deal with the volume of code complaints. A new system was created in which property owners received advisory notices rather than work orders. The department found that almost 50 percent of the issues were resolved without the need to issue work orders. Inspectors were only sent to sites if there was no compliance after the advisory notice. This had a positive impact on the workload of the building inspectors by focusing their efforts on the more difficult code compliance issues.

LMC strategies can be very helpful in addressing a variety of workplace problems. For example, a school district used a collaborative approach to resolve budget problems at one of its middle schools. This particular school district had been using collaborative strategies to negotiate labor contracts for a number of years. A middle school assistant principal, who had been a member of the bargaining team, saw great value in using this process to address issues in his middle school. His principal and the building teacher association leadership were also supportive. Training was provided to the school staff and several students during one of the district inservice days.

The school was able to apply the training to address a budget reduction problem. Because of significant finan-

cial difficulties, budget reductions needed to occur throughout the district. Middle school teacher association leaders and management wanted to work together to best meet the needs of the school. They concluded that, while this was an unpleasant matter, they knew the situation better than others. Working together, they made the necessary reductions while causing the "least amount of damage." While the financial dilemma was very troublesome, all parties felt that with the input of the school staff they had done the best job possible. The openness, candor and commitment exhibited during the process had positive impacts on staff morale during this difficult time. It should be noted that the district's other middle school took a traditional approach to the financial problem with management making the budget reduction decisions independently. The teachers and staff chose not to participate in the process. Predictably animosities developed, decisions were undermined and students suffered.

Another labor management group dealt with a workplace problem related to hours of work. A number of employees had been experiencing childcare and other scheduling problems. The normal hours of the department had been from 8:00 a.m. - 4:30 p.m. The labor management committee had concluded that some changes could occur that would benefit both labor and management. On a trial basis the committee experimented with variable start times. In this experiment, employees could start an 8 hour shift between the hours of 7:00 a.m. and 9:00 a.m. This flexibility proved very helpful for individuals who had child care, educational or other scheduling needs. Management found that by implementing this variable start time, the operation of the office was extended by two hours each day which provided greater access. After the initial success of this scheduling change, the parties explored job-sharing arrangements for some of the positions.

The job sharing arrangement provided various flexibilities for management and employees alike.

In addition to improving productivity and addressing workplace problems, effective LMC efforts can help improve the overall work environment. Applying these principles can be very helpful in job redesign matters. The previously mentioned sanitation department example greatly reduced the stress and strain, associated with refuse collection. Productivity increased and injuries decreased. While this positive change may have seemed obvious after it was implemented, it only came about as a result of an effective labor management cooperation effort.

Many LMC efforts have been instrumental in improving safety of the workplace. After all, the employees who are actually performing jobs on a day-to-day basis know them best. This wealth of information can be tapped to make important improvements. Improving lighting, changing work design, ensuring that safety equipment is used, are ways in which LMC efforts can contribute to an improved work environment.

While improving productivity, addressing workplace problems and improving the work environment are important, the process involved in doing these things also leads to increased employee morale. Morale improves when employees feel valued. Morale improves when individuals can see that their input is received and implemented. Effective teamwork and cooperation improves morale. Working in a positive, productive and meaningful environment helps everyone.

VII. How To Begin

When beginning an LMC process, it is important to discuss the concept with your counterpart. It is important to answer some of the following questions: What objectives would we have? What areas of the organization might be most receptive? What support do we need from members, supervisors, elected

officials and others?

It is important to begin with small steps. Possibly, apply the approach to your next grievance. Possibly, suggest that a small union management committee be formed to address safety issues. Possibly, agree to use this approach during your next round of negotiations. The important thing is to practice the process and build on the successes. Sometimes parties begin too broadly and are unable to respond to the problems that develop.

After discussing the concept with your counterpart, it is also important to obtain some education. This can be done by attending conferences, reading resource material and meeting with groups that have experienced success. Joint training for union and management leaders would be very helpful. Practicing the process in a training environment is beneficial for long-term success. Meeting with groups who have experienced failure can also be very insightful. Resources may be available through management associations, unions and consultants. After an educational base has been established, it is important for those involved in the process to develop ground rules, clarify commitments to the process and develop the environment necessary for success.

After these preparatory items are completed, it is important to establish a support mechanism. Often, this takes the form of a steering committee of labor and management leaders who are committed to monitoring the process and progress. This steering committee would provide leadership and address problems that occur. The steering group can also evaluate the results of group work. Through continual assessment, skill in applying the process can be gained. Part of an important support mechanism may be the use of internal or external facilitators. Oftentimes, groups can function more effectively if they use a facilitator who helps manage the process.

After the foundation has been established, it is important to communicate

the initiative to the organization. This may be as informal as explaining to a grievant that we will be using an interest-based approach in an effort to address his/her concerns regarding the grievance. It could be more formal such as an organization announcement that a joint committee has been formed to respond to workplace concerns. Oftentimes, appropriate communications can be a challenge in applying cooperative strategies.

What can you do if your counterpart is not interested in or is skeptical of using an interest-based process? Why not take the risk and apply the process to your next dispute? This could be done by using the following statements and questions:

- Can you help me better understand the issue from your perspective?
- While you have identified a solution, what are your basic concerns about the issue?
- My concerns about the issue are the following
- What are some alternatives for addressing our concerns?
- Which of the alternatives/options we have identified could be shaped into a solution that would address our concerns?
- Who has the responsibility for implementing portions of this resolution?
- Let's review our results in six months to determine whether the problem was resolved.

These questions and statements can guide parties through the process.

I am unaware of any joint efforts that began with failure as a goal. Having worked with groups for over twelve years, however, I have noticed that some elements and actions seem to promote failure. Lack of commitment is a primary cause. If parties begin an LMC initiative without total commitment, people will give up when progress becomes difficult. Also, if individuals begin LMC initiatives for short-term gains or to deal with "the crisis of the moment," success becomes more diffi-

cult. Some groups fail after some initial success because they begin to take the process and each other for granted. Working collaboratively involves maintaining skills and cultivating relationships. Some groups become overconfident and feel that refresher training would be a waste of time and money. Other groups believe that steps in the process can be eliminated to save time. Often, short sighted actions cause problems that lead to failure. Also, as time goes on, the individuals involved in the initiative may change. It is important to insure that participants new to the process understand the steps, ground rules and overall expectations. It is very easy for some individuals to revert back to traditional ways. After all, most of us have great experience and practice with confrontational relationships. If new leaders do not value LMC initiatives, it is highly likely that the initiative will falter.

Groups that continue to experience success exhibit several characteristics. The interest-based process becomes a way of life within the organization. The interest-based approach is used with all types of problem-solving and decision-making opportunities. It also serves as the basis for effective conflict resolution. When membership on committees changes, new participants are trained in the process. Results of the various initiatives are communicated throughout the organization. When problems or concerns about the interest-based approach develop, they are addressed immediately. Early attention to problems helps keep them manageable. Ground rules are developed and honored. Consensus is the approach used in order to make quality decisions. Honesty, integrity and trust are principles that embody every activity and interaction.

Responsibility for the process is fixed with the leaders of labor and management. This centralized responsibility helps insure that problems are addressed and process corrections occur promptly. This group takes the initia-

tive to insure that participants are trained and honor the ground rules. This group also takes responsibility to insure that both labor and management renew their commitments to working collaboratively. Success is much more likely when participants recognize that working collaboratively is like maintaining any type of important relationship. It requires dedication, commitment and hard work. Continual assessment and commitment to improvement are cornerstones of success.

VIII. Conclusion

Labor management cooperation can do great things for individuals and organizations. Work environments and productivity can be greatly improved. Job satisfaction can increase dramatically when individuals provide meaningful input and significant contributions to the workplace. In an environment where employee loyalty is sometimes questioned and the impact of Generation "X" is a concern, why not involve the people who know the work environment the best? When parties look at the goals of labor and management, the true goals can be, and I suggest should be, very similar. ♦

RECENT DEVELOPMENTS

Recent Developments is a regular feature of The Illinois Public Employee Relations Report. It highlights recent legal developments of interest to the public employment relations community. This issue focuses on developments under the two collective bargaining statutes.

IELRA Developments

Arbitration

In *Chicago Teachers Union, Local 1, IFT-*

AFT v. Chicago Board of Education, Case No. 2000-CA-0017-C (IELRB 2001), the IELRB held that an arbitration award was unenforceable because it exceeded the scope of the parties' collective bargaining agreement. On July 30, 1997, Barbara Lewis, a business education teacher at Simeon High School, received a letter informing her that the school had changed its status to a career academy and that as a result, her job may be in jeopardy. Ms. Lewis contacted the Human Resources Department of the Chicago Board of Education (CBOE) and was told that her records indicated that she was still employed at Simeon. On August 25, 1997, she arrived at the school to find her position had been closed. On her behalf, the Chicago Teachers Union (CTU) filed a grievance alleging that CBOE had violated the collective bargaining agreement by failing to inform Ms. Lewis in a timely manner that her position had been eliminated and by retaining a less senior teacher with similar credentials.

The arbitrator decided that the matter was arbitrable and sustained the grievance in favor of CTU and Ms. Lewis. The arbitrator referred to the Illinois School Code and past practices for guidance. He also found that the July 30 letter was insufficient notice and that Ms. Lewis was senior to the retained teacher.

The IELRB decided that the arbitration award did not draw its essence from the collective bargaining agreement and, therefore, could not be upheld. Instead of interpreting the contract, the arbitrator used the School Code as guidance in deciding the matter. Although arbitrators are allowed to look at past history and past practice in deciding a case, they are still confined to the interpretation and application of the collective bargaining agreement. The IELRB found that the arbitrator looked to the School Code as past practice. In doing this, the IELRB found that the arbitrator was not looking at the School Code as an aid to interpreting a

collective bargaining agreement, but rather the arbitrator used it to modify the agreement. Therefore, the IELRB held that the arbitrator's award failed to draw its essence from the collective bargaining agreement and therefore, the award was not binding.

IPLRA Developments Subjects of Bargaining

AFSCME, Council 31 v. State of Illinois, Department of Central Management Services (Department of Corrections), Nos. S-CA-00-056, S-CA-00-068, S-UC-00-012, S-UC-00-024, (ILRB State Panel 2001), the State Panel held that the decision to transfer work to a position outside the bargaining unit was a mandatory subject of bargaining. During the representation election for peace officers some Business Manager positions were considered unit positions and some were determined to be non-unit positions. The parties later agreed to change the title of the unit position managers to Business Administration Specialist ("Specialist"), while the non-unit manager title remained Business Manager ("Manager"). In 1999, the employer decided to eliminate two Specialist positions and reassign all the duties to two newly created Manager positions. The new Manager positions performed all of the duties of the Specialist positions and had a slight increase in the number of employees the position supervised. The new positions also had minor changes in authority over their subordinates.

The State Panel evaluated the case using the analysis in *Central City Education Association v. IELRB*, 149 Ill. 2d 496, 599 N.E.2d 892 (1992) and *City of Belevide v. ISLRB*, 181 Ill.2d 191, 692 N.E.2d 295 (1998). First, the Panel determined that the removal or transfer of work out of the bargaining unit concerned wages, hours and terms and conditions of employment. The removal of the work caused the unit to lose actual or potential work, wages and hours and this reduction of work reduces the

strength of the unit.

Second, the Panel determined that the transfer of the work was not a matter of inherent managerial authority since it was neither (1) part of a legitimate reorganization or (2) the establishment of a bona fide supervisory position. The Panel found there was reorganization because the employer had not fundamentally altered the organizational structure, substantially changed the nature of the services provided, or substantially altered the nature of the position. The Panel also found that the Employer did not establish a bona fide supervisory position. The Panel found that although the Managers' work was substantially different from their subordinates, the Managers only directed their subordinates and did not use discretion or independent judgment with regard to the subordinates.

The Panel, therefore, concluded that the employer violated section 10(a)(4) and (1) of the Act. It ordered the employer to restore the Specialist positions, rescind the two Manager (non-unit) positions and to thereafter bargain collectively, in good faith, with the union.

In *International Brotherhood of Teamsters, Local 726 v. City of Country Club Hills*, No. S-CA-00-053 (ILRB, State Panel 2001), the State Panel held that residency requirements for newly hired police officers were a mandatory subject of bargaining, but the city did not refuse to bargain in good faith even though it objected to proceeding in interest arbitration over such requirements. The city and union were reaching the end of their collective bargaining agreement. Prior to negotiations for the successor agreement, the city passed an ordinance that required all newly hired full-time city employees to become residents of the city within twelve months of their hire date. During negotiations, the union proposed that the city revert to a prior policy of requiring full-time employees to live within a fifteen mile distance of the city. The city Asserted it had no duty to bargain its new ordinance because it had

the inherent managerial right to unilaterally determine matter relating to the selection of new employees.

As negotiations progressed, the city hired three new peace officers. One officer moved within city limits, the remaining two did not. The city and union entered several "stand still" agreements which allowed the two officers to continue employment on a probationary status. In July 1999, the parties reached a tentative agreement on all issues except the residency requirement and agreed to interest arbitration. Although the city objected to the arbitrator's jurisdiction, the parties proceeded with the stipulation that the arbitrator would determine the proposal if the city "withdraws its current objection and/or is required to do so by law." In August 1999, the city filed a petition for declaratory ruling with the ILRB to determine whether it had a duty to bargain over the residency issue. The parties agreed to delay the arbitration hearing until November. In the meantime, the union filed the instant charge with the ILRB alleging that the city violated Section 10(a)(4) and (1) of the Act by refusing to submit the residency issue to arbitration. On November 8, 1999, the city filed a motion to dismiss/objection to jurisdiction with the arbitrator asserting that the city did not have a duty to bargain the residency issue because it concerned the selection of new employees. The next day, the ILRB General Counsel issued a preliminary decision on the petition for declaratory ruling, which stated that the residency issue was a mandatory subject of bargaining properly before the arbitrator. The official ruling, followed in December, and specifically rejected the city's argument that residency was a selection criterion. The interest arbitration hearing began on November 11, 1999. The arbitrator rejected the motion to dismiss/objection to jurisdiction and proceeded with the hearing. The arbitrator ultimately found that the residency requirement

was not a selection criterion and reinstated the 15-mile residency requirement as proposed by the union.

This was the Board's first opportunity to address the amendment of Section 14(i) of the Act, effective August 15, 1997, regarding whether residency requirements are mandatory subject of bargaining for peace officers in communities with a population of less than 1,000,000. The State Panel applied the analysis in *Central City Education Association, IEA/NEA v. IELRB*, 149 Ill.2d 496, 599 N.E.2d 892 (1992) and *City of Belevidere v. ISLRB*, 181 Ill.2d 191, 692 N.E.2d 295 (1998). This analysis considers as a mandatory subject of bargaining, any issue that concerns wages, hours and terms and conditions of employment and is either not a matter of inherent managerial authority or is a matter of inherent managerial authority, but the Board finds that the benefits of bargaining the decision outweigh the burdens imposed on the employer's managerial authority.

The Panel found that in amending Section 14(i) the legislature acknowledged that residency requirements impact an employee's terms and conditions of employment. The Panel also found that residency requirements are a matter of inherent managerial authority because the city has a significant interest ensuring quick response time by police officers in emergency situations and enhancing public safety and community support of the police. However, the Board also found that the benefit of bargaining the issue outweighed the burden imposed on the city's authority. The city did not show that bargaining the issue would be a burden. Moreover, the union had a compelling interest since the requirement affects the employee's ability to choose where to live and could be discharged for violating the requirement. The Board further found that the legislature by its amendment of Section 14(i), intended to allow interest arbitration to decide residency requirements

and that dispute was well-suited to the interest arbitration process. The Board thus concluded that residency requirements for peace officers, which impact unit employees beyond their initial selection, are a mandatory subject of bargaining.

The remaining issue before the Panel was whether the city had refused to bargain in good faith. The Panel acknowledged prior authority to the effect that a party's objection to submitting a mandatory subject of bargaining to interest arbitration breaches the duty to bargain. The Panel held, however, that the city did not act in bad faith. It limited its prior rulings to situations where a party's objection to an arbitrator's jurisdiction is disruptive of the arbitration process or demonstrates a lack of sincere intention to resolve the dispute.

In the instant case, the city placed the newly hired peace officers on probationary periods rather than terminate them under the ordinance. The city requested a declaratory ruling from the Board's General Counsel. At no point did the city's conduct prevent, hinder, or disrupt the arbitration process. The Board concluded the city's conduct demonstrated a willingness to negotiate with the union to resolve their dispute while maintaining its legal position that it was not obligated to bargain the issue. ♦

Further

References

(compiled by Margaret A. Chaplan, Librarian, Institute of Labor and Industrial Relations Library, University of Illinois at Urbana-Champaign)

FOCUS ON PUBLIC EMPLOYEE BENEFIT PLANS. Employee Benefit Plan Review, vol. 55, no. 3, September 2000, pp. 34-45.

This collection of articles focuses on various aspects of public employee

benefit plans. It includes summaries of the "2000 State Employee Benefits Survey" from Workplace Economics and of the "2000 Survey of State Employee Health Benefits Plans" from The Segal Company, a description of the Internet-based system for benefits administration used by the state of Oklahoma, and a discussion of the state of Virginia's experience with outsourcing the administration of its employees group life insurance program. There are also brief notes about changes in federal government employee benefits.

Martin, David C., Kathryn M. Bartol, and Patrick E. Kehoe. **THE LEGAL RAMIFICATIONS OF PERFORMANCE APPRAISAL: THE GROWING SIGNIFICANCE.** Public Personnel Management, vol. 29, no. 3, Fall 2000, pp. 379-405.

Performance appraisals are used in many significant personnel decisions that can give rise to litigation, particularly charges of discrimination in employment. The authors review cases involving layoffs, promotions, discharges, merit pay, and combinations of these actions, in which job performance was used as the basis for decisions in order to demonstrate both good and poor uses of appraisals and the importance of due process in the performance appraisal system.

Zack, Arnold. **ARBITRATING DISCIPLINE AND DISCHARGE CASES.** Horsham PA: LRP Publications, 2000. 191p.

The author discusses the handling of discipline and discharge cases from their initiation through the arbitration process, with a focus on how arbitrators look at these issues. Chapters cover management's right to discipline, work

rules as the basis for disciplinary actions, grievance procedures and case preparation, the arbitration hearing, common reasons for imposing discipline, remedies available to the arbitrator, and the arbitrator's award.

(Books and articles annotated in Further References are available on interlibrary loan through ILLINET by contacting your local public library or system headquarters.)

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Illinois Public Employee Relations Report

Published quarterly by The Institute of Labor and Industrial Relations University of Illinois at Urbana-Champaign and Chicago-Kent College of Law, Illinois Institute of Technology, 565 West Adams Street, Chicago, Illinois 60661-3691

Faculty Editors:

Peter Feuille; Martin Malin

Production Editor:

Sharon Wyatt-Jordan

Student Editors:

Pamela Jones, Tiffany Nelson,

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