

**Labor Relations: What District Leadership Must Know**

Rodney L. Gabaldón

CELEBRATING **35** YEARS

WALSH GALLEGOS  
TREVINO RUSSO & KYLE P.C.

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**Panel Introduction**

Greg Maxie, UniServ Director, National Education Association

Travis Dempsey, Superintendent, Gadsden Independent Schools

Yvonne McCloud, Board Member, Belen Consolidated Schools



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**A Roadmap**

- A note about Slido and audience technological participation
- A quick look at our pre-conceived notions about unions
- Overview of the law relevant to collective bargaining
- The Board's role in effectively, and equitably, advocating during the collective bargaining process – best practices and pitfalls.



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**SLIDO**

- ❑ Using your personal technology device
- ❑ Login to [www.slido.com](http://www.slido.com)
- ❑ Enter event code: WG02

Answer this question:  
What word comes to mind when you hear the word "union"?



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**Notions about "Unions"**

- ❑ Board members and management may come to the bargaining table with pre-conceived notions about unions.
- ❑ In the Slido survey, some of the answers you gave were...
- ❑ How might those notions about unions help or hinder effective advocacy during bargaining?



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**About the Law: the Janus Decision**

"[Today], [t]he Supreme Court issued a landmark ruling in *Janus v. AFSCME* that overturns 40 years of precedent and ends compelled union dues for public employees. *Janus* was one of the most-watched cases of the Supreme Court's term, and for good reason. Overruling a 40 year precedent that affects thousands of workers will undoubtedly have serious repercussions. But, with such a controversial decision, it's easy to misunderstand what the decision actually accomplishes and what it does not."

-Brian Miller, *Unpacking The Janus Decision*, FORBES (June 27, 2018)



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### What Janus v. AFSCME says

- ❑ States and public-sector unions may no longer “extract agency fees from non-consenting [non-member] employees.”
- ❑ Such a practice violates the First Amendment by regulating employee “speech”
- ❑ Now, an employee must affirmatively consent to a union pay deduction



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### Does Janus change anything in NM?

- ❑ Not really, thanks to existing state law: the New Mexico Public Employee Bargaining Act (PEBA).
- ❑ The only change is that districts cannot deduct an agency service fee, called “fair share fees,” from those employees who decline union membership, without the non-member employee’s affirmative consent.
- ❑ The NM Attorney General issued an advisory following the *Janus* decision states “[t]he only change under *Janus* is that public employers may no longer deduct agency fees from a non-member’s wages, nor may a union collect agency fees from a non-member, without the non-member employee’s affirmative consent.”
- ❑ Walsh Gallegos also prepared a summary article – attached.



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### PEBA Basics

- ❑ A rule promulgated by a local board shall not require, directly or indirectly, as a condition of continuous employment, a public employee covered by the Public Employee Bargaining Act to pay money to a labor organization that is certified as an exclusive representative.
- ❑ The issue of fair share *shall be left a permissive subject of bargaining by the public employer and the exclusive representative* of each bargaining unit. NMSA 1978, § 10-7E-9(G).
- ❑ In other words, since “fair share” is a permissive condition of bargaining, the NEA has proposed it only a handful of occasions and it is unlikely to be negotiated.



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## From the NM Public Employees Labor Relations Board Manual

Public employees may form, join or assist a union for the purpose of collective bargaining through representatives of choice, *without interference, restraint or coercion*. See § 2 and § 5.

Public employees *may refrain from forming, joining or assisting a union*. See § 5.



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## The State of New Mexico?

- The holding in *Janus*, as well as New Mexico law, levels the playing field. Rarely in New Mexico has the issue of fair share fees been a permissive condition of bargaining.
- New Mexico school employees do not pay fair share fees.
- There has been a drop in union membership nationally, but not in New Mexico.
- The National Education Association (NEA) had 3.2 million members before *Janus*, 2.9 million members shortly after *Janus*, and currently has 3.2 million members nationwide.
- Unions have to earn their membership – as to avoid a member like the one in the *Janus* case from being unhappy.
- Employers and unions need to work together and advocate for finding common ground and reasonable resolutions – both within their own ranks and at the bargaining table.



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## SLIDO

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code: WG02

Answer this: Could the *Janus* case impact your district?



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## Collective Bargaining 101: Effective Advocacy

- ❑ Do not undermine the process or authority of the other party's representative.
- ❑ Make reasonable efforts to conclude negotiations with a final written agreement in a timely manner.
- ❑ Put agreed-upon matters in writing.
- ❑ Honor and implement existing agreements.
- ❑ Do not unilaterally change a term of employment that is a mandatory subject of bargaining while valid agreement is in effect and while parties are still bargaining, but an impasse is not yet reached.



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## The Board's Role and Obligations

- ❑ The Board of Education has the important role of setting, in executive session, the scope and authority for the bargaining team in up-coming negotiations. The Board should inform the Superintendent's negotiating mission, not have the Superintendent and the bargaining team inform the Board. But the Board must know the difference in what is required in negotiated and what may not be negotiated.
- ❑ Understand that per the Public Employees Labor Relations Board Manual, public employers and unions *must* negotiate in good faith over *mandatory subjects* of bargaining such as
  - wages;
  - hours;
  - all other terms and conditions of employment except for retirement programs provided pursuant to the Public Employees Retirement Act or the Educational Retirement Act;
  - payroll deduction of membership dues.
- ❑ They must also bargain over the impact of professional and instructional decisions made for employees, by the employer.



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## Putting it Into Practice

Mandatory subjects: wages, hours, all other terms and conditions of employment except for PERA retirement programs, payroll deduction of dues.

Illegal subjects: generally those that deal with powers reserved to the school board or administration (School Personnel Code, Standards of Excellence, licensure requirements, administrative reporting obligations).

Permissive subjects: optional and permissive subjects do not require the parties to reach an agreement.



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## A Key Rule: Be Reasonable

- Be reasonable in all ways. Meet at reasonable times and places. Advocate for the benefit of students.
- Bargain over mandatory subjects (salary, wages, hours and other terms and conditions of employment) until agreement or an impasse is reached.
- Bargain with the intent to reach agreement (best efforts to consider and respond to all proposals).
- Make the effort to agree on effective bargaining process; agree on "ground rules" and chief negotiators for both sides represent a "unified voice".
- Respect the role of the exclusive representative.



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## SLIDO

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code: WG02

Answer these:

1. What is one issue you want discussed during collective bargaining?
2. May the issue you want discussed be discussed during the bargaining process?



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## Scenario 1

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code: WG02

Answer this:

During the school year, in an effort to retain current highly qualified teachers, a school district wants to *unilaterally* provide certain employees an extra end-of-year merit based bonus and include the bonus in the final paycheck at the end of the year. Is this permissible?



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### Scenario 1: Discussion

- Can the employer unilaterally give a bonus to one or more employees?
- What would be some alternatives to achieving the outcome intended by the bonus?
- How can you partner with the union on improving student outcomes and retaining good teachers?



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### Scenario 2

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code:WG02

Answer this: During the middle of contract negotiations, a Board member questions why the process is taking so long, as there are only a few issues "on the table" this year. The Board member starts calling union leaders to ask what's going on. Is this okay?



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### Scenario 2: Discussion

- The Board of Education's role in the bargaining process is to set, in advance, the bargaining goals and to understand mandatory conditions of bargaining. The Board vests the bargaining team with negotiating authority, and directs the Superintendent within the parameter of that authority. The bargaining team can only negotiate using the authority given.
- It can be what is called "regressive bargaining" or "bad faith" if the District's team agrees to something and the Board does not approve.
- Nationally, some Districts are having a Board member as a neutral observer to negotiations. This is permissible in New Mexico.



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### Scenario 3

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code: WG02

Answer this:

1. The District wants to make an example of teachers with serious conduct or performance issues, and negotiate the ability to suspend such teachers without pay. Can they?
2. It would be easier to suspend problem teachers if union representatives weren't in on the initial meetings. Can the District negotiate or deny an employee's request for union representation at a pre-suspension meeting?



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### Scenario 3 Discussion

- If there is an "investigatory interview," where information gained from employees could be used as a basis for discipline or discharge, or if the employee has a reasonable belief that discipline or discharge may result from what s/he says, the employee has the right to request union representation. This comes from a Supreme Court case – *Weingarten*.
- How might you better negotiate with the union – and advocate for your position – in order to agree on effective measures for addressing employees who demonstrate repeated or serious conduct or performance issues?
- The District should seek to partner with the union to put forth the best teachers for the students, and the union will want to maintain the individual's employment, as much as possible, maybe in an alternative position. Employer will pay employee in most circumstances.



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### Ticket Out The Door

- Using your personal technology device
- Login to [www.slido.com](http://www.slido.com)
- Enter event code: WG02

Answer this:

- Based on the presentation, please list:
  - One thing you already knew
  - One thing that you will take with you and use in negotiations
  - One thing you would like to know more about



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**Rodney L. Gabaldón**

Rgabaldon@wabsa.com



500 Marquette Ave NW  
Suite 1310  
Albuquerque, NM 87102  
**Phone:** (505) 243-6864  
**Fax:** (505) 843-9318  
**Web:** www.walshgallegos.com

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The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.



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