

LEGAL MAILBAG – MARCH 5, 2026



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The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

Our local teachers union is at it again. I am in my first year as a middle school principal, and for the first part of the year I observed what is right and what is wrong with my school. Now that I have my legs under me, I made my first move. I was surprised, however, that the teachers union immediately pushed back, invoking the bugaboo of “past practice” to claim that my directive was illegal.

All I did was exercise basic management oversight to address a problem that I have seen. Specifically, I noticed that teachers would simply leave the school as they wished during their lunch period or preparation period, and we could only hope and pray that they would show back up for their next class.

Given my legitimate concern, I addressed the problem head-on. I set up a sign-out sheet in the main office and sent teachers an email letting them know about the new procedure – teachers must sign out with their name and time when they leave the building and then sign back in when they get back.

Shortly after I sent the email, the union building representative was in my office claiming that I had overstepped. He was polite enough, but he kept yapping about “past practice” and telling me that I must rescind the new policy because it was a “unilateral change,” whatever that is. To be sure, teachers weren’t signing out before, but that was the whole point in my establishing the new procedure.

I have no intention of rescinding the policy. Am I good?

Signed,
Problem Solver

Dear Problem:

Legal Mailbag is impressed with your derring-do, but Legal Mailbag must caution you that your unilateral action in imposing the new sign-out/sign-in policy may well be an unfair labor practice. Based on the facts you shared, Legal Mailbag predicts that you will have to rescind the policy one way or the other, at least for now.

The duty to bargain in good faith imposes obligations on employers during the term of a contract. Employers may not make unilateral changes in conditions of employment without negotiations (the “past practice” rule), even if there is no contract language addressing the matter. To be sure, you have described a compelling justification for the new procedure, but it is likely that the State Board of Labor Relations (SBLR) would find that initiating a mandatory sign-out procedure would be a unilateral change in working conditions. Unless you work things out with the union, it can file an unfair labor practice charge challenging the new procedure. If that happens, after a hearing, the SBLR would likely order that the new policy be rescinded to restore the *status quo ante* and that the school district must negotiate with the teachers union over such a policy (if you are still interested in doing so).

This “past practice” rule results from the practical realities of collective bargaining. The parties are obliged to negotiate over wages, hours, and conditions of employment. However, if the employer could take unilateral action on any matter not nailed down in the contract, negotiations would be an interminable process because the union would want to negotiate on a broad range of working conditions to foreclose unilateral changes in those working conditions. Accordingly, the “past practice” rule preserves existing conditions of employment that exist outside the contract unless and until the employer negotiates changes in those working conditions.

Significantly, the “past practice” rule cuts both ways. Sometimes unions will challenge an employer’s action on a mandatory subject of negotiation that is not addressed in the collective bargaining agreement. If the employer has regularly exercised that prerogative in the past, however, the continued exercise of that prerogative will not be a change, and therefore the employer will not be required to negotiate over that practice. For example, if your situation were reversed and a sign-out procedure had existed outside the collective bargaining agreement, you would have been free to require that teachers follow the procedure even though it is not codified in the collective bargaining agreement.

In sum, the “past practice” rule does not prohibit changes in working conditions, but it does prohibit unilateral changes. Once your district has negotiated successfully over the implementation of your new procedure, you will be all set.