

BARGAINING BASICS

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Workshop Overview

- This workshop provides an overview of the labor negotiations process including
 - **Determining your goals and selecting your bargaining team**
 - **Issue Identification and Prioritization**
 - **Negotiations styles**
 - **Planning and controlling your conduct at and away from the bargaining table, and anticipating the consequences of what you say and do**
 - **Preparing for and dealing with work stoppages**
 - **Knowing *when* and *how* to make the deal.**



Identifying, Understanding, and Prioritizing Your Side's Negotiations Issues



Set Your Goals Intelligently

- Identify and categorize them immediately:
Musts, Reaches, Fillers, Decoys – Nevers
- Distinguish between practical (achievable) goals vs. abstract/ideological (usually unachievable) goals.
- Never negotiate to even a grudge.
- Remember Newton's Third Law:
 - *'For every action, there is an equal and opposite reaction.'*



When to Communicate Your Goals to the Other Party

- **Right-time disclosure** is science *and* art
 - Before negotiations;
 - At first bargaining session; or
 - As counter to other side's proposal (where you know or can reasonably anticipate);
 - As set by negotiation ground rules.
- Always consider the **legal ramifications** under the NLRA, applicable state law.
 - *Ex: Springing a major change in health care rates 3 days before K termination date – bad idea.*



Counsel or Chief Negotiator Add-Ons

- Threshold Q: Are they acceptable?
 - To you.
 - To other side.
- Next Q: When will they be acceptable?
- And then ask: Does it *really* matter?



Your Bargaining Team



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Member Selection

- Who to Select:
 - Best if have representation from each major affected area (finance, operations, departments heads, etc.)
 - Role Determination
- Process Concerns: Large for Unions and Management alike – practical, political, ideological, personal concerns
- The creep of Pomp and Circumstance:
 - *Sometimes...* you gotta go along to get along.



How to Use Your Team Wisely

- Learn how to extract the most/best from team members who know the bargaining issues (better), especially key ones.
 - 4 C's: *Cooperate, Compliment, Concede, Cajole*
- Use your team's expertise to:
 - REALLY *understand* the key issues, concerns;
 - Properly *give voice* to your side's concerns
 - *Craft* your bargaining proposals *and respond* to the other party's;
 - Regularly *take the temperature* of "The Room".



Bargaining Team Ground Rules

- Your bargaining team must not be:
 - **Unduly divisive.** *Team must be capable of reaching consensus on issues.*
 - **Disrespectful.** *As much a problem internally as externally.*
 - **Loose-Lipped.** *Information must be communicated at the proper time.*
 - **Self-styled heros/heroines:** *Communications should come from a unified bargaining team. No “John Waynes”.*



Inside and Outside the Sessions

- Practical concern:
 - Bargaining team members must be loyal and accountable to their constituents.
 - ... yet be sufficiently independent to make sound decisions, even if unpopular.
- Legal concern:
 - Team members are legal “agents” for their constituencies, so their actions make them and their constituents vulnerable.



The three most important features for (*real*) team member selection?

- Character.
 - Character.
 - Character.
-
- This is less important with ceremonial attendees.



Bargaining



Some Basics for the Chief Negotiator

- Negotiator: Know Thyself (thy “side”):
 - Understand the goals, will and appetite of your side.
- Know Its Goals, Limits and Expectations:
 - CLEARLY identify your side’s Must Gets, its Would-Be-Nices, its No Gives, and its Expectations.
- Approach Each Negotiation as Unique:
 - Commonality of issues \neq equivalence of issues.

NLRA Statutory Compliance and Penalties for Failure

- Statutory Requirements such as:
 - Notice by cert. mail of Contract Termination:
 - 60 days to other party, 30 days to FMCS.
 - Failure: Lose right to lawful strike/lock out.
 - Obligation to bargain in good faith
 - Avoid early “take it or leave it”.
 - Avoid “regressive” offers absent rational basis and objective financial support if an Economic issue
 - Ensuring legal compliance of proposals, e.g., FMLA, ADEA, Title VII, PDA, federal and state statutes applicable to veterans, soldiers.

Contract Compliance and Penalties for Failure

- Check 'Termination' or 'Duration' clause
- See if contract itself informs you of specific penalties for non-compliance
 - Automatic contract extension
 - Lost right to lawful strike/lockout
 - Limitation on subjects that can be negotiated (Evergreen effect)



Information Requests

- When to make?
 - Prior to or during bargaining
 - Generally (camouflaged) or when hit an issue.
- How to make?
 - In writing best; if verbal, do written follow-up.
What should I ask for?
- *First ask: Do I really **need** / do I really **want** this information?*



Setting Your Strategy and Performance

- What to know:
 - Players;
 - Issues;
 - Facts;
 - Probabilities; and
 - Risks
- What to anticipate:
 - All the things you should anticipate
 - Some of the things you fear
 - Things happening that you didn't anticipate
- Deal with the unanticipated.



Negotiation Styles

- Negotiations as Art
- Negotiations as Drama
- Negotiations as Combat
- Negotiations as Symphony



Negotiations as Art

- **Approach negotiations from an informational / educational viewpoint:**
 - Enlighten the other side;
 - Disabuse the other side from incorrect information;
 - Disabuse the other side from incorrect perceptions.

Negotiations as Art

- **This form is best used:**
 - When negotiating first contracts or major-change contracts;
 - When negotiating significant amounts of complex language / issues;
 - Whenever your first hurdle is to get the other side past its own preconceptions (or misperceptions);
 - To reach past an intransigent chief negotiator to reach the other side's committee or other decision-making body.

Negotiations as Art

- **The method:**

- Establish your own credibility by demonstrating that your information, language, and positions are reasonable and credible.
- When needed (and always at the other party's request) provide details and facts that indisputably demonstrate the accuracy and credibility of what you are presenting.



Negotiations as Art

- **The risks to the “Artistic” Form:**
 - Michelangelo took four years to finish the Sistine Chapel.
 - Time-consuming and slow-moving:
 - Delay may make it difficult to “hold in” your own side, especially if their expectations and understanding of the process and were not properly set from Day One.
 - Educational proposals or information that turn out to be skewed or inaccurate will be disastrous, with resultant loss of credibility and major long-term consequences:
 - In this event, switch to the Combat or Drama Forms.

Negotiations as Drama

- **Approach negotiations like a high-stakes poker game:**
 - Play for the endgame, with cards held close to your vest throughout;
 - Keep enough high risk issues on the table so that the other side is likely to capitulate on your *true* key ones... which you may not reveal until the very end.



Negotiations as Drama

- **This form is best used:**
 - When there are major stakes at issue:
 - Survival or financial viability issues;
 - Need for major operational changes.
 - When there are a large number of issues on the table;
 - When there are low trust levels between the parties.



Negotiations as Drama

- **The method:**
 - Engage in very measured give-and-take bargaining:
 - Carefully set and calibrate specific success and venture points;
 - Perhaps concede on identified peripheral issues.
 - Maintain your position on most major issues throughout the negotiations:
 - Keep the number of open issues super-sized as the parties head towards the finish line.
 - Camouflage your key issues by surrounding them with decoys where you do have greater flexibility.

Negotiations as Drama

- **The risks to the “Dramatic” Form:**
 - Soap operas are slow, confusing, and filled with angst.
 - Also very slow-paced pace can be off-putting:
 - Slow movement or no movement can lead to charges of “game-playing”, “surface bargaining” or intentionally slowing bargaining down.
 - *Presentation, packaging and signaling* are all important:
 - A miscue on any of those may cause a misread of your intentions by the other side – leading it to “give” on the wrong issue and “hold” on the one you most need or want.

Negotiations as Combat

- **“Go to the Mattresses”:**
 - The diametric opposite of “Win-Win” negotiations;
 - Bare-knuckles, go-for-broke environment, charged with high emotion:
 - Passion, anger, righteous indignation.
 - Results in much more intense (sometimes extreme) “personal” conduct due to outsized personal investment in the results:
 - Getting what you came for is a win, but anything else is a loss.



Negotiations as Combat

- **This form is best used:**
 - When a party has made a conscious decision to establish or apply power;
 - When a party wants to change the dynamic of an existing relationship;
 - Where the parties are angry;
 - When a trust gap exists:
 - This form is very common with first contracts, or first contracts after a long strike or lockout.



Negotiations as Combat

- **The method:**
 - Determine your ‘Waterloo’ issues and defend them zealously:
 - Refrain from excess hyperbole.
 - Before you commit your party to stand in front of a cavalry charge, insure internal consensus on what the prize is, and for doing whatever it is going to take to bring that prize home.
 - At the table, label and define your ‘Waterloo’ issue/s realistically:
 - If something is a *money* issue, call it that; if it’s a *trust* issue, call it that; if it’s a *lifestyle* issue, call it that; if it’s an *emotional* or *pride* issue, call it that.
 - When internal consensus exists, convey that you’re prepared to go to the wall on your ‘Waterloo’ issue/s.



Negotiations as Combat

- **The risks to the “Combative” Form:**
 - Napoleon lost Waterloo. You might too.
 - Win or lose, the approach may be a negative building block for the parties’ relationship:
 - In the right circumstance it *can* be a positive... a starting point for where you need to go.
 - *Bluffing* is your worst nightmare.
 - Don’t go – or, worse, lead – on any issue if you aren’t 100% sure that you have the *muscle*, the *stomach* and the *support* for it.

Negotiations as Symphony

- **Classic “cumbaya” bargaining:**
 - Everybody wants the same thing;
 - The parties like and respect each other;
 - Goal is getting to the right place, thus satisfying everyone’s interests;
 - The parties know agreement is possible.



Negotiations as Symphony

- **This form is best used:**
 - **When there is a high trust level amongst the parties, and both sides recognize that they are going to deal only with necessary issues:**
 - No fluff;
 - A controlled atmosphere of good faith and fair dealing.
 - **Where parties commit to a pared-down, very direct and straightforward negotiation in order to transform a historically bad relationship:**
 - Often involving new “players” on one or both sides who are duly empowered to deliver on the promise of overhaul (e.g., trustee negotiations);
 - New parties may have narrow or shaky power bases and need measurable results fairly quickly.



Negotiations as Symphony

- **The method:**
 - Limit your menu to what you really need and want;
 - Draft your proposals so as not to be overreaching or excessive:
 - i.e., proposals virtually certain to be recognized by the other side as being inherently reasonable.
 - Start much closer to where you intend or need to end up than you would in any of the other formats.



Negotiations as Symphony

- **The risks to the “Symphonic” Form:**
 - People fall asleep at the symphony:
 - Risk of basing approach on *belief* the parties have a mutual shared vision of the *whats* and *hows* to be achieved in bargaining, only to learn you have either misread, misunderstood the other party, or that the other party was insincere or not sufficiently sophisticated to read and understand your signals (*words*).
 - Can result in a loss of credibility with your own committee:
 - Very difficult, maybe even impossible, to restore.



Bringing It Home

- Manage your issues wisely.
- Kenny Rogers had it right:
 - Know when to hold ‘em;
 - Know when to fold ‘em;
 - Know when to change the game, the dealer, or the stakes.

Observe and Assess; Don't Deny

- When frustration sets in, when you realize some (or all) of your goals may be frustrated:
 - Objectively assess your position;
 - Ascertain your coordinates;
 - Communicate where you are internally; and
 - Determine your best endgame:
 - This may involve a change in the form of your negotiations.



When Your Best End Game is Determined:

- Get buy-in where you need it:
 - Remember to get buy-in from your committee as well as your constituency.
- Dot every “T” (and cross every “I”):
 - Your end contract language should be clear, unequivocal, and done.
- End well (or as well as you possibly can):
 - Contract negotiations are an iterated game – you will see each other again.
 - The “5th C”= Celebrate/acknowledge team and communicate what was maintained and won.

Communications Inside and Outside of Bargaining



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Agreements on Communications Between Parties

- Is an agreement a good idea?
- Is it binding?
 - On the Parties only?
 - On individual bargaining committee members?
 - On employees?
 - On agents?

Minimize the number of memos of understanding or joint taskforces. At the very least establish timelines for completion!

Special Concerns

- Varying types of communications elicit varied concerns:
 - Between/to bargaining committees;
 - Between/to bargaining unit and company; and
 - To the media / the public.
- Also distinguish the method, style and content of communicating:
 - Leaks, News Releases, and Media and Internal Responses (e.g, to Faculty, or to Administration).

Special Concerns

- Communications with legislators and other interlopers; and
- Employee use of social media:
 - Under Section 7 of the NLRA, employees have a right to engage in concerted activity to improve the workplace.
 - One employee or a group of employees agitating about terms and conditions of employment is likely protected conduct.
 - Work Stoppage.



Preparing for a Work Stoppage

- Practical concerns:
 - Arrange to continue business operations (including bringing in temporary workers);
 - Communicate with customers/suppliers.
- Public relations concerns:
 - Designate spokesperson for dealing with media inquiries;
 - In some circumstances, it may be wise to have a press release ready.



Questions?



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