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NEGOTIATIONS BEHIND NEGOTIATIONS:

REACHING OUT TO CONSTITUENTS

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ROWAN UNIVERSITY: AN OVERVIEW

Rowan University is one of nine public institutions included in the New Jersey state colleges and universities sector. Since 1973, the faculty, librarians, and professional staff in this sector have been included in a bargaining unit and represented by the Council of New Jersey State College Locals, AFT, AFL-CIO. Historically there has been one master contract covering all of the campuses in this sector, while each campus is authorized to engage in local negotiations to develop agreements pertaining to terms and conditions of employment at the institutions. At Rowan University, there are in excess of 30 such local agreements.

Regarding the issue of the faculty teaching load, the relevant sections of the master contract stipulate: 1) “the academic teaching load for full-time faculty shall be twenty-four (24) teaching credit hours” (Article XII, Section B, 1,); and 2) “Assignment of non-teaching duties within load for any faculty member, for any purpose, is a matter of academic/managerial judgment of the College/University. The President, or his or her

designee, prior to the commencement of each semester, and prior to the allocation of non-teaching assignments to various purposes and individual faculty members, will consult with the Union as to such allocations and the contemplated manner of selecting individual faculty members who will receive them” (Article XII, Section B, 7).

In summary, while the contract stipulates that the teaching load for full-time faculty is 24 hours per academic year, the administration has the authority to assign non-teaching duties in-load provided that they engage in appropriate consultation with the union.

A NEED FOR CHANGE

By 2003 it had become increasingly clear that, given growing demand for faculty research, scholarship and creative activity, faculty needed a system to secure time for these activities within load. It was also clear that the current faculty load had a detrimental effect on faculty morale and was becoming an obstacle in recruiting and hiring first-rate faculty scholars.

Thus, in the spring of 2003, the President of the University charged the Union and the Administration to commence discussions and eventual negotiations for a new local agreement addressing this issue. Inherent in this charge was the caveat that whatever process was developed must have the accountability, with checks and balances to ensure acceptance by the University Trustees and withstand public (and political) scrutiny. For the next nine months, faculty and administrators, individually and collectively, engaged

in intense discussions and negotiations that led to the development of four new local agreements: 1) the faculty workload adjustment agreement; 2) the additional academic service agreement (replacing an antiquated agreement on academic management time); 3) non-salary financial support grants; and 4) a professional development account for permanent part-time faculty.

THE CHALLENGE

Reaching consensus within one's own constituency group, whether from the union or management perspective, is often an overlooked and underappreciated part of the bargaining process. Emphasis is typically on negotiating and getting to "yes" with the other side. While that is the culmination of the process, often the consensus-building that occurs within one's own membership determines success or failure at the main table. That can be a tall task, given the diverse and at times opposing views and philosophies at play.

It must be emphasized from the outset that the union has the much more challenging job in this endeavor. With management, even in the most disparate environments, the CEO (in this case, the President) ultimately is empowered to dictate the management position. While this top-down approach is not the ideal model to follow, it can be the modus operandi in formulating management's bargaining positions. Clearly, that is not the case with unions. Normally, they engage in a variety of consensus-building exercises, leading up to formal ratification votes of the executive body and/or membership. While the union president and/or chief union negotiator may yield a great

deal of power and influence, he/she cannot rule the day without the majority of the membership's support. There is no such requirement on the management side.

Nonetheless, the challenges for the chief management negotiator are very real. Certainly, the difficulty of the negotiator's task will vary, depending on the managerial environment in which he/she operates. Having served in this capacity at my institution since 1988, I have been through a number of major negotiating initiatives transformational in scope and impact. This experience has led me to believe that several strategies should be employed in building consensus with the ranks of management. This discussion will focus less on getting the management team to agree on the administration's bargaining proposal (in this case, the faculty workload agreements), and more on the process of developing and maintaining cohesiveness within the group itself. As stated previously, the President can simply declare "this is our position," without the need for a ratification vote or concurrence on the part of the team. However, unless the management team is cohesive and unified in voice and action, negotiations with the union can fall apart even before reaching the table.

For this particularly discussion, the "management team" is the Council of Academic Deans, headed by the Provost. While these academic leaders were not formally a "bargaining team" for the Rowan Administration, they were the key administrative players when bargaining on faculty workload. In my capacity as Associate Provost for Faculty Affairs, I serve as the chief liaison with the faculty union, as well as the administration's chief negotiator and President's designee. It was my role

to coordinate the efforts of the administration to successfully negotiate the local agreements on faculty workload.

The following are a number of strategies we followed in developing and maintaining consensus and cohesiveness within the management team. While these pertain to a particular case study, they are important and useful considerations in any negotiating process.

1) KEEP YOUR “EYES ON THE PRIZE”

(Establish your goals and keep them in your sights)

It is critical that, from the beginning of the bargaining process, your overall goals are clear to all members of the management team. In a university setting, initially the President should be the person to communicate these goals. Later, the chief negotiator should fulfill this role, bringing in the President on an as-needed basis should the waters get murky. Why is this important? Simply put, there will be enough distractions and obstacles springing up throughout the process without further confusion caused by having unclear goals. In the heat of debate we often lose sight of what we're trying to accomplish and we can get sidetracked by disagreements and personality clashes. The more important the issue, the more likely that is to occur.

What was the “prize” in the faculty workload negotiations at Rowan University? One might suggest that a successfully negotiated agreement was the prize. However, the

agreement is never the prize; it is only a vehicle to get where you want to go. In this case, the prize was the ultimate result of our ability to provide time and opportunity for faculty research and scholarly activity: 1) improved morale; 2) enhanced institutional competitiveness in attracting quality faculty; and most importantly, 3) an improved teaching/learning environment for faculty and students. It is useful to remember that provosts and deans are academic leaders, not labor negotiators. The more you can focus the attention of your team on the overall goals in an academic context, the easier it will be to maintain cohesion and keep the team moving in the same direction. That may sound more like cheerleading than hard-edged negotiating, but it really works.

**2) IF WE CAN'T BE ON THE SAME PAGE, LET'S AT LEAST WORK
FROM THE SAME BOOK**

(Managers are just as disorganized and diverse as you are)

I hate to break the news to those who may think otherwise, but management is not necessarily a well-oiled machine. We're as diverse, disparate, and, at times, as disorganized and divisive as the union membership. There are just fewer of us and we hide it better. The fact is, managers have opinions like everyone else, based on their personal experiences, philosophies, biases and understanding (or lack thereof) of the issues at hand.

An important consideration in working on your team cohesiveness during bargaining is to recognize diverse attitudes within the team. In *Contemporary Labor Relations*, Allen and Keaveny present what they consider typical management attitudes towards unions. These range from one extreme of “Open Hostility” (implying a “willingness to engage in illegal actions, to say nothing of practices involving questionable ethics”), to the other of “Collusion” (involving union-management relations “that go beyond legitimate cooperation,” and that “adversely affects the legitimate interests of other employers, employees, the union membership”). Normally, these two extremes are not common in an academic environment. They are in fact illegal in most labor environments (certainly in the public sector).

Most of us contend with what Allen and Keaveny situate between these extremes: “Controlled Hostility” (“a determination to avoid dealing with a union”); “Accommodation” (“a willingness to deal with the union in such a way as to avoid unnecessary disagreements); and “Cooperation” (representing an end to “us versus them attitude and an adoption of a we attitude,” implying “a willingness to try to solve problems that adversely affect either party or both parties” and a recognition that “both parties stand to gain from more efficient operations”).¹

Those of us involved in labor negotiations can identify group members who fall into any one of these categories. The extremes of “Open Hostility” and “Collusion” are hopefully rare; I would be hard pressed to name one individual with whom I have

¹ Allen, Robert E. and Keaveny, Timothy J.; *Contemporary Labor Relations* (Addison-Wesley Publishing Inc., 1988); pp.142-144.

worked, either in management or the union, who I would place in either category. I have been fortunate in my work experience, and at my university those who might fall in the category of “Controlled Hostility” are few and far between. The large majority are either Accommodating or Cooperative. However, it is critical that those who are not are coached throughout the process. This should be in a group setting, so team members can collectively discuss, debate, and reach consensus on matters pertaining to bargaining. In addition, those who border on “Controlled Hostility” need to be approached on a one-to-one basis, where a frank discussion can occur. These are the team members who need constant coaching and gentle (or not so gentle) reminders of the bargaining goals. It’s important to remember that managerial “loose cannons” have sunk many a negotiating ship.

3) PROCESS?? WE DON’T NEED NO STINKIN’ PROCESS!!

(Why don’t they just trust us...we’re good people!)

Even accommodating and cooperative managers often fail to see why we have to formalize certain things through negotiated agreements. Such formalities are often viewed as burdensome, a waste of valuable time, and overly bureaucratic. “I’m a fair guy,” says one manager, and another chimes in, “I don’t need a committee tell me to do the right thing.” Such ideas, although not always verbalized, do exist in some minds. This attitude can get in the way of the negotiating process by causing friction within the management team and conveying to the union a sense of distrust and lack of good faith.

As noted previously, the language in the New Jersey State master contract on the faculty workload stipulates that while management has the right to assign non-teaching duties within load, it must consult over the process for doing so. Thus, such an assignment is a negotiable item, and the union has a right to expect full participation. Similarly, in an environment of shared governance, the faculty and the Faculty Senate also expect to be involved in the determination of standards and criteria from an academic perspective. Whether managers agree with this or not is irrelevant. It is a matter of contract (and law), and of academic tradition and practice. The sooner the management team accepts this, and more importantly, endorses it, the sooner it can get on with the business of successfully negotiating an agreement. Ideally all the members of the team would embrace this concept, but that may be too much to hope for. Not all will be Cooperators, but we can work with Accommodators.

People at Rowan generally understand what is negotiable and what is not, and that bargaining needs to be done in good faith. Thus, my job is easier than for some. However, a good negotiator will ensure that as things heat up and as disagreements arise (as they tend to) the bargaining process is not abandoned or compromised.

**4) SPEND A LOT LESS TIME WORRYING ABOUT HARRY AND MORE
WORRYING ABOUT SALLY**

(Focus on the productive faculty, not the slackers)

We all know Harry. Harry hasn't done a lick of scholarship since he was last promoted in 1986. He never volunteers for committees unless forced to, and then rarely attends. He goes to department meetings infrequently, claiming it's his "academic freedom," yet he complains about not being informed of departmental activities. He is never available for students because "that's not why they pay me."

We all know Sally as well. She keeps current in her field and publishes regularly. She volunteers for committee work and serves whenever asked by her chair or dean. She's always in her class well after it's over and fully engaged with her students; she maintains office hours over and above the norm.

The ratio between the Harrys and the Sallys in higher education may vary; however, in my experience there are many more Sallys than Harrys. Given that, why is it that far too often managers focus on the Harrys of the world and not the Sallys when bargaining with the union? Why do we consider the worst-case scenarios first rather than the more common best cases when we consider a change in terms and conditions? Why does Sally take a back seat to Harry?

There is no single or simple answer to this. This attitude is often not systemic, but person specific, as individuals reflect on bad experiences with faculty members who "milk" the system without consequences or accountability. This is understandable, and for practical purposes there must be some accounting for the Harrys when we

bargain in order to put appropriate checks and balances in our policies and agreements. That certainly was the case at Rowan when we negotiated the work load agreements. However, the Harrys of the university must not determine our bargaining philosophy. This creates an atmosphere of distrust and hostility and makes it nearly impossible to negotiate agreements successfully. It can also be a divisive and counterproductive force in the managerial mindset.

In the Rowan example, it was important to keep our attention on the ultimate goal and not on the few individuals who might take advantage of the new workload agreement. Through our discussions and information sharing with the union, I was confident that they too were concerned about accountability, and that the appropriate checks and balances would be built into the agreement. I needed to convey that to the management team so we could focus on standards and criteria, particularly to those less inclined to be Accommodating or Cooperative. The reality of the workplace is that Sallys outnumber and outweigh Harrys. By focusing more on Sally, our bargaining process was more closely related to the people affected by the negotiated agreements.

5) WHOSE SIDE ARE YOU ON...OURS OR THEIRS??

(You need to know the union's "hot button" issues and represent these to the management team)

Do you ever find yourself in the position of not only presenting the other side's positions to your team but actually *championing* it? In truth, that's an important part of being a negotiator and a rather common occurrence.

The bargaining process at Rowan University is described best as a combination of Interest-Based and Positional-Based. There is much information-sharing between the union and administration throughout the process; informal positions and proposals are often exchanged, both verbally and in writing, and modifications and revisions are made to these as the process unfolds. The more important the issue, the more this occurs. The key players in this process are normally the union president and chief negotiator for the union and the chief negotiator for the administration. The President becomes part of this information loop on an as-needed basis. However, all members of the management team participate at various junctures as well, as they play a critical role in formulating bargaining proposals.

This information exchange leaves both union and management negotiators with a clear sense of the "hot button" issues on each side. Over the course of the nine months negotiating the workload agreements in frank discussions with the union leadership, I knew what they would accept, what they would not accept, and what might be areas of compromise. I am quite certain that they knew the same from me. This can only occur where there is a bargaining environment anchored by trust. In an Interest-Based environment, proposals and positions are made in good faith without posturing or the typical "high-balling" and "low-balling" we often see in bargaining.

Thus, when the union president told me “this won’t fly with my members,” I believed him. I trusted what he told me.

This put me, the management negotiator, in the position of regularly articulating the union’s interests to the management team, often in a rather forceful way. Part of the negotiator’s role is to present the views of the “other side” so that your respective team pursues a course that will be successful. That is not to suggest that there will never be times when you disagree and refuse to compromise on a given issue or bargaining item. However, it is still important that your team knows about those “hot button” issues, the problems the union leadership is contending with, as well as those compromises the union has made in order to move the process forward. In this particular case, there was an element in the union membership who simply wanted the administration to declare that all faculty had an adjusted load of nine hours per semester, without any application process or reporting structure. “Let the individual faculty member ensure accountability,” they no doubt said. When the union had endorsed the concept of an application and peer review process plus a strong oversight and approval role for the deans in, I knew this represented a major compromise on their part. Thus, when some management team members insisted on complete administrative oversight over the process, I was able to use my knowledge of the union’s compromise as leverage for promoting accommodation towards the union’s position on peer review. When the administration resisted providing any support for part-time faculty, I knew that was another “hot button” issue for the

union. Here too I used the union's compromise as leverage, eventually leading the management team to provide a development fund for part-time faculty support.

The reality is, some team members don't like to hear "their" negotiator espouse the union's position. Nonetheless, it is an important part of the negotiator's job, and unless you are prepared for it you will do a disservice to your team and to your institution.

6) SPREAD THE WORD...KEEP THE FAITH

(Try to keep the team informed and speaking with "one voice")

An important part of the negotiator's role is to keep your team informed, involved, engaged and energized about what's going on. It is important to remember that these are busy people, who do not live this process on a day-to-day basis; you have to keep them part of it. This can be done any number of ways, and with today's technology you can readily reach out and inform your team of the latest occurrences via email or voicemail (keeping in mind the issues of confidentiality).

In our case, over nine months passed from the time the President made his charge to successful negotiation of the agreement. Since the issue of faculty workload was transformational in scope and vital to the academic health of the University, it was the topic of much discussion, speculation, and debate. As such, it was important that the management team stayed informed of developments as they occurred throughout the

process, for two reasons: 1) beyond feeling a sense of ownership in the process, they also were able to provide their feedback and opinions; and 2) they could serve as key communicators, responding to questions and squelching rumors.

As academic leaders of their respective colleges, the academic deans need to be informed and consulted on key developments of the bargaining process from start to finish. Failure to do this will result in an alienated key constituency group who are pivotal in the success or failure of the process. I have learned that deans resent being blindsided and informed of management's proposals by their faculty. They should learn about what is going on from the management directly.

A cautionary note is in order. While having an informed and involved team is both desirable and necessary, you must ensure that the actual "bargaining" is done by the appropriate individuals, and that it occurs at the appropriate times and forums.

Sometimes members of the team feel compelled to share the latest update on the bargaining process with their constituents (who happen to be in the bargaining unit), and these conversations may take on the appearance of a bargaining session. Unit members might come away from these informal discussions under the impression that they have been presented with the official positions from management, leading to unfounded rumor and speculation. Getting feedback and ideas from faculty on items that are being negotiated is one thing; engaging in the true give-and-take on negotiable items is another. Team members need to be cautioned against engaging in

these discussions, as they can be detrimental to the bargaining process. A simple “This is *not* to be discussed with your faculty at this time,” often is warranted.

7) KEEP THE PRESIDENT IN THE LOOP

(He/she is the key communicator and chief spokesperson, and needs to know what’s happening)

As discussed earlier, in a university setting the President is the chief spokesperson and negotiator. He/she should be the one to articulate the overall goals, and also may be involved periodically throughout the process—to meet with the management team and assess progress, and to keep the ship steady if and when needed. However, the President has other things to attend to, not least the business of running the university. Thus, the President’s direct involvement in the process is naturally sporadic. Such was certainly the case during the negotiations at Rowan on the faculty load.

That is not to suggest, however, that the President was out of the loop on what was happening. On the contrary, he was very much aware of developments in the negotiations. He was sought out for advice and counsel on an as-needed basis, and was regularly updated on the critical aspects of the process. The importance of this cannot be emphasized enough. The President is the *ultimate* key communicator at any university; like many Presidents, Rowan’s is actively engaged with the university community. Such communication can occur formally and informally, in casual

conversation, at meetings, functions, and in parking lots. His opinion is sought after and listened to.

Given this, you cannot overestimate the importance of the President knowing and understanding what transpires in the bargaining process. Like the other team members, Rowan's President needed to know when there was apparent agreement, disagreement, and areas of potential compromise. He also needed to know about any "hot button" issues, and where the union stood on them. As the ultimate arbiter for the management team, unless the President was aware of how negotiations were unfolding, he would be making judgments in a vacuum, without context or perspective. Bargaining of this scope evolves, and keeping the President part of the informational "loop" during this evolution was instrumental in Rowan's success at capturing that "prize." We are currently bearing the fruits of this collective labor.