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Negotiations 101

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2010: Negotiations 101:
An Introduction To the Art of Negotiations and Collective Bargaining

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All-righty then!
Jim Carry [Ace] in Ace Ventura, Pet Detective.

THE ESSENCE OF COLLECTIVE BARGAINING

Finite resources [usually money, but not always]
Ultimate Power [ability to act]

How much of the resources and power will
the union gain?

Balanced by

How much of the resources and power
management must give up?
NATIONAL LABOR RELATIONS ACT
29 U.S.C. Sec. Sec. 151-169 (printed above)
TITLE II
[Title 29, Chapter 7, Subchapter III, United States Code]
Conciliation of labor disputes in Industries affecting Commerce;
National Emergencies

Sec. 1. [Declaration of purpose and policy] It is the policy of the United States that (a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees .

Sec. 8. (d) [Obligation to bargain collectively] For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession .
2010 Negotiations 101:  
An Introduction to the Art of Negotiations  
And Collective Bargaining

This workshop is intended for people who are just beginning to be involved with collective bargaining on their campus or for their union. Although the following Agenda may appear fixed in stone, it is merely an outline. We hope that the class will develop along the lines of a ‘give and take’ dialogue. You are encouraged to ask questions at any point in the process.

Agenda

Introductions:
- a) Presenters and Participants
- b) The Essence of Collective Bargaining
- c) The NLRA definition of collective bargaining

1. Pre-Bargaining Phase
   - a) A Pragmatic Definition of Collective Bargaining
   - b) Initial or Mature Agreement?
   - c) Negotiating Teams
   - d) Strategic Planning

2. Standard Contract Items – and Why?

3. Priorities, Costing and Data
   - a) Initial Priorities and Key Demands
   - b) The Art of Costing Out Proposals
   - c) The Use, Misuse and Mis-Understanding of Factual Data

4. The Negotiator’s Basic Tools

5. Bargaining’s Beginning Steps
   - a) Ground Rules?
   - b) Team Table manners
   - c) The Caucus
   - d) Waiting
   - e) Negotiations Away From The Table

6. The Flow of Negotiations

7. Adjunct Bargaining – Special Considerations

8. The End Game
   - a) Rules of Thumb

ATTACHMENTS:
- Bibliography
- Negotiations 102 Agenda
Standard Contract Items and Why?

There is no such thing as a standard contract for higher education institutions and their unions, but the following ten items may serve as a starting point.

Preamble

Unit Definition and Recognition

Union Rights and Management Rights

Wages and Benefits

Leaves, vacations, holidays

Hiring and employment rules

Work Schedules

Discharge

Grievance and Arbitration

Term

NEGOТИATOR’S BASIC TOOLS

Life’s basic skills are the negotiator’s basic tools:

Common sense

Common sense is common sense

Not necessarily common – but

I think the phrase is understandable

Preparation

Enough can’t be said about prep

I believe that no time spent on prep is wasted – ever

Even if you never use what you prepared

People skills
Probably listening skills
Are the most important

**Patience [and Anger]**

*“The side with the strongest fanny usually wins.”*

**Anger**: Is the opposite of ‘patience’
Needs to be discussed and understood
Real anger is bad – and needs to be controlled

**Future te ipsum!**

This is not good.
Remember that there is no ‘divorce’ in negotiations
Tactical anger – may be good, but it has to be carefully used

**Self-knowledge**
Examine yourself
You probably will not change much (if at all)
So – you should take steps to know yourself
And work with what you’ve got

**MANAGING MEETINGS**

**Ground Rules?**

Determine how agendas will be made and agreed to
Location
Joint Submissions or Who Goes First?
Blackout/Confidentiality
Communicating with your members
The Press

**Team Table Manners**

Spokesperson(s)

*Who speaks and when?*
The Caucus

When to caucus
Why to caucus
How to caucus
The ACBD Rule: “Always consult before deciding.”

Waiting

The value of waiting
Readiness

Negotiations away from the table

Sidebars
Substantive discussions

THE END GAME

90% of the negotiation takes place in the last 10% of time

Don’t let time pressures push you to a settlement.
Take your time. Look at every angle.

[Remember, the side with the strongest Fannies usually wins.]

Test your understandings and summarize what the other side has said with other side

Caucus with your team and review where you are a lot

Take careful and accurate notes

Don’t narrow down to only one issue

Package items together
Keep a ‘package’ in motion to manipulate

Never offer to split the difference
1st: 50%/50%;
2nd: leaves you on the short end of 75%/25%.

Taper concessions towards the end.
Don’t make equal size concessions.
Make smaller and smaller ones.
Never make a big jump at the end.

Don’t be too greedy.
Always leave something on the table.

Don’t let the other guy write the final language.

Read everything you are going to agree to, even if you wrote it

Win/Win means making sure the other guy believes that he has won, or been fair.
2010 Negotiations 102: A Further Introduction To the Art of Negotiations And Collective Bargaining

{With Emphasis on the Skills and Concepts Needed to Bargain Successfully}

This workshop is intended for people who are involved with collective bargaining on their campus or for their union. Although the following Agenda may appear fixed in stone, it is merely an outline. We hope that the class will develop along the lines of a ‘give and take’ dialogue. You are encouraged to disagree, or ask questions at any point in the process.

Agenda

Introductions: Presenters and Participants

1. Fisher’s Rules
   BATNA
   ZOPA

2. Practical Rules to Remember and Use

3. Listening, Watching, and Being Watched Skills

4. Relationships, Trust, and Credibility]

5. Adjunct Bargaining – Special Considerations

6. Reduction of Agreements to Writing

7. Standards Used By Arbitrators

8. Is it a Good Agreement?
ANTHONY D. WILDMAN is the Director of Higher Education Services at New York State United Teachers. Previously, he was president and negotiator for a small faculty local, a labor relations specialist for NYSUT, and served as Director of Staff and Chief Negotiations Consultant at United University Professions.

Tony has worked with NYSUT’s national affiliate, the American Federation of Teachers, on a number of training and negotiations projects in Kenya, California, Missouri, West Virginia, New Jersey, Florida at Miami Dade Community College and with the university systems in Alaska. He was Co-Chief Negotiator for the Public Employees Federation, New York State’s largest state employee union. Recently, Tony acted as chief negotiator for the initial contract of the Kansas Organization of State Employees (KOSE), a joint affiliate of AFT and American Federation of State County, Municipal Employees (AFSCME).

Tony’s holds degrees in History and has studied in Europe researching the poetry of World War I. He has also studied collective bargaining with Roger Fischer and mediation with Frank Sandner at Harvard University. In addition to history, Tony teaches collective bargaining, mediation, arbitration, and alternate dispute resolution. He is a member of the American Association of University Professors.

Tony has received the Higher Education Staff Award from the American Federation of Teachers for “30 years of dedication and commitment to collective bargaining and labor relations in higher education.”

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2010 Bibliography

‘How-to’ Negotiate:

Like trying to learn to swim on the kitchen table, ‘how-to’ books can leave much to be desired. You might learn the strokes—crawl, backstroke, and butterfly — but never had the experience of trying to breathe once the water hits your face. Nonetheless, here are some good ones, and ones that will make a lot more sense after you have had one go at negotiations.

Academic Collective Bargaining, edited by Ernst Benjamin and Michael Mauer. Modern Language Association of America, 2006. Benjamin, the former General Secretary and Director of Research at American Association of University Professors, and Mauer, the current Director of Organizing at AAUP, present a series of essays describing collective bargaining in the higher ed setting.


Colosi, Thomas R. On and Off the Record: Colosi on Negotiation. Kendall/Hunt Publishing Company, 1993. Tom Colosi is a former Vice President of the American Arbitration Association. These two books are practical ‘how-to’ descriptions of the negotiation process.


Latz, Martin E. *Gain the Edge! Negotiating To Get What You Want*. St. Martin's Griffin, 2004. *This is ‘hardball’ stuff: Tools and tactics to get ahead of your opponent and keep ahead.*


Resolving Conflict:

Here we emphasize some of the individual components of the negotiations process.


Covey, Stephen M. R., with Rebecca R. Merrill. The Speed of Trust: The One Thing That Changes Everything. Free Press, 2006. A bit hokey – and you just know that he is going around the country doing workshops for big fees – the Covey book nevertheless presents a lot of thought-provoking ideas about the nature of trust.


Leadership:

Leadership is the art of influencing people to do things they might not otherwise do in achieving desired goals. Here are four small books packed with the values and principles of leadership.


Harvey, Jerry B.  **The Abilene Paradox and Other Meditations on Management.** Jossey-Bass, 1988.  Harvey's Abilene Paradox story is a classic, a study in group dysfunctional behavior, and how to – hopefully – avoid such mistakes.

Phillips, Donald T.  Martin Luther King, Jr.  **On Leadership: Inspiration & Wisdom For Challenging Times.** Warner Business Books, 1999.  Obviously, negotiations is way too trivial a subject when compared with Dr. King's struggles, but this little collection of his thoughts makes for powerful and sensible reading.

**Ideas, Words, Grammar, Body Language:**

The careful and proper use of words, words, words is the basis of enforceable contract language.  Here are some books that will help you think about words and their meaning.


Lakoff, George and Mark Johnson.  **Metaphors We Live By.** University of Chicago Press, 1983.  Lakoff, a Professor at the University of California and Director of the Rockridge Foundation.  Rockridge is a liberal think-tank.  The first half of this little book describes how to 'frame' your arguments for the most effect.  The Rockridge Foundation’s web-site is [http://www.rockridgeinstitute.org](http://www.rockridgeinstitute.org)


Luntz, Frank.  **Words That Work: It’s Not What You Say, It’s What People Hear.** Hyperion, 2007.  Lutz is the mirror image of Lakoff as a conservative wordsmith.  Lutz's forte is finding the exact words and phrases to evoke an emotional, but positive, response.  Luntz is the senior staff member of Luntz, Maslansky Strategic Research and their web-site is [http://www.luntz.com/](http://www.luntz.com/)

Pease, Allan and Barbara.  **The Definitive Book of Body Language.** Bantam Books, 2004.  The problem with reading this book is that you will become so self-conscious of your own body language that you might become unable to function.

**Technical books**

For want of a better term I call these books ‘technical.’ They are large heavy books, and are updated regularly. Like books of this kind, they are frequently called by their author[s]’ names.


In 1952 Frank and Edna Elkouri wrote the first edition of this classic text. It is the relied on by everyone as almost the definitive word on arbitration in the workplace.

**How to Take a Case Before the NLRB, Eighth Edition, Fredric H. Fischer, Brent Garren, and John C. Truesdale, Editors in Chief. Committee on the Practice and Procedure under the NLRA, Section of Labor and Employment Law, American Bar Association. BNA Books, 2008.**

**Labor Union Law and Regulation, and periodical Supplements, William W. Osbourne, Jr., Editor in Chief. ABA Section of Labor and Employment Law. Bureau of National Affairs, 2003. This book explores intra-union dynamics, the relationship of unions with its members and with nonmember employees.**

**Public Sector Labor and Employment Law, Third Edition, Jerome Lefkowitz, Jean Doerr, and Sharon Berlin, Editors in Chief. New York State Bar Association, 2008. This is an example of an examination of the laws and regulations in a single state. It happens to be New York, but your state will probably have a similar study describing the state’s labor laws.**

The Airport Book Store

If you spend a lot of time in airports you have spent a lot of time in airport book stores. At the risk of being laughed at take a look at a little series called “Essential Managers,” published by Dorling Kindersley [http://www.dk.com]. The little books are around 70 pages each, printed in China, and – I think –written in Great Britain. Here are five:

Achieving Excellence, by Robert Heller
Managing Meetings, by Tim Hindle.
Managing Teams, by Robert Heller
Negotiating Skills, by Tim Hindle.
Strategic Thinking, by Andy Bruce & Ken Langdon.

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