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What Factors Affect The Time It Takes To Negotiate Faculty Collective Bargaining Agreements?

Daniel J. Julius¹ and Nicholas DiGiovanni, Jr.²

Introduction

This essay endeavors to answer two straight-forward but complex questions: how much time does it take to negotiate a collective bargaining agreement covering faculty in post-secondary institutions, and what factors influence in the length of time involved? Are there any responses which will make sense? Can we offer any guidance? Permit first a few anecdotal stories and then a discussion about the internal and external factors that inform the answer to these questions and why the best answer may well be, “it depends.”

In the early 1980’s when one of the authors was associated with a large state university system, a first-time faculty contract was bargained in three days. Impossible? Here’s the reason why that could possibly happen. A negotiator and a senior administrator then in charge determined to wrap up the settlement “in principle” because, among other reasons, they were not supportive of the person who was about to come in as the new vice president responsible for all human resources and labor relations. Sparing the reader the names and details to avoid any untoward reactions, these two individuals, “collaborated” with a bargaining agent representative in a manner which they thought would conclude a deal, solidify “their” positions in the system, and exclude the new vice president from the important decisions going forward.

There were other mitigating circumstances to the story as well. For example, this was the first set of negotiations for this state system, and there were many political and variable dynamics between the campuses and the system office. In any event, the outline of an entire initial contract was set forth in principle on a single piece a paper. The new vice president, of course, suspected what was afoot (one reason why he was brought in) and within a short time the

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negotiator and senior person who tried to pull off this side arrangement were gone. The first system-wide contract then took about another eight months to complete.\(^3\)

In another case from the late 1980s when one of the authors was associated with a large private university, the contract covering the law school faculty unit was traditionally negotiated routinely over lunch in a favored Chinese restaurant. All was signed, sealed and delivered within an hour. The opening position from the administration was: well, we might have to endeavor to amend the collective bargaining unit and add law school faculty into the full-time faculty unit—a proposal which was, of course, anathema to the law school faculty. The remainder of those luncheons were then focused on wrapping up a quick deal. That was the same conversation, for over a decade, and all on very good professional terms.

On the other side of the time fence, it is well known that one renewal contract negotiated between the AAUP and the University of New Hampshire several years ago took almost three years to finalize, including two rounds of fact-finding. By the time it was done, there was two plus years of retroactive pay that had to be sorted out. But even longer was the initial contract at Seminole State College in Florida, which, according to reports, took well over five years to conclude!

These are, of course, mere anecdotes and unusual stories to illustrate that anything can happen in negotiations, and in a world where the law does not dictate a fixed timeframe to complete the process, the parties can create their own timeframe—from a handful of hours to marathon events that would dwarf Hannibal’s long elephant march through the Alps!

But in the normal world of collective bargaining, what factors can we identify that affect the length of time it takes to negotiate a faculty contract?

**Initial Collective Bargaining Agreement: Influencing Factors**

First of all, we must distinguish between first contracts and renewal agreements. As a general rule, it takes infinitely longer to negotiate an initial faculty collective bargaining agreement than it does with a renewal contract. While this may seem obvious, it is worth underlining the reasons for the difference.

\(^3\) The one-page three-day “agreement in principle” remains in my treasured notebook, coffee stains and all, hidden in my closet, it was important at the time. (DJ)
The Importance of First Contract Language

Perhaps foremost on the list of special features of first-contract negotiations is the language of the contract itself and, simply put, getting this right takes an inordinate amount of time. It is axiomatic that the first contract is the most important in terms of contract language. Each side starts with no language in place, not even a title page. And from this void, an agreement governing the working conditions and compensation of hundreds of bargaining unit faculty must be chiseled and shaped. Moreover, since the provisions of a union contract do not easily change from one round to the next, the language that is negotiated into that first agreement is absolutely critical, especially on the key areas of the contract such as grievance procedures, management rights, standards of review for personnel decisions, and matters of academic judgment, to name a few. In many cases, language negotiated 20 years earlier will still survive in subsequent contracts without amendment. This is because of the burden in later rounds of making changes. The party coming forward with language changes in any future round bears a practical burden of persuasion, and gains that were hard fought in previous rounds will not be easily given back. For example, the establishment in a first contract of a “just cause” protection for discipline and discharge or the right to arbitrate grievances are provisions that are not likely to disappear in later rounds, and any administrative effort to take them back is likely to fall on deaf ears.

Public-sector contracts are even more difficult to change from year to year due to the absence of the right to strike (in many states) and the substitution of other devises to resolve bargaining impasses. Under many public sector labor statutes, when impasse is reached, the parties may proceed to advisory fact finding or even binding arbitration. These processes are notoriously conservative, and most neutrals will not recommend wholesale changes in fundamental contract language, thus making it more difficult for a moving party to alter original contract provisions. None of this is absolute, of course, and language changes of some sort are made in every round of bargaining. But on the fundamental core provisions set in that initial round, the years only serve to cement their stature in the agreement.

For such reasons, first contracts take time to complete. With no language in place, with skeptical and wary participants, and with all of the issues cited above, it is little wonder that the negotiations of most first contracts take well over a year. As bargaining proceeds, the time itself becomes a burden, taxing the schedules of the participants, the expenses of the institution, and the patience of all. The ability to understand this reality early will help an institution cope with the tedium, the frustration, and the periodic outbursts of tempers along the way.

With all these considerations, among many others, looming before an institution, it is easy to understand the enormous pressures that weigh on a bargaining team and an administration as it goes into first-round bargaining with any new bargaining unit.
Developing the Relationship

For better or worse, the introduction of a union changes the relationship between faculty and administration. The relationship is no longer bilateral but trilateral: the administration, the faculty, and the union. The administration must adjust to having a new political and legal entity on the campus with which it must deal on all matters affecting wages, hours, and working conditions and, in many cases, permissive subjects of bargaining as well such as governance. The adjustment takes time, but usually unions demand bargaining within weeks of their certification and thus the building of the relationship will begin to develop while the parties are in the midst of that first round of bargaining. This itself can slow down that first bargaining round with each party, like Sumo wrestlers, eyeing the other cautiously around the ring.

First contracts, like treaties after a war, are often negotiated in strained and tense climates. In the aftermath of a union campaign, what may be remembered first is that both sides may have attacked the other in seeking votes. When the dust settles and the union has won, the administration may still be angered at the results and not inclined to make life any easier for the upstart labor organization. Unions, depending on their margin of victory, may come to the table with the arrogance of success and a mandate to improve the lot of the unit members. Or at the very least, they may come to the table determined to rectify the problems that led faculty to turn to them in the first place.

Style and tone at the table, then, become critical elements in establishing the long-term relationship between the parties. That relationship will evolve from the way the two sides relate to one another during these early days and particularly how they conduct themselves at the bargaining table. Factors such as the ferocity of each side’s rhetoric, the demeanor of the negotiators, the nature of the proposals, the insistence on demands, the tone of the dialogue, and the way the parties handle the side issues that occur while bargaining the initial agreement will all take on particular meaning in that initial round.

For such reasons, it takes time for everyone to catch their breath after the union campaign and decide how they want to approach each other—and that can slow down the process of negotiating that first agreement.

Planning

The key to effective negotiations starts with effective planning. Never is this more important than in the first contract negotiations and never does it take more time to do. In addition to the normal bargaining preparation and data collection that accompanies every round, the initial season at the table requires the development of a certain type of grand strategy and a
delineation of essential goals and principles that will guide the team and the administration through the months ahead. To accomplish this, an institution must set aside considerable periods of time to define and refine this strategy and to sketch out a broad vision of the future.

As one example of this, administrators, in approaching an initial round of bargaining, will first want to consider whether they will have a particular overall stance to the bargaining itself. For example, will the administration simply seek to preserve the status quo and prevent the union from encroaching too much on management prerogatives? If so, it will be on the defensive most of the time, seeking to avoid substantive change wherever possible.

On the other hand, the administration may pursue a more aggressive approach and propose major changes in the status quo. First contract negotiations may be seen as an opportunity to address problems of performance, productivity, governance, or economics that may not have been dealt with effectively in other settings. An administration adopting this approach will be formulating major initiatives to present at the table—and these will take considerable time to deal with at the table.

Beyond the broad picture, the administration will turn to particular themes and principles in preparing for bargaining. These can include many different concepts that vary depending on the nature of the bargaining unit. With a full-time faculty unit, concerns may extend to establishing or maintaining sound evaluation procedures, focusing on language that will enhance academic quality, defining the legitimate lines of governance, and restricting matters of academic judgment from arbitral review. With part-time faculty, the focus may be on keeping costs low, avoiding the extension of major benefits, and maintaining control of assignments as much as possible.

With every bargaining unit, then, there will be special institutional aims that can be developed into operating principles in addressing many of the issues at the table. They will constitute the broad priorities as well as the reasoned underpinnings of the administration’s approach in the months ahead. This kind of planning neither seeks to define every piece of contract language with precision, nor does it set forth fixed tactics that must be followed week to week. Such matters should be left instead to the negotiators, who must be responsive to what the other side is doing, what circumstances develop, and what opportunities emerge. Instead, this pre-negotiations work on goals and principles can be important grounding for the institution and

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4 As one recent example of this, the wave of new adjunct faculty bargaining units in the past few years has resulted in administrations, often for the first time, examining the method by which adjuncts are evaluated and realizing that there was often no clear oversight of the adjuncts’ performance. Thus, at the bargaining table, colleges and universities are themselves proposing more detailed and thoughtful evaluations procedures where none had previously existed.
can provide guidance on any particular issue. As the bargaining proceeds, it will be useful to refer to these principles periodically to make sure everyone is staying close to the charted course.

Finally, the administration has to consider what it is willing to discuss at the table. While an administration is required to negotiate over wages, hours and working conditions under the National Labor Relations Act and virtually all public sector statutes, other issues of vital concern to faculty—such as governance issues—may be only permissive subjects of bargaining. This does not mean the administration is precluded from discussing those topics, but it does mean that it has to decide whether it wants to wade into those waters as part of the bargaining process. In addition, while an employer can always bail out of discussing permissive subjects in future rounds, the reality of the relationship is that if the administration discusses a permissive subject in the first round of bargaining, it will be hard pressed to extricate itself from such discussions in the next round.

Data Collection

The collection of data and information for collective bargaining is a time-consuming but necessary task. While this is true in every round of bargaining, first contracts are particularly difficult because there are often no templates in place to serve as a guide for obtaining the data. The administration has to figure out which department will be in charge of producing what information. What will the role of the Provost’s office be? Human Resources? Institutional Research? Academic Departments? Who will be responsible for what?

Also, in many cases involving first contracts for adjunct faculty units, for example, administrations are not even sure who is in the unit or what information they have on such unit members, due to localized hiring of adjuncts by department chairs. In a first round of bargaining, just getting the information gathered is time consuming. This requires time-consuming questioning of the individual departments, the usual locus for such information.

First Considerations at the Table: The Establishment of Initial Ground Rules

Once the teams are at the table, where do you start? The very first consideration should be ground rules. Ground rules are sometimes not even considered as the parties approach bargaining, but they can be indispensable to a smooth first contract round and indeed for all subsequent rounds of negotiations. They establish, along with the legal framework, the rules by which the parties will play, and, once established in the first round, they often continue without major changes for future rounds. Thus, the first round again becomes an important test period and pinning down satisfactory ground rules can also take considerable time.
Among the many items to be considered here include:

- Time lines for submission of initial proposals and possibly time lines for either reaching an agreement or reaching impasse;
- The location of the meetings and frequency and times of meetings;
- The number of people on each team;
- Identification of the chief spokesperson;
- Provisions for communications between the parties between sessions;
- Understandings that articles may be T/A’d (tentative agreements);
- Provision that nothing goes into effect until contract is ratified by both sides;
- Provisions regarding who may or may not attend bargaining sessions;
- Whether or not there will be any restrictions on press releases or other public statements about the bargaining; prior notice to the other side if one side or the other plans a press release and similar provisions;
- Release time, with or without pay, for employees participating in bargaining;
- Agreement to set agenda of an upcoming meeting at close of any given meeting;
- Provisions as to the number of copies when materials are exchanged;
- Sharing of expenses if bargaining takes place off-campus at hotel or other rented facilities;
- General principles of civility and good faith to govern the bargaining affirmed by each side;
- Understandings with regard to data requests;
- Provisions for changing the rules by agreement.

Once such ground rules are negotiating for a first agreement, they often simply get rubber stamped for future rounds. But again, for a first round, these take time. In summary and considering all of the factors above, it is little wonder that first contracts almost invariably take more than a year to negotiate under the best of conditions, and, coupled with some of the factors to be cited below, the process can easily span 18 or more months.
Subsequent Rounds of Bargaining: Influencing Factors

Collective bargaining, especially with faculty units, is never easy, but subsequent rounds of bargaining are uniformly less difficult and less time-consuming than first rounds. In subsequent rounds, the parties have come to know each other. Each side knows the style of the other side, the people who will tend to guide the process, and the general approach and demeanor of the other side. In other words, the relationship has been formed, at least initially.

Details such as ground rules require less time. Often previous ground rules are adopted with no changes, or perhaps only a tweak or two. Data collection has become more routine, with appropriate offices involved in the collection of particular data. The parties may have already established a timetable, either informally or in that first contract, as to when the renewal negotiations will start. Everything is simply more established.

According to recent informal polling among higher education administrators who actually sit at bargaining tables, contract renewals usually take between four and ten months, with a number of rounds taking a year or more. It is typical at most institutions that bargaining will begin in January for contracts expiring in the summer, or some similar time frame. And yet, there can still be great variation in the time it takes to negotiate a successor contract. Why is this the case?

Certainly, we can identify a series of factors that can, and do, directly influence the length of time it takes to negotiate a successor collective bargaining agreement. These include:

The Adopted Style of Negotiations: Positional v. Interest Based

As is well known, the two styles of bargaining normally in play are traditional positional bargaining and interest-based bargaining, with variations in between. This essay will not debate the two approaches except to underline that interest-based bargaining, if done correctly, will usually take much longer to negotiate than positional negotiations. This is due primarily to the need to confront every issue raised by each side (as opposed to simply saying no to a proposal) and, when so confronting an issue, allowing for brainstorming of ideas, various suggested options to deal with the issue, then measured against agreed upon criteria, and so on. Such a process is not designed for those who want to limit the time devoted to collective bargaining in a given year.

Frequency of Meeting Times

This is an obvious factor. Parties meeting once a week will get the work done quicker than those meeting once or twice a month.

Here there is a tremendous difference between the private and public sector. In the private sector, under the umbrella of the National Labor Relations Act, either negotiations concludes with a settlement (perhaps with the help of a mediator) or there may be a strike. In contrast, public sector negotiations take place within a statutory framework where strikes may be prohibited and, instead, there are lengthy impasse procedures when the parties get stuck. For example, many state statutes provide that if negotiations fail, then a mediator must be appointed to assist and, if the parties still do not reach closure, then they proceed to advisory fact finding. This process can take months, as the fact finder must be first mutually agreed upon; a hearing date or dates must be set; briefs must be filed and decisions rendered. This process alone can easily take six months. Beyond that, in some sectors, there are steps beyond advisory fact finding, such as last best offers, that must be followed. In the public sector, then, such processes can drive a normal bargaining process well into a second year or more.

Size and Composition of the Bargaining Team

For example, the Service Employees International Union, in its recent surge of activity in organizing adjuncts and other contingent faculty in the Boston area would routinely have bargaining teams of 25 or more faculty at the sessions, each with the ability to participate. Inevitably, this delays the process as more individuals find the necessity to speak. This is opposed to tightly circumscribed union bargaining teams of five or six faculty members with a chief spokesperson. While smaller teams may not mean a quicker pace any more than large ones slow it down, the number of people involved in the process can be a factor.

The Subjects on the Table

Certainly, a bargaining round with an abundance of complex issues will inevitably take longer to negotiate whereas limited-scope bargaining, under which the parties agree in advance to limit the number of articles to be opened or the number of issues to be raised can expedite the process. When both sides want to avoid an excessively long bargaining season, they may mutual agree to follow this approach.

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5 In Vermont, following fact finding, each party must submit, as a single package, its last best offer on all disputed items to the Vermont Labor Relations Board who must then pick either the union’s package taken as a whole with no amendments, or the administration’s package, taken as a whole with no amendments. 3 V.S.A. Section 901 et seq.
Parties Control over the Subjects

Further complicating the negotiations may be the degree to which the parties control—or don’t control—the resolution of the issues. Some issues at the table may be beyond the authority of the team and rest instead on external agencies. For example, in the public sector, does the state legislature control or otherwise have to approve financial packages, or does the institution have the autonomy to chart its own course? Where the state controls, the parties may reach some tentative understandings, but the state legislature may take months to ratify or appropriate the money to fund the agreement.

The Nature of the Bargaining Unit and Degree of Conflict or Cooperation Among Primary Constituencies in the Unit

This can be an issue when the unit is particularly broad, such as when there is a mixture of tenured/tenure-track faculty mingled with non-tenure track, contingent faculty. The views of one group may not mirror the views of other groups. Indeed, a classic example of this is the desire of many full-time faculty unions to limit the number of part-time or otherwise contingent faculty at the institution. When the unit includes both contingent faculty and tenured faculty, the interests of the two groups can be in conflict, creating delays. A problem can also occur in a multi-campus system where negotiators are trying to take into account the particular interests and needs of the different campuses. The relationship of “local power brokers” to system decision makers often proves to be determinative;

The Relationship of Local Union Representatives to National Representatives

At times, the relationship between local and state/national union officials can affect a number of issues. The best interests of one may not mesh with the best interests of the other. For example, an aggressive national union may insist on certain provisions for the local agreement—such as a union shop—that may hamper the ability of the local union to complete negotiations.

The Agenda of Negotiator, Administration, or Union

This is broader than the particular proposals on the table. For labor, this may depend on why and in what manner the union agent was elected in the first place. For example, the primary impetus may be to act as a hedge against what was perceived as arbitrary and high-handed management actions, as a way to safeguard gains made prior to unionization and which may now be perceived to be in jeopardy, or as a defense against system-wide incursion into local affairs. Is this a situation where one agent challenges another, and wins an election, and must now demonstrate greater prowess at the table to a “new” membership? On the management side, an
administration may have an aggressive agenda that it knows it won’t achieve at the table but plans to assert during the impasse proceedings.

The Lead Negotiator

In some cases, the lead negotiator becomes the problem in terms of the time it takes to negotiate. A new negotiator for one side or the other may enter the round of bargaining seeking to undo what his or her predecessor did at the table. A new union leader may think that the previous union negotiator was too soft, or too compliant with the administration’s wishes and may now seek to assert the union’s agenda in an aggressive fashion that forces the parties into impasse and slows down the process.

On the other hand, a thoughtful and experienced negotiator may become an asset in moving the process along, counseling his or her side to make reasonable responses to the other side’s needs, achieving fair compromises and finding ways to settle issues that may have seemed impossible to resolve.

The Economic Climate

Bargaining in tight economic times is a challenge and can often elongate the process. A union facing a management position of either no compensation increases or maybe a 1% increase, for example, will have no incentive to settle quickly and, in the public sector, may simply decide to move into the longer statutory impasse procedures.

The Relative Strength of the Unit

A unit of tenured/tenure-track faculty generally holds more sway than newly formed units of adjunct faculty. Administrations may be more concerned about their full-time tenure-stream faculty and be willing to engage in longer negotiations over more issues than it might with contingent faculty. However, the current climate, where adjuncts and full-time contingent faculty units are numerous and developing into a force, may eventually change that equation.

The Ability of the President or the Board of Trustees to Sustain Conflict with the Union, with Internal Constituencies, or to Survive “Negative Press”

Simply put, some administrations and boards of trustees are willing to weather a long siege to maintain their position and not yield to union demands. Others may eventually not want the distraction of an unresolved contract and will fold on issues at some point just to get the process over with. This can also include the relationship of the president to his or her senior leadership team and generally whether the president is secure or feels at risk.
Continuity, or Lack Thereof, of Administrators

It sometimes is the case that a new president, or provost, is hired in the middle of a round of bargaining. The new administrator may have sharply different views from his or her predecessor, and, depending on what those views are and how they contrast with the previous administration, the negotiating process can be suddenly cut short through concessions or elongated through defiance.

Additional factors include:

- The degree to which settlement will advance the career of one individual or another or advance the interests of a particular constituency;
- The degree to which one party or the other needs or desires to test the strength of the other;
- What other agreements unions in the area or region have made and whether pattern bargaining plays a role and how much support the bargaining union will receive from other unions on campus;
- The process for contract ratification;
- Luck, serendipity, time of year, and the health of individuals at the table;
- The extent to which one party feels coming to agreement may hurt institutional prestige or set a pattern for other institutions (a city or region).

The list above is fairly comprehensive, and yet, we would be hard pressed to answer a question concerning in what manner these factors and variables shorten or extend the length of negotiations. For example, the experience of the negotiator, size and composition of bargaining teams, the authority of negotiators all matter but to what extent? An experienced negotiator will know under what conditions settlement is possible but may be prevented from doing so by other variables identified in this essay. Research is needed in post-secondary settings on the effect of personality, organizational, political or structural variables that impact negotiations in a “positive” or “negative” manner assuming anyone can come to an agreement on the definition of those terms.

While first contracts invariably take longer to negotiate, successor agreements can be as problematic as first-time contracts. For example, if the parties are confined to economic items only, there may be less opportunity to trade non-economic issues for economics and vice versa.
By and large, it is sometimes easier, in our experience, to have both economic and non-economic issues on the table; the art of negotiations demands that tradeoffs be made (or at least feigned).

Moreover, there are strategies negotiators employ to enhance leverage which may make negotiations for successor agreements an easier or more difficult affair. For example, inserting language that mandates arbitration procedures expire, let’s say a month before the actual agreement terminates, can, in some jurisdictions leave one party without recourse to arbitration until a new contract is agreed upon and ratified. A situation such as this can, in some cases, cause pressure to settle, as can a strike or a lockout. There are other ways to enhance leverage and such strategies require sophistication and a knowledgeable “long-term view” of negotiations processes.

While legal and organizational environments differ, and the politics of organizations and personalities of leaders are always interesting, we would argue the private sector affords employer representatives with greater legal flexibility and leverage in negotiations. Whether or not the negotiators take advantage of that leverage is another story, and sometimes it may not be wise to take advantage of such. There is an old adage, that good legal advice may not be good academic advice. While a party can triumph at the bargaining table through a strike or lockout, negative press, attitudes of students, and public opinion often leave deep institutional scars. Animosity resulting from a strike or lockout may last for years, ripping the fabric of the academic community and replacing civility with cynicism and anger.

Ultimately, students suffer, and the institution has a much harder time recruiting talented faculty and staff. In our experience the next president after such actions occur will inevitably be asked to start anew with a different team. In academic organizations, as in other highly political contexts, the heroes of a strategy that lead to particular outcomes in one era, may be scapegoated over time, when the unintended consequences of labor relations actions are then blamed on those who were given accolades and credit for what originally transpired. Bargaining is a cyclical process, and one would do well to approach it with caution, foresight, and a long-term view about bargaining gains and losses. This is true for union as well as employer representatives.

The truth is that regardless of negotiating positions and bargaining outcomes, in academic organizations the parties must still engage in shared governance of some kind in post-bargaining relationships. Conditions that pre-dated bargaining can be exacerbated if negotiations and settlements are not addressed in an effective, respectful, and fair manner. After the ratification vote, the parties have to live with each other again; trust and respect must be nourished. In this regard, labor relations dynamics in colleges and universities really are different than in many other industries and organizations.
The appended charts depict the dimensions of negotiations. They provide some insight into why the process can sometimes drag on for months and even years. Charts 1 through 6\(^6\) depict the dimensions of labor relations and constituents who impact collective bargaining processes and outcomes. Knowing the “dimensions” is a *sina qua non* for understanding how the process is influenced and, as well, the impact of the variables identified which are associated with the length of negotiation processes.

**Imperatives on Negotiators to Manage the Process**

As good practitioners we conclude this essay by providing readers with questions they might consider as they “manage “or navigate the negotiations process. One caveat is clear; those who negotiate must prepare their team, constituencies, and the senior leadership for what will transpire at the bargaining table. Presidents need information and need to be prepared to respond when trustees, legislators, or community leaders ask why the institution cannot settle with the union. In worst case scenarios, senior academic leaders, including the president, look inept and unattached to reality (and because of this, lose authority and prestige) when they are unable to respond intelligently to important internal or external constituencies on the question of the length of negotiations. We have witnessed cases where important external stakeholders lost faith in internal leaders because they did not understand negotiation strategies and tactics and instead perceived the process to be adrift. We count among our friends chief negotiators who lost their positions by failing to provide the information and evidence that the negotiating process was being managed correctly; all of which is related to the question of the length of negotiations. Explaining contract negotiations and the variables and factors that effect negotiations to presidents or chancellors or faculty constituencies, who may be asking for a rational approach and a realistic timeframe to wrap up negotiations, is imperative for chief spokespersons who seek a long career and the ability to retain the power and influence needed to be effective.

Our experience suggests that bargaining is still dependent on a multiplicity of variables and factors. Knowing which ones are most salient will help determine answers to the original questions which generated this essay; which, by the way, is still, “it depends.”

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\(^6\) The appended charts, Dimensions of Collective Bargaining, were, to the best of our knowledge, originally developed for training programs by the U.S. Department of Labor in the 1940’s or 1950’s. We have adapted them for use in higher education and have been using them since the 1970’s. They were most recently published in D. Julius and N. DiGiovanni, “Academic Collective Bargaining: On Campus Fifty Years “Center for Studies in Higher Education, Research and Occasional Paper Series, University of California, Berkeley, April 2013.
The issues that are brought to the table, or scope of bargaining, are determinative and can set the tone for collective bargaining relationships. In many jurisdictions, the scope of negotiations (wages, hours and working conditions) is outlined in enabling public sector labor legislation. Terms, such as wages, hours and working conditions can be ambiguous in higher education settings. In general, creative spokespersons can negotiate the issues they need to address each party’s concerns. However, there remains a healthy tension between unions and various “governance” committees in many institutions. There are no set rules for the number of individuals who sit on bargaining teams. In general, it is more often difficult to come to agreement when greater numbers of individuals participate, particularly if party spokespersons lack the necessary clout or integrity to deliver on promises made at the negotiating table. In some systems or institutions, bargaining protocols are set forth in negotiated agreements. The location of bargaining sessions, released time for negotiators, and team membership can all be contentious issues. Normally, chief institutional representatives, President, or Chancellors do not participate in negotiation sessions. To do so would significantly reduce their ability to “take positions” or “remain above the fray.” However, the absence of chief executives also provides flexibility to negotiators to float trial balloons or table sensitive topics. Bargaining is a political process which causes those in charge to “compromise.” Eventually, the need to engage in compromise erodes authority.
In effective relationships, all formal agreements should be initiated by chief university and union negotiator. The arrow between the administration and faculty depicts the horizontal bargaining that takes place between two chief negotiators. Such bargaining may begin at the table, but ultimately migrates to legislative hallways, restaurants, and bathrooms. Toward the conclusion of negotiations the parties invariably spend more time away from the table than at the bargaining table itself. Nevertheless, personal trust, integrity, and professionalism remain a constant feature of effective collective bargaining efforts. Demonizing opponents or rotating negotiators (so others can get a turn, but who may have no awareness of history or trade-offs necessary to conduct negotiations), hampers collective bargaining. Why would any professional negotiator come to a resolution which often involves compromise and the need to “sell” the resolution to other team members or constituents, with one negotiator only to find that individual had been replaced by another spokesperson with no memory or appreciation for the compromise recently made. Unions who engage in such practices, allegedly to promote democratic values or training opportunities often have difficulty coming to resolution with employer counterparts. Seeing negotiating positions through the eyes of the individual sitting across the table is important! Creative negotiators have an uncanny ability to find shared objectives and construct contract language which addresses the concerns of both parties. Here the key is not to negotiate language which proves impossible to implement. This can be problematic as many negotiators, union and administration, have no real management or supervisory experience. Negotiators are often very naïve about how contract language is translated and utilized in the workplace. (A good reason to insure that “managers” are present on the bargaining team). Moreover, in many higher education settings, individuals who determine ‘bottom line’ parameters for the union and management are not present at the table. All the more reason that chief negotiators are able to deliver on their promises. In the final analysis, all the negotiator really has to offer is his or her word.
In most higher education settings, there is some political intrigue and honest disagreement among members of the same bargaining teams. Significant internal negotiations can occur between representatives of academic units and financial offices. It is also quite common for various faculty in different schools to disagree over issues or standards. Faculty often have pronounced opinions concerning the work of those in other disciplines which, if not addressed openly, can hamper negotiation processes. This is particularly the case in systems where different institutions seek to safeguard institutional autonomy and resist centralizing tendencies. In some employee associations, there are factions who seek to take over the union, particularly in organizations where leaders are not secure. In such cases, negotiations can be disastrous, as negotiating counterparts are reluctant to make concessions to individuals who may be unable to deliver on promises, or who are susceptible to recall elections. Personal animosities between different units, divisions, or individuals also hamper collective bargaining processes. This can be exacerbated when those responsible for labor relations are demonized by other administrators or faculty, or accused of "giving away the store" in response to various demands. When negotiating positions are not in alignment with organizational values or mission statements, or institutional leaders undermine negotiators by allowing "end runs", the process breaks down. The maintenance of sound labor relations requires that institutional and union leaders stay focused on outcomes and provide authority and trust to negotiators. Obviously, collective bargaining is impeded when those given responsibility for negotiations are not trained or do not understand the role of the negotiator or the unique organizational features of colleges and universities.
Chart 4

DIMENSIONS OF BARGAINING
EXTERNAL - WITH OUTSIDE GROUPS

Special interest groups affect bargaining outcomes in all negotiating processes. Collective bargaining is inherently political and requires an awareness of the importance of particular external constituencies. Those who negotiate must negotiate on behalf of wider audiences. For example, agreement on economic provisions which require increases in tuition or agreement on contract provisions which change promotion or tenure criteria, or the compensation of department chairs, potentially affect other powerful special interest groups in the organization or state. Providing particular economic benefits to one group may require similar benefits be offered to comparable employee groups. The "costs" of such compromises must be seen in a larger context. A party cannot easily afford to 'settle' with one constituency to the detriment of other interests; both must please a particular constituency within its ranks. Ultimately labor relations requires a redistribution of power and influence; this is difficult in organizations where shared governance and consensus are normative. Labor relations demands finality. Academic organizations resist hierarchy and deadlines. Negotiators from all perspectives face similar problems and challenges.
Ultimately, administrative representatives must convince Trustees, Legislators, or other powerful academic leaders to come to agreement or compromise on matters that may have been characterized as "principles". This requires an internal structure to engineer the decision-making process. Problems and challenges are complicated when those who negotiate are external to academic divisions where organized faculty and academic leaders reside. Union negotiators have similar challenges, particularly when organizing rhetoric promises new gains and the redistribution of power relationships. Negotiators who make such promises risk losing the confidence of union members or union executives if such claims are not deliverable. It is also the case that senior organizational leaders, on both the administrative and union side, may have bigger fish to fry. While compromise on an issue (parking rates, subcontracting, office hours, and the like) may seem monumental to local constituencies, individuals responsible for approaching state or federal officials for new legislation or increased financial support, may not feel "local" issues are worth the fight when "larger" systemic concerns are being debated. In this regard, parties external to the process exert an influence on bargaining relationships.
Chart 6

DIMENSIONS OF BARGAINING

This chart depicts why collective bargaining, particularly in large complex systems, is a cumbersome and time consuming affair. Negotiation processes, horizontal, vertical, internal, and external, occur with an array of individuals. Relationships break down during periods of institutional transition because those responsible for making decisions or legitimizing bargaining compromises leave or are at risk themselves. Stable academic environments and consistency in leadership are important. In large organizations or systems, executives or faculty leaders must effectuate policies and procedures in alignment with other institutional endeavors. This can be difficult where permissive leaders are reluctant or unable to hold others accountable, or senior union officials are subject to the whims of elected faculty. Ultimately the ability to negotiate effectively requires integrity, political acumen, support by institutional leaders and good fortune. Various actors and constituencies away from the table exert continuous pressure on parties to come to agreement or, in some cases, resist compromise. For example, a Dean who seeks to impress a particular faculty group or president may, for his or her own selfish reasons, undermine the efforts of negotiators. Communication and a concrete strategy underpinned by realistic and objective bargaining parameters are essential. At some juncture during negotiations, the good of the organization must be put before the interests of any one party or constituency.