

March 2017

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Recommended Citation

(2017) "Workshop: Training on Unionization and Collective Bargaining for Academic Labor - Handout: Which Form Will Your Negotiations Take (R. Ufberg)," *Journal of Collective Bargaining in the Academy*. Vol. 0, Article 7.

DOI: <https://doi.org/10.58188/1941-8043.1661>

Available at: <https://thekeep.eiu.edu/jcba/vol0/iss12/7>

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Journal of Collective Bargaining in the Academy

Volume 0 NCSCBHEP Proceedings 2011

Article 29

12-4-2012

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Recommended Citation

Ufberg, Robert Esq. (2011) "Which Form Will Your Negotiations Take: Art, Drama, Combat or Symphony? Why, When and How to Exercise Each Option... and Sometimes More," *Journal of Collective Bargaining in the Academy*: Vol. 0, Article 29.
Available at: <http://thekeep.eiu.edu/jcba/vol0/iss6/29>

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Which Form Will Your Negotiations Take: *Art, Drama, Combat or Symphony?* Why, When and How to Exercise Each Option... and Sometimes More

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I. Introduction: Some Basics for the Chief Negotiator

A brief summary of some basics if charged with the responsibility of heading up a negotiation:

A. Know Your Own Party. Make sure you fully understand the goals, the will and the appetite of your side before you ever set foot in that first bargaining session. That knowledge will define *your* goals, your boundaries, as well as your best method to proceed. Everything you do – and say – across the table should be rooted in those known goals and boundaries... there is no casual conversation.

B. Know Your Goals, Limits and Expectations. In furtherance of your ‘goals and boundaries’ setting, confer as soon as possible with your real control group (which may not always be what or who it first appears to be... finding out may require some detective work and some gentle diplomacy, especially if the apparent Wizard is but an empty suit). Learn as definitively as possible what your side really wants, needs and expects. Determine what the control group sees as your **“Get” Goals** (Primary, Secondary, and It-Would-Be-Nice), your **“No Give” Goals** (the things they stay up worrying about, that they fear losing or giving up), and, finally, what its **Expectations** are - and why.

If you know that any of these – **“Get” Goals**, **“No Give” Goals**, or **Expectations** – are not realistic, face off on that as early, openly and clearly as you can. (Ex: *“We don’t want to cost-share on health care.” “We are not going to even discuss allowing our faculty to teach in our new Distance Learning Program.”*) You can’t afford to withhold honest, realistic information or bad news from your own committee. Doing so – allowing incorrect information or beliefs to linger – is a recipe for disaster, likely to cause discomfort on your or your team’s part about the proverbial elephant in the room; or a gnawing sense of foreboding (knowing that eventually you *must* have “the conversation”; or, worst case, distrust flowing one or both ways). Avoid these problems at all costs; because if you create them or allow them to be created, there is no magic restoration hardware or software to re-open the door to full confidence between you and your team.

C. Approach Each Negotiation As Its Own... *Uniquely*. Practically speaking, anyone who lives in the world of collective bargaining knows that labor negotiations are *not* cookie cutter; they are anything but.

Virtually every negotiation is and should be different – *because the parties are different, and so, too, are the issues, problems, needs, priorities and relationships...* as are the solutions.

Seeking certain common contract language is natural when negotiating labor contracts within the same industry, or provisions based on industry-specific statutes, regulations or exceptions, or uniquely applicable trends or events.

(Ex: It was very common when the Obama Recovery Plan's 2/3 government-sponsored COBRA subsidy was in place to amend labor contracts on the issue of employer-provided health insurance for laid off employees – often trading that for additional severance pay or other layoff benefits. Exporting recently negotiated language to that effect to other, similarly-situated employers made great sense).

But *commonality* does not mean *equivalence*. In most cases the final proposals (TAs) from your last successfully negotiated contract should not be shoehorned into your next contract – different employer/union, different issues, etc.

To the seasoned negotiator on the other side, prepackaged proposals signal that:

(1) You need to cling to the ready-made rather than address the issues *du jour* with original thoughts because you aren't capable of generating those original thoughts or solutions;

(2) You're afraid to change previously developed language because *you* don't understand it; or

(3) You're under strict orders from your own Committee or principal – the university, or the local or international union – to not deviate from the premanufactured language... probably because they don't trust your abilities.

Keeping prepackaged concepts or themes, or ready-made contract language, on the table after clear rejections or serious counterproposals will eventually earn you a reputation as being mediocre – a pusher, not a creator.

II. Which form will your negotiations take?

You have your internal marching orders. You know what your side defined as its Goals, Limits and Expectations. You either accepted their vision in those respects or, after candid discussion with them on what needed to be modified or abandoned, you have reached a new shared vision.

Now you have to figure out *how* you're going to get them there.

This refers to the method you will employ (“*a way of doing something or carrying something out, especially according to a plan*”, *Encarta Dictionary: English (North America)*) to lead your team to the results it wants and now expects:

A. Negotiations as Art:

Described: Approaching negotiations as informational, educational... often to enlighten the other side or disabuse it from incorrect information or perceptions.

When: First contracts; major change contracts; negotiating significant amounts of open contract language that is (or the underlying issues are) more complex, esoteric or highly technical (e.g., major changes to benefits plan - retirement; health insurance); whenever your first – or biggest – hurdle is to get the other side past its own pre- [and mis-] conceptions.

Another situation that lends itself to this approach is trying to move beyond an inherently oppositional, belligerent or cynical opposing Chief Negotiator or a committee leadership that has fixed, hard views of the important subjects or language under debate – by reaching out to that committee or its corporate body that has the ultimate power to ratify (Board of Directors; bargaining unit) with hard, irrefutable facts and/or an inherently reasonable position.

How: Establish yourself as credible by demonstrating your information, language and positions as credible. When and as you feel it necessary (and always at the other party's request), provide details and facts that indisputably demonstrate the accuracy and credibility of what you are presenting.

Risk: Very time-consuming, likely to be slow-moving. That alone 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. 'Neutral' or 'educational' proposals, or information that turn out to be 'positional', skewed, or inaccurate will be disastrous, leading to a tsunami-like loss of credibility and major long-term consequences - at which point you must embrace Combat or Drama.

B. Negotiations as Drama:

Described: Approaching negotiations as a high stakes poker game - cards held close to your vest throughout and, heading towards the endgame, enough high-risk issues on the table that the other side is likely to capitulate on your true key issues... which you may not reveal until the very end.

When: Major stakes (survival or financial viability issues; need for major operational changes); large issues portfolio; low trust levels between the parties.

How: By engaging in very measured give-and-take bargaining, carefully setting and calibrating specific success and venture points - perhaps conceding on identified peripheral issues, but maintaining your position on most major issues throughout the negotiations (your "balls in the air") so the number of open issues is super-sized as the parties head towards the finish line. Camouflage your drop-dead positions by surrounding them with decoys where you have greater flexibility.

Risk: Slow pace can be off-putting, especially to newbies; 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 – if

you miscue on any of those you 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.

C. Negotiations as Combat:

Described: 'Win-Lose' approach to negotiations...“going to the mattresses”. This is the diametric opposite of 'Win-Win' negotiation—a bare-knuckles, go-for-broke environment, charged with high emotion (passion, anger, righteous indignation) and in turn resulting in much more intense and 'personal' conduct due to outsized personal investment in the results. Getting what you came for is a win; anything else is a loss.

When: A conscious decision to establish or apply power, or to change the dynamic of an existing relationship (“get the jewels back”); angry parties (usually long preceding the negotiations); a trust gap (belief that the other side is being dishonest, disingenuous or intractable). Very common with first contracts, and first contracts following a long strike or lockout.

How: Determine your 'Waterloo' issue/s and draw your line/s in the sand on it/them. Be real – try to refrain from excessive hyperbole. Make sure, before you commit your party, that there is internal consensus on what the prize is, and how strong the support is for doing whatever it takes to bring that prize home.

At the table, label and define your 'Waterloo' issue/s realistically... i.e., if something is a money issue, call it that; likewise if it's a trust, lifestyle, emotional, or pride issue. Once you are sure of your aim, convey that you're prepared to go to the wall on your 'Waterloo' issue/s.

Risk: Losing. Win or lose, the Combat approach to negotiations may be a negative building block for the parties' relationship (though in the right circumstance it can be a positive—that is, a starting point for where you need to go). Bluffing is your worst enemy. Don't move – or, worse, lead – on any issue if you aren't 100% sure that you have the muscle, the stomach or the support for it.

D. Negotiations as Symphony:

Described: Classic *cumbaya* bargaining – everybody wants the same thing; we all respect each other; now all we have to do is to get to the 'right place', thus satisfying everyone's interests, which we know we can do.

When: This approach is most common in one of two extremes: Where there is an existing high trust level amongst the parties (usually the chief negotiators as well as both sides' team members are veterans who know and like or at least respect each other professionally) and mutual recognition that they are going to deal only with necessary issues – no fluff - in a controlled atmosphere (good faith; fair dealing). Another 'Symphony' application is where parties commit to a pared-down, very direct and straightforward negotiation in order to transform a historically bad relationship. This

often involves new “players” on one or both sides who are duly empowered to deliver on the promise of overhaul (e.g., trustee negotiations), but may have narrow or shaky power bases and need measurable results fairly quickly.

How: Limit your menu to what you really need and want. Draft your proposals so as not to be overreaching or excessive, and 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.

Risk: A major risk in this approach is its basis on presumption rather than confirmed knowledge and commitment from the other side. In believing you have a mutual shared vision with the other side of the whats and hows to be achieved in the bargaining, and assuring your own committee of that, should you learn that you have either misread or misunderstood your counterpart, or that he or she was insincere or not sufficiently sophisticated to read and understand your signals, you may lose credibility with your own committee – credibility which is very difficult, maybe even impossible, to restore.

III. Closure

A. Observe and Assess; Don’t Deny.

At some point in virtually every labor contract negotiation, regardless of how positive and friendly it may have started, the *cumbaya* effect wears off and certain realizations set in.

If you got everything you came for (or close to everything), STOP here.

But if you find that you will get very little, or even none, of what you came for – or, worse, that you may even have to give on what you didn’t want to give – read on.

Examples: (A) *On the Union/Faculty side:* The University won’t back off its proposals for both a two-year wage freeze and major increases to your health insurance cost share even though you have candidly conveyed that you can deal with one or the other, but not both. (B) *On the University side:* The union won’t budge on revamping seniority and tenure systems that it knows are antiquated and continue to cause the University major time, money and agita even though you have been very straight-up that the University needs the ability to remove its worst-performing (at least its *non*-performing) faculty given the well-known and enormous legislative pressures and/or Board mandates for budgetary cuts.

Nerves on both sides are or will soon be getting raw; each side is becoming more and more emotional about, and therefore more entrenched in, its positions; and the parties are edging towards that zone where, absent real stewardship, emotions like disappointment, irritation and frustration may lead to automatic position reassertion rather than the will to work towards meaningful change.

You're frustrated. Your team is frustrated. And you may presume, or even know, that the other side is equally as frustrated. But as the Chief Negotiator, you need to figure out how to get it done.

B. Objectively Assess Your Position; Define Your Coordinates, Communicate Them Internally, and Recommend Your Best End-Game.

When you think you may be getting close to this point, you need a true GPS reading of your position, to assess where you are now in comparison to where you started, and the direction in which you seem to be heading:

Pull out your original lists – primary, secondary and maybe even tertiary goals, as well as your “worst fears” list – the ones against which you promised to defend.

Do this alone – or perhaps with that one most-trusted colleague – so that when you go to stand in front of your entire group to deliver a status and progress report you have – and can speak with – internal, reality-based conviction about where you are and where you expect you can get to.

Be honest with yourself in the first instance, so you can in turn be honest with those to whom it is your job to deliver the news – good, bad or otherwise.

Be honest with your constituents. There comes a point in time when you have to stop “cheerleading” for the cause, even though you know that once you do so you will instantly become the least popular person in the room. This is more of a problem on the union side than it is on the management side, because of the inherent structural difference in the way union vs. management committees are formed, and who comprises and heads them. Management typically does not have to work through the vagaries of a “democracy,” although I often find that one or two supervisors will become intractable with a certain pet issue, particularly where they know it will continue absent contractual relief.

Ex: Attendance rules enforcement; application of grievance-filing or grievance-processing requirements.

As chief negotiator, you know that certain supervisors or managers on your team have taken “hits” on these clauses, and you have made proposals to fix them. But the union is not giving on them – either because it is entrenched or because it assesses these as high-target value changes, and would like to either trade them for something it wants or perhaps get you to back off on something else that you've proposed that has a much higher target value (for everyone).

You recognize that you have only so many bullets, and so much time, to finish the contract, and if you use too many of your bullets and/or too much of your time on these clauses then you're probably going to have to give up something with a

higher target value. Or you may push the negotiations, overall, into a different time posture, which may be unacceptable for any number of other reasons.

Have an Affirmative Game Plan. Speaking to your team only of what is *not* possible, i.e., which of your original goals and objectives you have to rationally give up, must be balanced with (1) a positive but honest assessment of what you *have* achieved (or thwarted) and (2) your credible, realistic plan on how to deal with what is left, both the positive and negative.

C. Get Buy-In Where You Need It.

On the Employer side: This is typically “up” the food chain – anywhere from the University President to the Board. On the Union side: It depends on the structure of chapter, local, state unit, international union. There are, of course, any number of other variables.

But on either side it is imperative that you also secure buy-in from the people who sit on your committee. Even if you have the full buy-in or sign-off from those with absolute, ultimate authority, ignoring the rest of your team – even the known “carpers” – is a big mistake. They may not have to know everything, and they may not have to know certain things at the same time as the true decision-makers, nor to the same level of detail, but you don’t want people on your side feeling left out and, in turn, signaling disharmony or dysfunction to the other side. One of the worst frustrations in negotiations is feeling that you need eyes on your own team’s faces and movements as much or more than you do the other side. That can lead to all kinds of problems, both internally and externally – including rejection of your offer if the other side is betting on the wrong horse. Fixing that can be a nightmare.

D. Dot Every T.

Make sure that every issue that was raised has and reflects closure – set out or restate all TAs, reiterate all rejections and withdrawals, etc. You should be able to go back to your last document in two years, or five, and easily be able to reconstruct how the negotiations ended – not just in general, but on each issue.

Consider using colors and fonts (underlining, bolding, strike-outs) throughout the negotiations, to differentiate the sides, distinguish changes in your position, etc. If you do this, also make sure that you have created and retain in progressive copies any code that you may need to make sense of your colors and fonts.

All your language needs to be clear and unequivocal... and done. The biggest disservices you can do in any negotiation are (1) to build in ambiguity or (2) to leave something open with the understanding that you will get back to it, only to remember or be reminded months later that that last nagging piece still isn’t done because everyone got busy, and suddenly it has legs – new issues or sub-issues, new players or proponents, or revisionist understandings, which may happen for many different reasons.

E. End Well – As Well As You Possibly Can.

Never be controlled by the anger or frustration of the moment, nor the euphoria of victory.

Remember that in labor, unlike most other forms of “contest” established by statute or regulation, we see each other again... and again and again and again. Therefore, like the traditional explanation of the broken glass at a Jewish wedding, every negotiation should end with some measure of *bittersweetness* –contentment with the achievements or successes realized, but checked by the recognition that not everything could be achieved for everyone.

Two, three or even four years rolls around fast, and if you leave the table with a bad taste, that taste is bound to be the only remaining sense that people have when they come in or back the next time around – even those who weren’t there the last time. In short, never end on a note you’ll need to overcome the next time around.