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Negotiations 101: Preparing for Productive Negotiations in Good Times and Bad - The Administration's View

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NEGOTIATIONS 101

PREPARING FOR PRODUCTIVE NEGOTIATIONS IN GOOD TIMES AND BAD

THE ADMINISTRATION’S VIEW

Holly Stern, General Counsel, New Jersey Institute of Technology

ESTABLISHING THE NEGOTIATIONS TEAM

1 – Determining appropriate team structure and representation

- Consider Strategy Team: Representatives from labor, HR, academic units, finance and budget; senior administration.
- Negotiating Team should be manageable in size; accessible; able to commit time.

2 – Need for Expertise and Information

- The size of the team is not likely to equal the size of the union’s negotiating team.
- Need to balance internal perspectives, while maintaining unity.

3 – Balancing need for authoritative representatives with preserving resources of senior administration

- Negotiating Team members must have the time and ability to commit to the process, as to attendance of negotiation sessions, ability to draft and synthesize material, and ability to participate in regular strategy sessions.
- Team members must have sufficient credibility within the university; final decision makers rarely attend sessions, but should be accessible.

4 – Lead Negotiator

- Inside representatives v. external experts
- Must have credibility with both administration and union
- Must have experience, commitment, vision

ESTABLISH CHANNELS FOR COMMUNICATION WITH ULTIMATE ADMINISTRATIVE DECISION-MAKERS

1 – Ensure that President, Senior Administration, and Board are informed and understand the issues and stakes.
• Be prepared to listen and to educate.
• Understand the stakes, the tolerance for contested proceedings, and which battles are you willing to fight.
• Ensure consistency within administrative ranks.
• Secure buy-in before and throughout negotiations.

2 – Determine negotiation parameters before and during negotiations.

• Feedback must be continual. Avoid going in unsupported directions.
• Speak with one voice – avoid susceptibility to side-discussions.

3 – Establish regular briefing and feedback sessions with President and Board. Determine what authority is delegated in advance.

DETERMINING GOALS AND OBJECTIVES

1 – Acting proactively, not reactively. Determine what the Administration’s objectives are, don’t simply respond to negotiations demands.

2 – Review the Contract and history of disputes; determine which areas are problematic in implementation or impact the university’s mission.

3 – Determine Scope of Negotiability – is there contractual language that is unenforceable?

• Define and streamline what is grievable/arbitrable

4 – Determine which issues are legally mandated

5 – Incremental Change vs. Overhaul

• If it's not broken, should you fix it?
• How do you determine what is broken?
• How do you prioritize objectives?

6 – Values of Institution - performance pay; transparency; valuing research v. teaching

7 – Understand and maintain matters of managerial prerogative

GATHERING INFORMATION AND RESPONDING

1 – Know financial parameters and budgetary constraints

2 – Cost out current contract and be aware of all demands and existing terms with financial impact
• Union will be doing their analysis; you are the holder of the data, however, so ensure accuracy of data and validity of assumptions.

3 – Create data profiles

4 – Review salary equities and inequities

5 – Review comparators in geographic region and by type of institution

HIGHER EDUCATION ISSUES

1 – Tenure and Contract Faculty

2 – Faculty Governance

3 – Compensation Programs

4 – Course Load

6 – Intellectual Property

7 – Distance and Asynchronistic Teaching Modalities

8 – Grievance and Dispute Resolution Processes

9 – Benefits Programs

DRAFTING PROPOSALS

1 – Determine team member responsible for drafts; circulate within team for review.

2 – Ensure sufficient time between negotiations sessions.

3 – Share with the union prior to negotiation session for meaningful discussion.

BARGAINING STRATEGIES

1 – Consider type of negotiations (Interest-based v. traditional)

2 – Establish ground rules

3 – Consider dual working subcommittees for particularized issues

4 – Understand the union’s priorities
POLITICAL CLIMATE

1 – This is not only internal climate, but local/state political climate

2 – Understand levels of support and resistance

CONFIDENTIALITY

1 – When is it permissible to contact university community?

2 – Consider ramifications for public statement vs. silence

STATE LAW AND THE PUBLIC INSTITUTION

1- Role of State in determining financial parameters – is there leeway?
2- Bans upon right to strike
3- Impasse procedures
4- State Mandates – Conflict of Interest, Open Public Records laws
5- Current trends in limitation on collective bargaining rights