

## Chapter Three: Negotiating the Agreement

### A. Presenting Proposals

The first negotiating meeting between the two teams is sometimes devoted to introductions and discussions of ground rules and usually the union presents its proposals at the first meeting. Sometimes the union wants to trade proposals at the first meeting in the mistaken belief that it isn't fair for management to see the union proposals before presenting its own.

The real reason experienced management negotiators like to see the union's proposals before preparing management's proposals is because they like to allow the union to set the tone and style of the negotiations. Management doesn't want to start a war with a long list of hard-hitting proposals only to learn that the union has decided to be reasonable and moderate. The internal political problems faced by union negotiators are much worse than those faced by management negotiators so it is helpful to the process to allow the union's chief spokesperson to lead the way in terms of the style and also in terms of the basic timing of the negotiations.

If the employer gets impatient, for instance, and pushes hard for an early settlement, he may do nothing more than prolong the process. Sometimes the union absolutely insists on "swapping" proposals and there isn't much to do except go along. At the time the union presents its proposals, it's a good idea to tell them that the employer will respond with its proposals at the next meeting and it doesn't hurt to describe in general terms the concerns that management's proposals are going to address.

If the negotiations are for a first contract, the union's proposal will probably be for a total contract with all the union's wildest desires covered. The employer should respond, if possible, with a total contract proposal showing the union what it is willing to do. Normally this will protect and conserve as much as possible management's "rights" and powers to react to public service needs and will not include very many changes in employee benefits and terms of employment. A more detailed discussion of first contract negotiations appears in a later section.

If the negotiations are with an Act 312-eligible union, that is police, fire, or public safety, then management needs to include a few proposals whose purpose is to give the union negotiators a reason to avoid the arbitration

process. These deterrent proposals help skillful union negotiators persuade their more militant members that interest arbitration (Act 312) can be risky, and that an amicable voluntary settlement is the better negotiating goal. In a later section, we discuss the special challenges of negotiating with Act 312 unions.

Both sides will probably state at the end of their proposals that they reserve the right to add to, amend or withdraw proposals. It is best to avoid adding new proposals or upping the ante after some point in the early stages of the negotiations. During the goal setting stage prior to negotiations, this point needs to be emphasized to all concerned. While you may add things, the bigger or more important or more numerous they are, or the later in the negotiations they are presented, the more they chill the process and the closer you come to committing the unfair labor practice of bad faith bargaining.

In rare cases, such as serious economic hard times, management may need to seek concessions from the union such as benefits reductions. In these cases, the employer becomes the moving party advocating change and it would be appropriate for the employer to present its proposals first. This is a different situation from when the employer seeks one or two concessions but is willing to increase benefits in other areas. It is common for the employer to indicate it will need to reduce health insurance costs in order to be able to make even a modest wage increase offer. This is not the situation that triggers management presenting its proposals first. The rule of thumb is the party that wants to change the contract goes first; the party that could live with the status quo goes next.

### B. The Format of Proposals

All proposals should be neatly typed and written in as clear a format as possible. We usually write what we want and save the arguments and reasons why we want it for the oral discussions. Keep the written proposal as short as possible, but remember that clarity is most important. Proposals do not need to be in the form of contract language, but sometimes that is the best way to achieve clarity. If you must rewrite long passages of old contract language to make changes, then, if at all possible, use the format of lining out language to be deleted and putting

new language in bold face, such as is done in the Legislature with bills that would amend existing laws.

But don't make a union hunt for your proposals. If you just want to reduce the number of holidays, just say so and say which holiday is to be eliminated. If possible, and this is not always easy, have your proposals speak for themselves without the need to reference the expiring contract. Number your proposals, indicate clearly that they are your proposals to this union and date them. The notetaker should always keep a clean copy of all proposals so they can be copied later. Mark the union proposals if they're not already, with the date and the name of the union and the fact that they are union proposals.

### **C. Describing Proposals**

When you first present your proposals you should give a brief explanation of them so that it is clear what you're asking for. When the union presents its proposals, you should ask them to do the same thing. It is important that all proposals are on the table and both sides understand clearly what is being proposed as early in the bargaining process as possible. If there aren't too many issues this should be achieved by the end of the second meeting. The issues are now joined and the bargaining may begin.

### **D. Discussing the Proposals and Issues**

Once the proposals are on the table and understood, the process of explaining, justifying and persuading gets underway in earnest. The process is a communicating process and the key to success is the ability to listen. Listening is an art and is the most important skill a negotiator can possess.

The discussion stage of the bargaining is the longest. During it, both parties will communicate their interests, concerns and real priorities, turning all their cards face up, as it were. Once this is done, the negotiations will enter the short, rapid-paced settlement stage.

A good negotiator has certain skills and knowledge. The most important skill that can be learned is the ability to listen well. He or she must be honest, trustworthy and credible and must have a great deal of knowledge regarding the terms and conditions of employment that will be discussed. Experience is very helpful because it gives the negotiators more opportunities to learn.

Listening begins with paying attention when the other side is talking. This is not easy because sometimes the subject matter is not very interesting and it is much more desirable to talk about yourself and your own problems. You not only need to hear what is said, but you need to observe and note the non-verbal communication such as body language and facial expressions. This is so important that one member of your team should be assigned to focus on the non-verbal messages being sent since the chief spokesperson and the note taker may miss something important. Very often it is the non-verbal signals that tell you which person on the other side is the one to convince regarding an issue. The listener needs to believe that he or she understands the other side and then needs to take positive steps to confirm the understanding. Ask questions until you think you understand. Paraphrase what is being said, put it in other words and ask, "Is this what you are saying?" Don't interrupt and don't feel you need to respond to every point or answer every accusation or correct every error of fact. You are trying to find out what the other side wants, why they want it, and, most importantly, what problem they have that the proposal being discussed would supposedly solve. Don't get angry or lose your temper and don't say or do anything that would embarrass anyone. Your own body language and that of your teammates can be a very important part of good listening. Your non-verbal language states clearly whether you are listening, whether or not you are taking seriously what is being said, whether you care about their problem or not.

### **E. Explaining Your Viewpoint**

When it is your turn to talk, only your chief spokesperson should say anything except when it has been pre-arranged that another member of the team will speak to a particular topic or when, by pre-arranged signal, the chief spokesperson requests another member of the team to speak. Team members who interrupt to say something could very well cause harm to the process. Revealing information out of sequence or when the other side is not ready to receive the information can confuse them or send the wrong message causing their expectations to get distorted.

The chief spokesperson should explain management's position regarding each issue as clearly and completely as possible, then explain why management takes that position, and which of management's basic interests is involved.

Questions should be encouraged and answered thoroughly as soon as possible (sometimes more research is necessary to get the answer to a question).

When firmness is in order, be firm. It is very bad to waffle or say “maybe” when the only answer you’ll ever be able to give is “no.” Remember that it always happens that a union must be told “no” during negotiations. If you cannot do that, don’t be involved. The union expects some “no’s.” A union negotiator who was told “yes” to all his proposals would faint and then chastise himself for not asking for enough. He wants to get all there is to get and he knows he has arrived when management finally says “no.”

## **F. Candor and Openness**

Never deliberately mislead or lie to the union. Never withhold information you possess that they have a right to see. Always try to help them by giving them pertinent data or by suggesting where they might get it. You may be kind and diplomatic and you may avoid being brutally frank, but always be honest and speak the truth, even if it hurts.

## **G. Putting an Agreement Together**

People often say that timing is everything in negotiations. Although this statement may have a profound truth buried within it, it is so vague that it is, in a practical way, of very little help. After all the issues are on the table and understood by both the parties, somehow, progress toward an agreement must be made. Each issue must be disposed of, either by agreement or by its withdrawal. If you think the time is right, or if you want to find out if the time is right, you might get the ball rolling by agreeing with one or two of the union’s proposals or by offering part of what they have proposed. You might also withdraw one of your own proposals to demonstrate that such things can happen. If the union does not respond in kind in some manner, the time is just not right yet to begin progressing toward an agreement. If you make the gesture, however, you have sent the message that you’re ready to start dealing, and the next move and the timing of the next move, are clearly up to the union.

The first tentative moves or overtures to make moves usually deal with the easiest and least important matters. Even an agreement to correct spelling and grammar errors or to delete obsolete language can be a very important

beginning because it symbolizes and demonstrates that agreement between these two parties is possible.

Once the process of agreeing has begun, the chief negotiator should attempt to press forward to dispose of more and more issues. This pressure should usually be gentle and patient, but the negotiator should be prepared to move rapidly if the other side is so inclined. This means that the negotiating team needs to have decided well in advance what it is prepared to do with each issue. This may require extensive research and will usually require authorization from whoever must approve. Nothing is worse than tentatively agreeing to something at the bargaining table and then having to back away from or renege on the agreement.

There are only a few things you can do with an issue. If it is a proposal from the other side you can agree to it, reject it or make a counterproposal designed to deal with the problem but in a different way. If it is your proposal you can reaffirm it by insisting on it, you can withdraw it or you can modify it in a way that still deals with your problem, but in a way that might be more acceptable to the union.

There are normal sequences to negotiations. In the most common situation, the negotiation of a renewal contract in a well established union management relationship, the most common sequence is to begin with the easy and simple issues and progress gradually toward the larger or more important issues. In this sequence pension and health insurance issues are near the end and wage rates usually come last.

In negotiations for a first contract with a new bargaining unit and union the sequence is similar in that the less significant matters are usually settled before the big ones, but it is also true that non-economic issues such as grievance procedures, union security, management rights and zipper clauses will usually get settled before the big issues that will cost money. In new contracts much work is required to simply write down language that describes current benefits and working conditions that no one is proposing to change. This is not easy. The employer may have written policies that describe these things but the language may not be clear enough or complete enough to be used in a labor contract. Language in a policy manual or an old council resolution was easy to change. If an ambiguity arose or a question came up that had not been anticipated, the city or village council could easily amend or add to the previous language. With the employees now organized into a

bargaining unit, the language describing their benefits and working conditions is going to be chiseled into the rock of a labor agreement where management cannot change it without the negotiated agreement of the union. Much time is necessarily devoted in negotiating first contracts to simply writing down, in good labor contract language, the existing benefits and conditions.

The other situation that has its own sequence is the negotiation of an agreement with a union that has available Act 312 (of 1969 as amended) sometimes known as Compulsory Arbitration of Labor Disputes in Police and Fire Departments, or simply as the Police-Fire Arbitration Act. Although this is more thoroughly covered in a following section, the sequence here is to dispose of as many minor issues as possible reducing the list to the economic issues and, perhaps, a non-economic issue if it is of prime importance, and then to make a “total package” settlement proposal that settles, one way or another, all the issues. The other side responds with a total package settlement counter-proposal. The parties continue swapping settlement proposals, which presumably are getting more and more alike, until one party accepts the package proposal of the other.

## **H. Presenting Package Proposals**

Even when the union is not eligible for Act 312, the idea of making package proposals can sometimes be helpful to the process of reaching agreements. The idea is simple – you simply put two or more issues together. You might say, “We’ll agree to your proposal to equip the road grader with air conditioning if you’ll agree to our proposal to change the co-pay on the health insurance drug rider.” There does not need to be any logical connection. The proposal itself shows a willingness to make trade-offs. The package can be a total settlement package or a “mini package” that covers two or more issues. It does not need to change anything. It could be as simple as, “We’ll drop our proposal #7 if you’ll drop your proposal #6.” The advantage of packages is people feel there is a trade-off taking place, that they are getting something and, therefore, it saves face for people who cannot make movement on single issues without feeling they are capitulating.

## **I. Closing the Deal**

While each bargaining situation is unique, there are a few general concepts about closing the deal and settling that are true often enough to discuss. First, remember that both bargaining teams will need to convince their principals to agree to the deal. If the management team has done its homework, then its challenge in selling the agreement should be much smaller than the challenge facing the union team. Because of this, the final sequence of settling can affect the ratification process.

If the final tentative agreement was a proposal made by the union, individual members of the union and of the union’s bargaining team may believe the deal is a better deal than if the exact same outcome had been a settlement proposal made by management. If management accepted that last proposal after agonizing over it and sweating blood, all the better.

The psychological commitment to the deal is stronger for the party who made that last proposal. This can be very important later when ratification of the agreement is being considered. Almost always the union has the greater challenge in getting the deal ratified because the management negotiators kept their decision makers informed about what was going on and because they stayed within the parameters that had been set.

## **J. Ratification**

With few exceptions (some of the old craft unions), union bylaws require that the members of the bargaining unit who are dues-paying members of the union in good standing shall have an opportunity to vote on approving a tentative agreement. Normally the members of the union’s bargaining team present and explain the deal at a meeting and try to persuade the members to approve. Similarly the management bargaining team will need to sell the agreement to its side, the city or village council and, of course, the chief executive who should have already pre-approved it.

When the tentative agreement is reached, it is a good idea to discuss the ratification process both sides face. The union should be urged to proceed as quickly as it can. The more time that elapses between reaching the agreement and voting on whether or not to ratify it, the more likely will be a negative vote.

If a summary of the new agreement is prepared and reviewed by both the union and the management negotiators before the ratification, misunderstandings regarding just what was agreed upon can be avoided. It is also a good idea to have the union hold its ratification vote before submitting the question to the elected body. The city or village council should know that its approval will finalize the agreement. If the union ratification vote is still pending, the elected officials may be tempted to postpone their consideration of the deal, so you may as well wait until the union votes. Of course, if the union votes against the agreement there is no point in even discussing it with the elected body except as a point of information.

## **K. Special Bargaining Situations**

### **1. First contracts.**

When a group of employees form a new bargaining unit and begin the negotiating process, there are difficulties that are not present in older, established bargaining situations. Most significantly, there is usually not a good employee manual or other document that spells out the details of employee benefits and working conditions. Even if there is a pretty good manual, it is probably not written in the tight language needed in a labor agreement or union contract. Language describing benefits for non-union employees could be changed quickly and easily by action of the city/village council if that language was not clear or seemed to provide a benefit the council didn't intend. Language in a labor agreement cannot be changed unless the union agrees, and unions rarely agree to anything unless you make it worth their while. So even if the negotiators are trying to write down nothing more than a description of current benefits, payroll practices and working conditions, this can be a very big time-consuming project.

Secondly, the negotiation of a new first-time contract is taking place against a backdrop that may include hard feelings. Public employees in Michigan have had the right to engage in collective bargaining since 1965. Why did they wait until now to do it? What caused them to form a bargaining unit after all these years? Whatever it is, it's going to make the negotiations more difficult. It is not uncommon for first-time negotiations to last for several years because of these difficulties.

### **2. Act 312 unions.**

Negotiations with unions (police and fire) who have available by state law, compulsory binding interest dispute arbitration (Act 312 in Michigan) also present special challenges to management negotiators. Many such unions take the position expressed or implied, that either management gives the union what the union wants or the union will submit the dispute to arbitration. One of the pitfalls is that arbitrators rarely, if ever, give management any consideration for concessions made in the negotiations prior to arbitration. If management agrees to costly improvements in some benefits, the arbitrator is likely to ignore those new costs and focus on the unresolved issues. The arbitrator is not likely to award all the unresolved issues in favor of management just because management was generous in the negotiations that led up to the arbitration. Although most arbitrators will claim that they are not "baby-splitters", the fact is they never fail to award some issues to each side if they possibly can. For this reason, the more normal sequence of progress in negotiations – settling relatively minor issues first, then progressing up the ladder to the more difficult or more expensive issues – would not be effective for management in dealing with an Act 312-eligible union. Any money committed in the settlement of any issues would be wasted if the union submits the last few big economic issues to arbitration. The way around this pitfall is simple: at some point in the negotiations, perhaps when all or most of the non-economic and trivial economic issues are settled, put all discussions of serious economic issues together as a package. Make package settlement proposals. Try to get the union to respond in kind. This way, nothing costly is settled and off the table until an overall agreement is reached that concludes the negotiations.

The alternative to this "package proposals" approach is to repudiate any agreements you have made during negotiations if the matter is submitted to arbitration. This has the disadvantage of damaging your credibility but it is allowed. [*City of Manistee v Manistee Fire Fighters Association*, 1987 MERC Lab. Op. 590,601 enforced 174 Mich App 118 (1989), lv den 434 Mich 864 (1990)].

The largest pitfall of Act 312 is its ready availability. In another case involving the City of Manistee, the Michigan Court of Appeals held that good faith bargaining to impasse is not a prerequisite to Act 312 arbitration. [*City of Manistee v Michigan Employment Relations*

*Commission*, 168 Mich App 422; 425 NW2d 168 (1988)] There need be only a dispute, no impasse is needed. This makes it very easy for a union to proceed to arbitration. It is too easy. A union negotiator eager to please as many of his or her members as possible can avoid the difficult process of dropping or compromising some of the union's proposals and simply proceed to arbitration. The process of negotiating is not easy. Difficult decisions have to be made if a settlement is going to be reached. The ready availability of interest arbitration provides a convenient alternative to the difficult decisions inherent in good faith negotiations. To counter this pitfall, about all management can do is try to find some way to discourage the union from wanting to use the arbitration process. Put something the union already has or wants at risk. Do not agree to make the process simple, easy or inexpensive for the union.

Before the negotiations begin the management team should prepare several special proposals whose purpose is to give the union reason to avoid arbitration. The arbitrators have generally given too much weight to one of the factors that the Act 312 statute requires they consider: the comparison of benefits with those provided by other employers. While this is only one of nine factors in the law, it is clearly the one relied upon most by arbitrators in case after case. Unions have learned that it is not smart to bring an issue to arbitration where they are better off compared to others, but instead they submit issues regarding benefits where they are a little (or a lot) behind. If only the issues selected in this manner by the union are in front of the arbitrator, the union is likely to make gains relative to other employees. This process is a form of whipsaw as each bargaining unit tries to "catch up" with everyone else. There are two ways to counter this union strategy. The first is to find an arbitrator who understands that not every bargaining unit can possibly be behind everyone else. Gather the complete data regarding all the benefits of all the other employers and find a consistent way to evaluate all this data. Then show it all to the arbitrator who will then conclude that while this bargaining unit may be behind in some areas, it is ahead in others and does not need to "catch up." This approach is sometimes very difficult to do. The complete data from the other employers is usually not available and, at best, very difficult to get. The costing procedure or method of evaluating benefits is complicated and very difficult to explain to an arbitrator.

The better approach, because it makes the point more clearly, is to propose in the negotiations a reduction in benefits that the union could easily lose in arbitration. This could be anything where your bargaining unit is ahead of or better off than other employees of other employers. Another favorite Act 312 deterrent proposal is to offer to pay half of any future increases in health insurance premiums, with the employees paying the other half. This has another advantage. In situations where the employer has been paying the entire health insurance premium, it is common for the employees to be unaware and unconcerned about health insurance costs. While national union leaders give lip service to the health insurance cost problem, their members and representatives at the local level dismiss the matter as a "management problem." Many of them won't discuss any of the ways to deal with rapidly rising insurance premiums. So when management proposes to share premium cost increases, it is offering to increase its own costs (not demanding a give-back), putting an arbitration deterrent on the table, and possibly educating a group of employees as to how good their benefits really are.

Other than putting something at risk for the union, about the only other arbitration deterrents are the costs of the proceedings and the length of time the cases take. Union leaders and arbitrators often pressure management to cooperate in various ways to "make the process more efficient" to speed it up or cut the costs involved. This can be very tempting because the costs can be very burdensome to management and the time frames play havoc with responsible budgeting. But keep in mind that these efficiencies also make the process even more available to the union.