

## Chapter Two: Bargaining Preparations

### A. The Duty to Bargain in Good Faith

Section 15 of the Public Employment Relations Act requires both the employer and the union to bargain in good faith regarding the mandatory subjects of bargaining, i.e., wages, hours and other terms and conditions of employment. This obligation does not compel either party to agree to a proposal and it does not require the making of a concession. The requirement is to meet at reasonable times and confer in good faith. The representatives must display, through the totality of what they say and do, their sincere desire to reach an agreement. Surface bargaining, going through the motions with no intention of ever reaching any agreement, will be regarded as a violation of the duty to bargain in good faith. On the other hand, hard bargaining, bargaining with the idea of reaching an agreement but an agreement which overwhelmingly favors your side, is not a violation of the duty to bargain in good faith.

One of the most common unfair labor practices occurs when management fails to bargain in good faith by unilaterally changing a mandatory subject of bargaining. If something is a mandatory subject of bargaining such as a wage rate, an insurance or pension provision, or a work schedule or safety rule, management cannot change it except when the union agrees it can be changed or except when there has been bargaining but an impasse has been reached. An impasse is the point in negotiations where the positions of the parties have solidified and further bargaining would be useless. There must have been a good faith attempt by management to negotiate, a reasonable term of bargaining (the longer the better), and both parties must be clearly aware of just what are the positions of both parties that have become fixed. The Michigan Employment Relations Commission has laid down some strict criteria for determining if an impasse exists. An employer should not act unilaterally thinking there is an impasse, without the advice of a labor attorney.

Without impasse, the employer may not change benefits or terms and conditions of employment unless the union agrees. This agreement could be language in the contract previously agreed upon. It may be that the union has already agreed that management can change something. A well-written management rights

article specifies a number of things management can do without further agreement of the union. This enables management to react to unforeseen circumstances in a timely way.

### B. Getting the Negotiations Underway

After a union is first certified, it will contact management with a request to begin negotiations. This may take some time because the union may want to prepare a lengthy proposal covering all the provisions it would like to see in a contract. If the union has been established for awhile and has a contract due for renewal or re-negotiations, the contract will specify or, at least, give a hint as to when the new negotiations should begin.

Management should be ready. As soon as management knows negotiations are about to commence, it should do several things to prepare:

1. The management bargaining team should be selected.
2. Appropriate research must be done.
3. The general goals and desired outcome should be discussed and decided upon.

### C. Selecting the Management Negotiating Team

The first step in preparing for negotiations is to select the team that will be conducting the negotiations. The size of the team and its make-up will vary with each situation. Usually three persons is enough and more than five is probably too many. There should be a chief spokesperson, a note taker, and people who are knowledgeable about the interests and concerns of the employer as they pertain to the negotiations such as a finance director or department head.

Because the negotiations are important, the team members must be people who can devote the necessary time which can be quite a bit. The team must consult with all affected management people, conduct research, and then work with top management, often the elected officials, to formulate the employer's goals. Then the team must meet with the union and feedback to top management and repeat, then continue going back and forth as necessary and meeting with the union until an agreement is reached, then typed,

proofread, and ratified and signed. If the union is new and the negotiations are regarding a first contract, the negotiations will take much longer than negotiations for a renewal contract. First contracts sometimes take several years and usually require many months of negotiations, depending on the reasons the employees formed or joined the union and whether they have realistic expectations regarding the outcome of the negotiations. Renewal contracts, on the other hand, may take only two or three bargaining sessions, or may take ten or twelve, depending on the difficulty of the issues involved.

Leading the team is the chief spokesperson. This should be somebody who is experienced with negotiating and who is comfortable in the role of chief spokesperson. An employer may be fortunate enough to have somebody in-house who can do this or the employer may bring in an outside expert to lead the negotiations. A number of law firms can provide this service. It is penny-wise but pound foolish to attempt to conduct negotiations with a chief spokesperson who, for whatever reason, is not suited for the task. Some city and village councils assume the city manager can do this. Even if he or she had the time to lead the negotiations, the manager may not have the specific expertise or experience required. City and village managers are a talented group of people but not all of them are experts in all fields. Another reason to not assume a manager, or a department head, should be the chief spokesperson, is temperament. Chief spokespersons need to be patient, and they need thick skins, because sometimes there is abusive language, heated emotions, and frustrating delays. It is not a weakness or a failing to not be suited for labor negotiations. Employers need to keep in mind the importance of the outcome of the negotiations when selecting a chief spokesperson.

The other regular spot on the negotiating team is the person who takes notes, organizes all the paper and keeps a record of all proposals, offers and agreements. If there were only two people on the team, it would be this note taker position and the chief spokesperson. It is never appropriate to have only one person doing the negotiating and meetings should be postponed if only one person is available.

The other members of the management bargaining team should be people who have one or more of the following attributes: 1) they get along well with members of the union's bargaining team; 2) they bring useful knowledge

to the bargaining table such as knowledge of operations (department head or department supervisors), or of finances or of employee benefits; 3) they have previous experience with bargaining; 4) they will need to know later what has been negotiated because, as managers, they will have some responsibility to administer the new agreement.

## **D. Pre-Bargaining Research**

There are a number of political, social and economic forces that, one way or another, affect the negotiations. Knowing what these are, and how they bear upon the negotiations and the negotiators, is essential to successfully conducting the bargaining. Conducting research to do this is simple but tedious and time-consuming. This is where management's "natural advantage" can come into play. Management people are able to conduct more research and assemble more data than union people. This may be because the typical union representative in the public sector has a staggering workload and will probably have to either do the research personally or recruit members of the bargaining unit to assist. Since much of the pertinent data is local and only available locally, the state or national union's ability to assist is limited.

Management, on the other hand, lives with and works with much of the data on a regular basis. Also, management people are often well trained to conduct research and there are usually more people on the management side that can be put to the task.

### **1. Fiscal data**

Municipalities usually have a good handle on their own financial condition and they usually are aware of how neighboring and comparable communities are doing as well. The assessor, the planner, the person responsible for preparing the budget, all have a wealth of data. How much money does the city have? How much will it have in the next few years? Do you have a long-term fiscal plan projecting revenues ahead at least five years? Is your unallocated surplus as large as your auditors and financial advisers recommend? What kind of big financial burdens loom in your future, such as infrastructure replacement and maintenance needs? What is your bond rating and what do the rating companies say about you? What is your tax rate? Is there a tax rate limit in your charter? How does your community compare to your

neighboring communities and to other similar communities regarding all these questions?

Being financially well off and fiscally responsible does not mean big pay raises for your employees, but being broke or fiscally challenged can set upper limits on what you can do in the shorter run. You can't spend money that you don't have.

## **2. Economic data**

Everyone wants a glimpse of the future. Economists are always being asked to predict the future, but none of them are very good at it. Looking at historical trends in economic data can give clues as to your town's near-term economic future. Unemployment rates generally and in your community, rates of inflation and changing patterns in census data should all be gathered. What are the leading industries, if any, in your town? Who are the largest taxpayers and how optimistic are they about their own futures? One of the many good sources for basic economic data is the U.S. Bureau of Labor Statistics whose Internet address is [www.bls.gov](http://www.bls.gov). Ask your planner and your local banker about the economic prospects for your community. If times are going to be tough, you may be facing the need to reduce services which is a major factor affecting the negotiations. If the present and the future are bright and rosy, that's good, but don't be caught off guard – don't be building in big employee pay and benefits costs if the revenues are not going to be there to pay for them.

When fiscal and economic data are gathered together, it's a good idea to picture the numbers in graphical form – especially historical data. Graphs make numbers come to life and make it easier for understanding during group discussions such as management goal-setting sessions.

## **3. Comparing wages and employee benefits**

An important part of getting ready for negotiations is finding out how your municipality compares to other similar communities and also to neighboring communities regarding wage rates and employee benefits. This is a difficult and complicated task. It's relatively simple to find out what other places pay their employees. What's hard is determining if the duties, responsibilities, skills, etc. of their employees are similar to those of your employees. To the extent that they are different, you are comparing apples to oranges

and the data have little meaning. Just because the job in each town has the same name, doesn't mean it has the same duties or required qualifications. Also, if you do compare wage rates, remember that you are only comparing part of one person's compensation package with part of another person's and you don't know how big a part wages plays in either! Ideally you would conduct a study, a detailed job analysis, in several comparable communities, finding jobs with similar duties and responsibilities, and requiring similar skills and qualifications. Then you would analyze the entire compensation package of all jobs being surveyed and "cost" them out. This is a procedure of adding up the costs of all benefits in dollars and cents and dividing by the hours actually worked (scheduled time plus overtime, less time off). This will show you the cost per productive hour in each town being studied which can be compared. Anything less than that is like comparing a slice of one pie with a slice of another and trying to draw some conclusion about who has the bigger pie. It can't be done. Unfortunately we seldom are able to get complete cost of benefits data. It's hard enough to calculate for our own benefits and it's very hard to get all the necessary data from another employer. There are very few shortcuts, but some cities and villages routinely share as much information as possible on a regular basis so they have an ongoing rough idea of what the others are doing. Another obvious comparison pertaining to an upcoming negotiation is how do benefits compare for members of this bargaining unit with those of other employees of the same employer. If you've been treating one group of employees better than another, you'll hear about it at the bargaining table. All too often employees think they've been short-changed because someone else has a better benefit, but they don't know or have chosen to ignore some benefit area where they are ahead of the others. If one group has a better pension plan and the other group has a better insurance package, they'll both want to "catch up" with the other. This is called whipsawing. It is a very common union negotiating tactic. The more comparable data you can get, the better you'll be able to resist or defend against the whipsaw.

## **4. Bargaining unit history**

In preparing for bargaining, the team needs to review the events of the relationship that occurred during the term of the contract. All

grievances, particularly those involving contract interpretation, need to be studied. If a grievance had an unfavorable outcome, you will need to change the contract to avoid repeating the problem. Even grievances that were finally disposed of to your satisfaction, may indicate that the contract language is unclear and should be improved.

If this is one of several bargaining units in your organization, you need to consider if there is a history of pattern bargaining where one group settles first and sets the pattern the others follow. Is this group the leader, or the follower? Do two or more bargaining units traditionally attempt to whipsaw the employer? History has a way of repeating, so it is worthwhile to identify what has been the bargaining history with this unit.

### **5. Bargaining unit politics**

Who are the leaders of this group? What are they like? If there are differing factions within the unit, are they all represented on the union's bargaining team? The shifting demographics of the bargaining unit and its bargaining team can offer clues to how they will behave in negotiations. More senior employees generally are more concerned with retirement benefits. Employees who have families appreciate the value of health insurance more than single, healthy employees do. Younger people place greater value on benefits that put cash in their pockets. Employer negotiators have very limited resources to work with in negotiations, so they need to determine where they can get the "biggest bang for the buck." They need to maximize the aggregate utility or satisfaction, as economists might put it. This is something management must figure out. The union won't be a lot of help. If you ask a union negotiator if he would prefer an increase in shift premium payments or an increase in the dental insurance coverage, he'll say "yes" and expect you to do both. Correctly, "reading" the union regarding its real preferences depends in part on knowing the facts of its demographics (seniority, age, sex, family status, etc.) and being aware of the subtleties of the group's politics.

With respect to each issue, there is one, perhaps two, people on the union bargaining team that is the person to persuade. It may be a different person or the same person with different issues, but there is always a key person. Understanding how and why each person was elected to the bargaining team can help in

knowing where to focus your efforts.

### **E. Developing Management's Bargaining Goals**

The negotiating team needs to bring together all the data and information it has gathered, organize it, analyze it, and decide what it believes to be the possible range of outcomes of the upcoming bargaining. These possible outcomes need to be realistic and well-founded on the social, economic, and political facts that have been identified.

Each possible outcome will have various advantages and disadvantages associated with it. For instance, the not-so-realistic outcome of keeping all pay rates and benefits constant for three more years will have the advantage of being easier to afford since most costs will hold steady, except probably the insurance premiums. The disadvantage is that the union won't agree to it and you will get an unwanted result like a strike, an interest arbitration case (police or fire), low morale, or high turnover. At the other extreme, there are outcomes the employees would love, but you can't afford them or they would require a big tax increase (if such is even possible) and trigger a taxpayer revolt. In between, there are many possible outcomes, so the team needs to identify a few that seem realistic and meet the needs and problems faced by both the employer and the employees. The reason for narrowing the number of possible outcomes is so they can be discussed in a group setting that includes the bargaining team and top management, usually the elected governing body.

In the goal-setting discussion with the city or village council, someone needs to explain to the council or remind the council that the goals need to be established prior to the beginning of the negotiations and cannot be changed later. Nothing upsets the bargaining more than trying to add a new proposal after the negotiations are well underway or near the end. The council may need time to consider the possibilities. Usually at least two meetings are necessary. It helps a lot if the team gives the top management and elected officials a well-organized notebook containing the research as well as charts and graphs of data and summaries of complicated material along with the team's recommendations. This should show the projected costs of current benefits, costs of various improvements, savings from possible benefit reductions, and the revenue projections through the expected period of the

next contract. Desired changes in non-economic language should be detailed with explanations as to why they are needed.

Sometimes, unfortunately, the goal-setting process reveals a dilemma. For instance, you may have to choose between a reduction in service or a tax increase. Because the total expenditures of a local government are in the range of 60 percent to 75 percent wages and fringe benefits, problems with revenues will have a big impact on the negotiations. This, of course, is also true regarding rising costs over which the local government has little control, such as health insurance premiums.

Underlying all the demands and proposals that are made at the bargaining table are the real interests of the parties. For a local government, the real interests are mainly serving the public, effectively and efficiently. Revenue shortfalls or rising costs are only problems because they can interfere with pursuing the true interests of the city or village.

Proposals made in bargaining are, almost always, a perceived solution to a problem. We need to remember that there are often other solutions, and more importantly, other ways to satisfy our interests. When we are setting our bargaining goals, it's all right to express our concerns in terms of specific changes in the contract, but we need to be very aware of the interests involved and the problem that the proposal would attempt to solve. We need to know what we want, but we need even more to know why we want it.

## **F. Strike Plans**

Strikes by municipal employees are rare and, when they happen, don't last very long. Police and fire employees don't strike because they don't want to jeopardize the availability of interest arbitration and the other employees have discovered that strikes are not effective. Even so, it is a good idea to be prepared for a strike. Michigan's Public Employment Relations Act defines a strike as: "the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in employment conditions, compensation, or the rights, privileges or obligations of employment." Sick-ins, slow downs and similar actions are strikes. Picketing on the employees' own time is not striking – it is

simply the exercising of free speech rights.

The first thing to do when considering what to do during a strike is to decide which services being interrupted should be continued and which can be deferred. The public health and safety are paramount, of course, so services such as water delivery and sewerage will make the list to be continued if possible. Since these are largely automated, the non-striking supervisory staff can usually keep the systems running in the short and medium terms. There are private companies that operate water and sewer systems. It would be good to find out who they are and keep their phone numbers at hand.

There are services that, when stopped, cause inconvenience but do not endanger the public's health or safety. In a strike, it may be prudent to simply allow the inconvenience to occur, at least, for a short time.

If a strike occurs, management will want to secure all properties, facilities and machinery and vehicles. Sabotage by overly enthusiastic strikers does happen. Somewhere there should be safely locked away and carefully marked, a complete set of keys to all locks and vehicles.

There should be an information control system to prevent the spread of harmful rumors. One person only should be the designated spokesperson and all information should be forwarded by all management personnel to one central place.

Public employees in Michigan who strike can be fired. Their only defense is if they were "forced" to strike because of the unfair labor practice being committed by the employer (except school employers). Therefore, if you fire the strikers you can be sure they will accuse you of committing all sorts of unfair labor practices. It is probably wiser to refrain from firing them unless the strike lasts a very long time. Put your efforts into negotiating an agreement thus ending the strike the more business-like way.

## **G. Ground Rules**

Sometimes it is a good idea to agree upon ground rules to govern some aspects of the bargaining. Experienced negotiators, especially if they know each other and trust each other, will omit having ground rules. Each element of the ground rules is probably based on somebody's bad experience, but those stories have been forgotten. Written ground rules can help put the bargaining on a businesslike basis and can head off disruptive misunderstandings. The following are common ground rules subjects:

### **1. Place of meeting**

The bargaining should take place at the employer's place of business, probably the city hall. The best conference room should be used. This demonstrates that the negotiations with the union are being given the highest priority by management. The room should be large enough to easily sit everyone on both bargaining teams at a single table and the room should be secure and private. As a gesture of goodwill, management should provide coffee and water.

### **2. Time of day of meetings**

This might be difficult. If the persons who are going to be involved can be spared from their jobs, it is best to conduct negotiations during regular business hours. If this cannot be done, then hold the meetings at times that are most convenient for the most people. If possible, avoid holding the meetings when people have not been able to get proper rest or when they don't have time to get cleaned up from their jobs.

An important consideration that bears on the times of meetings is the question of whether or not the employee members of the union's bargaining team are going to be paid while negotiating. While the Public Employment Relations Act forbids an employer from contributing to the administration of any labor organization, it clarifies this point by saying, "Provided, that a public employer shall not be prohibited from permitting employees to confer with it during working hours without loss of time or pay . . ." For a number of reasons, including avoiding abuses, an employer should limit what it will pay union bargaining committee members to what this provision in the law allows. Time spent preparing for negotiations should not be paid time. If a meeting extends beyond an employee's normally scheduled working hours, that time should not be paid. Never pay overtime to union negotiators unless you enjoy lengthy meetings that run late into the night! It is normal and reasonable to pay the union negotiators their normal straight time pay for normally scheduled work time that is spent in negotiations, but the law does not require this time be paid, it simply permits it.

### **3. The list of participants on each team**

It is sometimes agreed in the ground rules to keep each other informed of who will be on the bargaining team. Neither side can dictate to the other who they may have on their team, but it is

especially important that management know well ahead of time if an employee is going to need to be excused from work to participate. This also bears on the question of whether or not the union team members who are employees will be paid by the employer during negotiations because it raises the question of how many will be paid. Neither management nor union can tell the other how large its bargaining team can be, although both must be reasonable. An extraordinarily large team can be disruptive and turn the negotiations into a circus, and no one is required to participate in such an event. However, even within reasonable ranges of team size is the question of how many will management pay for. Since management is not required to pay for any, it absolutely controls this number. The recommendation is to agree to two or three. If the union has a professional staff representative as its chief spokesperson, who is paid by the union, then two more persons paid for by the employer should be enough. If the union has some peculiar political need to have a larger bargaining team, the union can pay people to participate or they can volunteer their time.

#### **4. Meeting length and frequency**

Sometimes ground rules indicate how long each meeting might last or how often the meetings will be held but this is a mistake because it can interfere with the natural flow of the discussion. If a meeting is obviously going nowhere, cut it off; if great progress is being made and you're deep into meaningful discussions, keep going. The time between meetings may be affected by the need to do further research or to consult with decision makers not on the bargaining teams. Keep flexible on meeting length and flexibility, place a high priority on proceeding toward a settlement, meeting for as long and as often as necessary to pursue the settlement goal.

#### **5. Press relations**

Ground rules often specify limits on public comments regarding the negotiations because such comments never aid in the pursuit of settlements and can cause great damage if only a partial story is told or if someone is misquoted or even just misinterpreted. In a democracy, elected officials don't feel comfortable being muzzled, so don't agree to ground rules along these lines without their concurrence. Ground rules limiting or banning comments and press statements are good but they are difficult to enforce and very hard feelings and mistrust may result from their

violation.

#### **6. Record keeping**

Ground rules often specify that there will be a sign-in sheet at each meeting and that the chief spokesperson for each side shall initial and date each time there is an agreement on an item. These agreements are called "tentative agreements" or "TAs". It is a very good idea to put in writing and initial each TA as you go along because it eliminates disagreements later regarding the details of agreements. Just remember that each TA is tentative pending overall agreement on all issues. Also remember that it is very bad form to back away from a TA after it is initialed so don't do it without good reason. Try hard not to do it at all.