Section 9: Using Collective Bargaining for Member Advocacy and Organizing

- Know your contract.
- Keep an ongoing file of concerns for bargaining.
- Participate in OEA-sponsored collective bargaining trainings.
- Notify your Labor Relations Consultant prior to the negotiations process and follow legal timeline requirements for filing your local's notice to bargain.
- Ensure members of the bargaining team/committee are elected or appointed in accordance with the local Constitution and Bylaws.
- Organize activities to identify members' interests in preparation for bargaining and keep them engaged throughout the bargaining process.
- Oversee and/or participate in contract negotiations through the ratification of the contract for your bargaining unit.
- Communicate with members on the progress of bargaining throughout the process.
- Submit all new contracts and Memoranda of Understanding to your Labor Relations Consultant no later than 30 days after ratification.
- Monitor the implementation of the contract and use the grievance process when necessary to ensure it is followed.

Introduction: What is Collective Bargaining?

Collective bargaining is an art and a science. It is principled and it is pragmatic. It demands steadfastness and it requires compromise. It calls for skepticism and it necessitates trust. It is power and it is equality. It embodies conflict and it exemplifies the spirit of accord. Collective bargaining is a process. It is a process that extends beyond formal contract negotiations. In fact, it never really ends. The context for the next round of bargaining starts about the time the contract is ratified and labor and management begin the task of working under, interpreting, and applying its terms.

What makes collective bargaining this seemingly contradictory and almost assuredly never-ending process is simple. It is fashioned by people and formed by their relationships. The convergence of our imperfections and our ideals makes collective bargaining what it is, which is anything but a one-size-fits-all process. Rather, collective bargaining is a process that is uniquely shaped and influenced by the history and traditions of the parties, by the quality of the labor-management relationship, by the personalities and experiences of the negotiators, by geography, by politics, and by incompatible positions and mutual interests. Three essential elements are needed to succeed in collective bargaining. The absence of any one of these basic components will likely hinder the parties' ability to settle their differences and reach a fair settlement that will be mutually acceptable by both sides. These elements are:

- Skill of the parties in utilizing the process.
- Desire of the parties to reach a fair and equitable settlement.
- Ability of the parties to maintain a relatively equal balance of power.

Skill with the process represents effort even more than it does experience. The necessary effort involves dutiful preparation, adaptation to changing conditions, and willingness to take risks.

As the old axiom goes, "Proper preparation prevents poor performance." Commitment to gathering member input is vital. Sufficient time must be spent identifying and prioritizing issues. Research must be done to ensure that decisions are informed by fact and not false assumptions.

If the conditions and circumstances for each round of bargaining never changed, we could simply follow a recipe that lists the ingredients for successful negotiations and spells out each step of the bargaining process. However, since circumstances and conditions change, we must be able to adapt to the environmental conditions that shape the bargaining climate. For instance, a new superintendent or school board could lead to a critical shift in an employer's priorities and fundamentally alter how it approaches bargaining. The changes could make it necessary for the association bargaining team to rethink the ground rules that have traditionally governed negotiations and could compel the local to engage in organizing activities much earlier in the process than has been the tradition.

Making a decision that impacts an entire membership is a hard thing to do, especially if that decision involves a change in the status quo. However, while a certain level of risk aversion is always prudent, some risks must be taken for the collective bargaining process to succeed. A willingness to take necessary risks is a fundamental component of leadership. Anyone who agrees to participate in the bargaining process has assumed a leadership role.

Pursuing a fair and equitable settlement means not just stubbornly advancing your own goals, but attempting to understand the other side's legitimate interests as well. It is important that you closely listen to what the other side has to say, because you will find sincere statements and expressions of interest. Finding common ground is the key to finding a solution.

A fair settlement can never be achieved when one side has all the power. The employer holds the purse strings. In order to balance the scales of power, the employees must be willing to engage in collective action away from the bargaining table. A strike is nothing more than the far end of the collective-action spectrum. Collective power is also exercised when a local association's members are willing to do things like wearing buttons and t-shirts, showing up at school board meetings, and passing out fliers at football games. Collective bargaining is a process that should be embraced. Those who oppose collective bargaining would ask us to stifle our freedom to speak. They would rather we forgo our right to disagree. They would jeopardize our ability to come together to solve problems.

Ohio Collective Bargaining Law

The Law

The collective bargaining law can be found in Chapter 4117 of the Ohio Revised Code. This statute establishes the right of public employees to organize together and to collectively bargain with their employers. Prior to the passage of the law, OEA members and other public employees had very few rights. The bargaining law repealed the Ferguson Act and embodied the pre-1984 environment. On the books since 1943, the Ferguson Act banned strikes by public employees and gave school boards and local and state governments the discretion to fire striking workers.

Since the passage of the collective bargaining law and the opening of the State Employment Relations Board (SERB) in 1984, public employees have been covered by a statute that guarantees them certain fundamental rights. Because of 4117, employees are free to join, or not join, a union. They are entitled to impartially conduct elections to determine if they want to be represented by a union, or if they wish to no longer have union representation. Public employees, like workers in the private sector, have the right to sit down and bargain with their employer over wages and working conditions. Some public employees have the right to strike. For those prohibited from striking, the law provides a fair procedure for settling unresolved bargaining issues. Essentially, the 1983 law gave teachers, police officers, firefighters and other public employees the same rights that were afforded private sector workers a half-century earlier.

Preparing for Negotiations

Overview

Arguably, preparing for negotiations is a never-ending process. Also, if done correctly, a local association will quite likely devote more time preparing for negotiations than it actually spends bargaining a contract. During the 2-3 year term of a typical collective bargaining agreement (CBA), local bargainers should pay close attention to concerns that are articulated by members, to problems that are grieved, and to topics that are discussed in joint labor-management meetings. The months leading up to bargaining should be used to select a negotiations committee and bargaining team, to survey members and identify bargaining priorities, to research issues and gather information, to develop proposals and draft contract language, and to put into place a plan for communicating with and organizing members.

Review of Constitution and Bylaws
It is important that association leaders understand and follow procedures that are spelled out in the local's constitution and bylaws. These documents may provide specific instructions with respect to the selection, appointment and configuration of committees and bargaining teams. It is important to know provisions relating to: roles served by association officers and leaders; requirements with respect to proportional representation on committees and teams; and types of expenses that can be incurred and reimbursed leading up to and during bargaining. The association must also be cognizant of the contract ratification procedure that it must follow once a tentative agreement is achieved.

Selecting a Bargaining Committee
Before choosing a bargaining team, the association should establish a larger committee that performs the jobs of developing and administering the negotiation survey and analyzing survey results, reviewing grievances and arbitration awards, conducting research and gathering information, and supporting the team during the course of negotiations. Prospective team members should be included on the committee, though their roles should change once the bargaining team is in place.

Surveying Members
The negotiation survey is probably the most valuable tool for gathering input from the membership in terms of the issues that are most important to them. A properly constructed and administered survey is essentially the first official organizing activity going into negotiations. Thoughtful reliance on survey results can assist organizing efforts throughout bargaining.

While there is no sole best survey instrument, there are several important guidelines and practices which should be followed. First, the survey should be comprehensive. It is better to ask too many questions than too few. Members should be asked their thoughts on basically all economic issues as well as all but the most routine non-economic items. Omitting issues because they are not a priority of those who are developing the survey is a sure-fire way to disenfranchise individual members. After all, an injury to one should be a concern to all.

A closed-ended rating or ranking system is easier to analyze than responses to open-ended questions. However, both methods serve a purpose. By forcing members to rank or prioritize issues, the team will be better equipped to judge how zealously to pursue individual issues. For example: Everybody wants a decent raise, but maintaining current health benefits may be more important to the majority of members. Open-ended questions, on the other hand, are helpful in uncovering issues that may not have been considered. Often, an open-ended survey is initially administered to capture all the issues that are important to members and is followed up with a closed-ended questionnaire that compels members to prioritize those issues.

If the questionnaire is to be administered electronically using an online surveying tool, it is imperative that every member has the opportunity and is encouraged to participate. Those members who do not have access to a home computer should be provided an alternative location (union office, public library) to complete the instrument. The association may want to offer a helpline for its less computer-savvy members.

It is best to keep specific survey results and analyses confidential. The distribution and sharing of this information can compromise the bargaining process and jeopardize the team's ability to achieve a good contract.

In addition to written surveys, committee members should consider setting up one-to-one meetings with members in order to gather additional, and richer, qualitative information.

Selecting the Bargaining Team
The importance of putting together a competent, dedicated and representative bargaining team cannot be overstated. The team has the responsibility to represent the interests of the entire bargaining unit – not just association members – and act as their unified voice across the table from management.

A team that is representative of the membership should include individuals from each building, grade range or job classification. For example, it can't just be comprised of high school teachers or over-represented by bus drivers. The team needs to be balanced with respect to age, experience, gender and race. It should include those who have sat on prior teams and some who have never been to the table. Team members should be independent thinkers who offer unique talents. Compatibility is important. Complicity and duplicity are fatal.

Team Member Roles
Team members need to be assigned certain roles and they must accept their role on the team. The team should consider and agree on the following roles: chief spokesperson; scribe; number cruncher; language drafter; clerical support; and member communication. More than one individual may perform a particular role (e.g., scribe). One individual may have multiple roles (e.g., clerical support and member updates). The roles may shift depending on the issue (e.g., language drafter). The Labor Relations Consultant (LRC) may perform one or more of these roles (e.g., chief spokesperson and language drafter). At the request of the LRC, other OEA staff members are available to provide additional technical assistance (e.g., number cruncher).

Team members should also be made aware upfront that if the local association determines it is necessary to commence crisis activities, then the responsibility for coordinating those activities must not fall on the bargaining team or any of its individual members. A separate committee will be formed for the purpose of planning and directing crisis-related events. The job of the bargaining team is to negotiate the contract, which is a challenging enough endeavor under ideal circumstances, and that challenge is only made more difficult once bargaining reaches the point where a crisis is declared.

Determining the Process
The team should consider whether it wants to engage in traditional negotiations or if it would like to consider following an interest-based bargaining (IBB) process. If the plan is to use IBB, then many of the traditional roles do not apply. However, discussions will need to occur with respect to how team discipline is maintained under a nontraditional process. Joint, formal training is critical if the parties agree to engage in IBB.

Ground Rules
The team should also discuss the ground rules for the conduct of negotiations. Generally, at least some of the ground rules are incorporated into the master agreement. These contractual ground rules, including the impasse procedure, should be reviewed; and the need for additional ground rules, if any, should be discussed and considered.

Ground rules may cover some, though typically not all, of the following: number and length of bargaining sessions; time and location for bargaining; size of respective teams and use of observers; granting of release time for team members; use of outside experts or consultants; number of issues that each side can bring to the table; restrictions on the introduction of new issues once initial proposals have been exchanged; timing of the exchange of initial proposals; specifications as to the use of written and/or verbal proposals; formatting of written proposals; number and length of caucuses; manner in which tentative agreements are executed; media blackout; and impasse procedure to be followed.

Ground rules are not generic. They should reflect the parties' specific circumstances and individual needs. However, there are a couple of musts when it comes to executing ground rules:

- Never limit communications with members.
- Never put in writing a definition of ultimate impasse or a date that it is reached; and avoid a certain date for mediation or a reference to a specific number of sessions that trigger the start or end of mediation.

Once the team has decided on tentative ground rules, agreement with management on these rules must be achieved; and any agreement between the parties on the ground rules should be in writing.

Resources

It is the team's responsibility to determine what issues and proposals it will take to the table. The member survey is an important tool for the team to use in deciding what to put into the initial package. The importance of having a strong grasp on members' concerns only increases as the bargaining process unfolds and the team faces the difficult, but necessary, task of triaging issues and proposals.

The team should use the survey to establish a list of bargaining goals and priorities. If the team spends a little time up front determining what is most important to the membership and developing written goal statements that capture those priorities, it will have an extremely valuable document to refer to throughout bargaining – especially when the pressure is at its greatest.

The team should look at the pay and benefits of similarly-situated employee groups (i.e., comparables) and it should gain an understanding of the employer's financial situation. While the employer's ability to pay should not necessarily govern what the team initially proposes, it should factor into informing the team's ultimate decision as to how much or how little they can reasonably expect to achieve in terms of an economic outcome. At the request of the LRC, the OEA has staff available to assist bargaining teams in assessing the financial capacity of the employer. The team should also be aware of the cost of salaries and benefits of the bargaining unit. Knowing the cost of steps, insurance and a one-percent salary increase can help guide decisions and verify or challenge the veracity of the employer's claims.

Drafting Initial Proposals

The initial proposal should reflect the ideal. The purpose of the initial proposal is not to signal what the outcome of bargaining may look like. It should specify the salary and benefits that members are worth. It should capture the conditions in which they should work. The initial proposal should be an expression of the union's desire to have members fairly and equitably compensated, to see members treated with respect and dignity, and to recognize members' dedication and hard work. Its purpose is to show how things ought to be.

The initial proposal should accomplish all these things and it should be in writing. Thoughtful construction of initial proposals can be time-consuming, but it is necessary. Having the proposals in writing is the best way of ensuring that everyone – association team members and the other side – understands what is being proposed. Seeing a proposal in writing for the first time allows the team members to think and ask questions and to reword (if necessary) to add clarity, and remove ambiguity. Also, having a written proposal to work from for the purpose of developing counter offers gives the association, and not the employer or its attorney, control over the specific wording, structure, and format of the documents that will ultimately be included in the final contract.

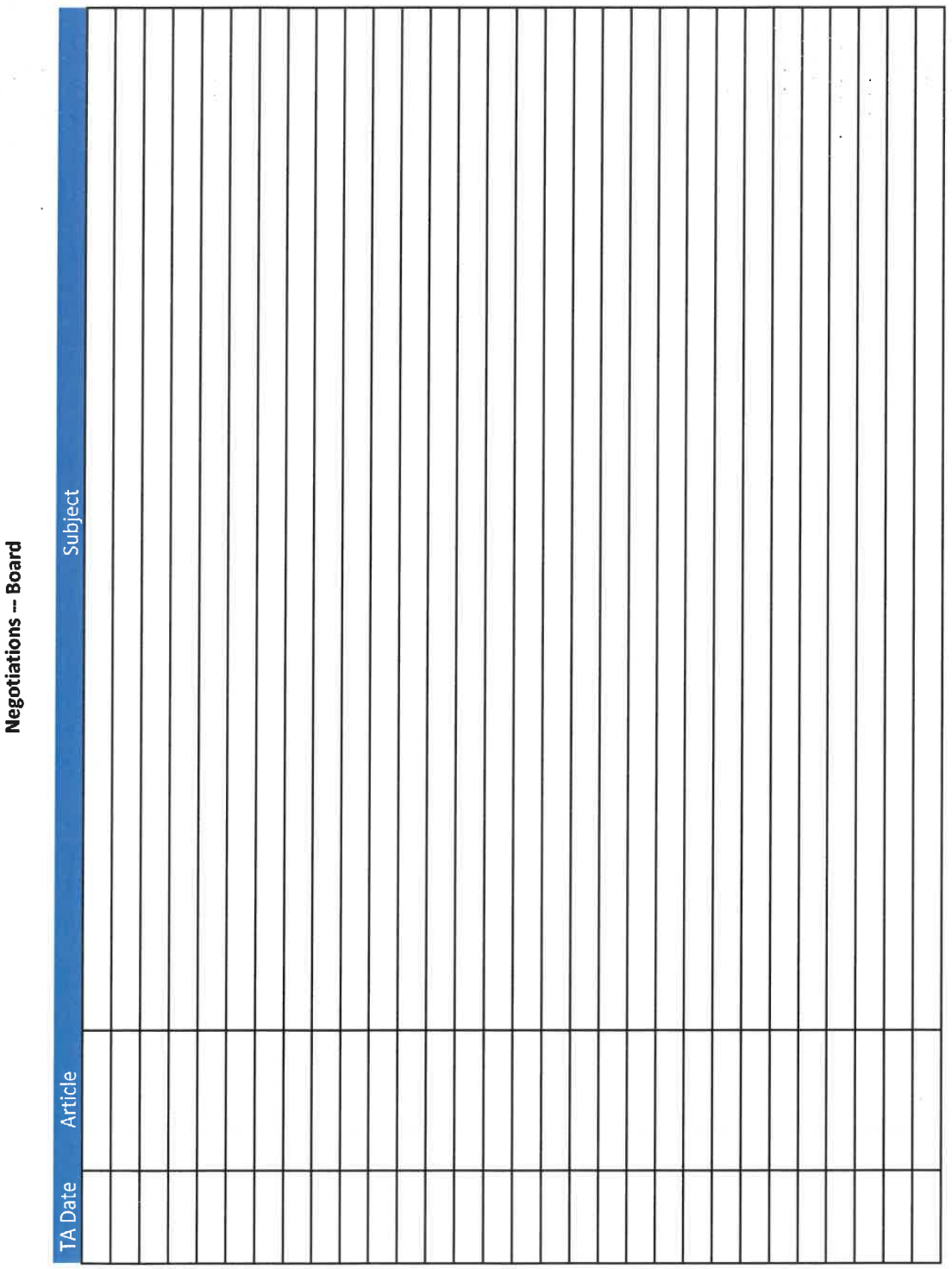
Frequently, a bargaining team will divvy up the work of drafting initial proposals with individual members taking the lead on issues in which they are most familiar or in which they have a particular interest. Working from electronically stored versions of the existing contract or pulling sample language from other CBAs can reduce the time spent writing proposals. However, when "borrowing" the language from another CBA, avoid simply copying and pasting that language. Be certain to carefully review the language and tailor it to the unique characteristics of the employer and the specific needs of the local association.

Negotiations Association

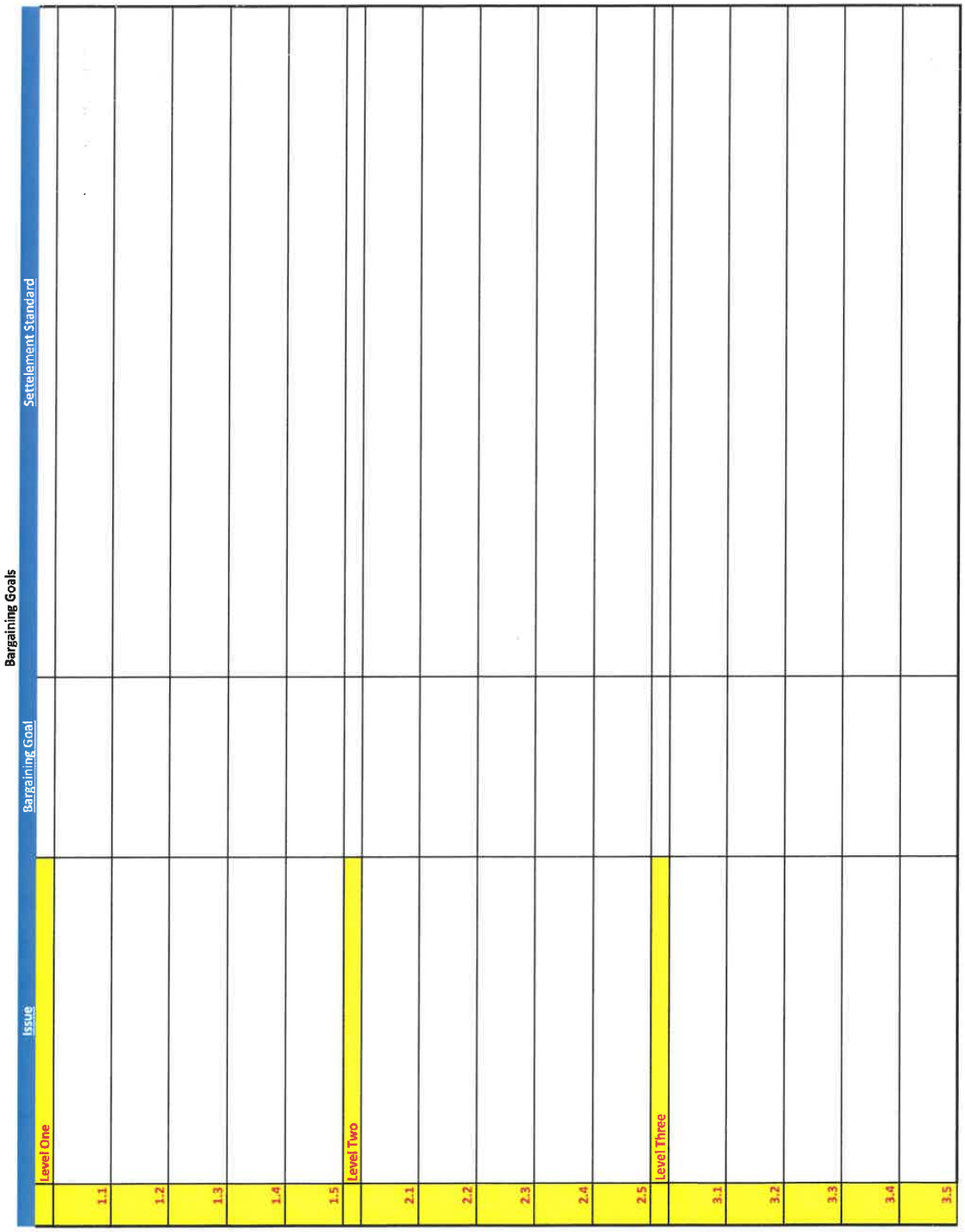
Negotiations -- Association

TA Date	Article	Subject

Negotiations Board



Bargaining Goals



Notice to Negotiate
Ohio's bargaining law requires that notice be provided to SERB and served on the other party prior to commencing negotiations. This notice is typically initiated by the union. SERB rules require the notice be served via email at least 60 days prior to the expiration of the contract, or at least 60 days before the beginning of mid-term reopener negotiations. Available on SERB's website is the Notice to Negotiate form that it accepts for compliance with this requirement. The person who will be acting as the designated representative of the association on all official matters relating to negotiations – typically the LRC – should also electronically file a Notice of Appearance with SERB and the employer representative. This form can also be downloaded from SERB's website.

Member Communications
Member communications with respect to contract negotiations should begin during the pre-bargaining phase. A meeting of the membership should be held early on to introduce the team, to explain the bargaining process, and to answer any general questions that members might have. Written communications and updates should occur throughout the process. From encouraging members to complete the survey to providing updates after each bargaining session, it is extremely important that members feel they are not being ignored or left in the dark.

Historically, many local leaders and bargaining teams have been reluctant to share details of both sides' initial and counter proposals with their members. However, letting members know the expectations of the association and the demands of management can help keep them both informed as well as engaged. Oftentimes, the best organizing tool is management's initial proposal. Bear in mind that in meeting and communicating with members prior to and during bargaining, it is important to strike the proper balance between making certain to keep them abreast of all developments and being sure to avoid divulging tactical information that, if leaked, could hamper the team's efforts.

The Negotiations Process

Overview

Whether eagerly anticipated or anxiously awaited, the onset of negotiations is likely to heighten the senses and fray the nerves. However, soon after bargaining has started, it is not uncommon for eagerness and nervousness to give way to feelings of frustration, impatience and indignation. Over the course of negotiations, bargainers can expect to run the entire gamut of emotions. Three things can be done to help manage this emotional rollercoaster ride. First, some comfort can be found in the rationalization that a certain level of tension and stress is a good thing, as it enhances creative thinking and facilitates problem-solving. Second, proper preparation is a proven stress-management tool. Third, an understanding of what to expect during bargaining is a good way to stay centered and to maintain a healthy perspective on a process. Moreover, a good grasp of the process helps to keep everyone on task and focused and reduces the likelihood of critical errors.

Ground Rules

Before bargaining over substantive issues, the teams, or their principal representatives, need to meet to finalize the negotiation ground rules. It is important both sides agree on the protocols and logistics for bargaining the contract. In addition to the ground rules that may be contained in the existing labor agreement, the sides need to discuss all other relevant procedural issues or concerns in order to make certain there is no confusion as to how the process will unfold.

The following are some important considerations in developing ground rules:

- The more bargaining dates that are specified up front, the more dates that will be used. It may be best to establish only a few dates at a time.
- Do not restrict the use or attendance of outside experts.
- Never limit communications with members.
- Never put in writing a definition of ultimate impasse or a date that it is reached; and avoid a date certain for mediation or a reference to a specific number of sessions that trigger the start or end of mediation.

Before the commencement of formal negotiations, it should be clearly understood that both bargaining teams must have the complete authority to make proposals and reach agreement on all matters. Tacit acceptance of an employer having to make a phone call to finalize a tentative agreement is not uncommon. However, if the management team declares it does not have the authority to move off of certain positions or to consider alternative proposals, then it needs individuals at the table who do possess that authority; otherwise, it will be unable to bargain in good faith.

Physical Location and Equipment

Irrespective of the degree to which the physical location and meeting space are covered in the ground rules, it is important that the location selected for bargaining be adequate and suitable for both parties' needs. Ideally, negotiations will take place at a neutral location. Not meeting in the administrative offices of the employer not only eliminates a "home field advantage," it also reduces exposure to ordinary workplace situations that can serve as a distraction. Parties who do not wish to incur the cost of renting a meeting space should consider libraries and other public facilities for bargaining.

While a neutral site may be the ideal, it is more important that the location be adequate for the parties' needs. Having a suitable place to meet with a table that is large enough to fully accommodate both teams, and the increasing amount of paper they will accumulate over the course of bargaining, is essential. Equally important is the need for at least one additional meeting room that provides both sides with a comfortable and secure place for caucuses. Having internet connectivity or Wi-Fi as well as cell reception/phones to research issues and answer questions should also be a part of the thought process when considering a location or facility.

The parties also should have access to printers and copiers. The ability to electronically edit and reproduce proposals during a bargaining session helps to keep the process moving and eliminates the problems that often

arise when it is believed that a meeting of the minds was reached, but is not the case once everyone had the chance to review the language that someone promised to "put together" later. OEA field offices, when geographically feasible, satisfy space and equipment needs.

Initial Proposals

The exchange of initial proposals can occur on an agreed upon date prior to a face-to-face meeting or at the first bargaining session. Though it can help to jump start the process, the former approach is infrequently used. This is probably because sharing the packages when the sides are together allows for a detailed explanation of the proposals and provides an opportunity for questions and clarifications. The parties can agree to provide a detailed, written explanation and rationale of each proposal. However, this rarely occurs because of the additional work that is required and the reluctance to put this sort of information in writing.

While providing written rationale is uncommon, the proposals themselves are almost always in writing. These written proposals can come in the form of either specific contract language with references to articles and sections of the CBA or they can simply summarize, for each issue, a position or a concept. Sometimes, a combination of the two approaches is adopted. For instance, the association may provide a very specific proposal on performance evaluations or reduction in force, but may offer a more broad statement with respect to economic items along the lines of, "The association is seeking a fair and equitable economic outcome."

Caution should be taken if you are considering making non-specific proposals. While this approach may be desirable so as to avoid putting in writing something that may come across as excessive, it fails to communicate to the other side what the association believes its members are worth and how it thinks they should be treated. For example, an aggressive salary proposal is not some pie-in-the-sky fantasy. Rather, it conveys a strong and clear message that the association demands a good-faith effort from management and will not settle for dismissive statements and weak excuses when it comes to bargaining over salary.

Written proposals should also be exchanged in electronic format. It is a good practice to provide each team member with a flash drive (or access to a virtual storage account) that contains the current contract, both sides' initial proposals, and survey results and other information collected in the preparations for bargaining.

Counter Proposals

Typically, after the initial exchange of comprehensive proposals, the parties move their focus to a single issue at a time. Conventional wisdom is to start with the least complicated or controversial non-economic issue and save the big-ticket economic items for last. Achieving that first tentative agreement can ignite and provide momentum to what can be a stuttering process and can give apprehensive parties a confidence boost. However, if a seemingly simple matter cannot be easily resolved, then it is better to move on to the next issue to avoid the process bogging down right out of the gate.

Individuals should avoid the pitfall of developing a personal attachment to their own proposals. A lot of thought and creativity can go into crafting and putting into words an idea or plan that could very well reflect the perfect solution to a sticky issue. Unfortunately, unless a proposal, no matter how flawless or ingenious, is embraced by bargainers on both sides of the table, it will not become memorialized in the CBA. Every offer, with the exception of the one that makes it into the bargaining agreement, is rejected. Rejection is simply a part of the process. If one gets stuck on one's own proposal, s/he becomes inflexible and is no longer an active participant in the process of trying to find an outcome that is satisfactory to all.

Frequently, it will take multiple passes to settle an issue. It is a good idea to time and date each proposal and counter-proposal and mark whether the proposal is that of the employer or the association.

A note on supposals: The concern that written bargaining proposals can be treated as public records led to the increased use of the "supposal." A supposal is a verbal "what if" that is not officially recorded by the parties. Additionally, a supposal does not have the quality of a formal offer or proposal. Therefore, if one side floats a supposal and the supposal is rejected by the other side, the last formal proposal that was placed on the table stands. The team should discuss the role, if any, that supposals should play in negotiations.

All agreements made during bargaining are tentative and must be ratified as part of the complete settlement. Once an agreement on an issue has been reached, it is set aside and treated as off the table for the duration of bargaining – unless the entire package is rejected during the ratification process. Generally, each written agreement, whether in exact language or in summary form, is initialed by one representative for each side.

As negotiations progress, it is common to move away from the discussion of issues one at a time and to begin to exchange proposals in a package format. At this point, an offer is made on all of the remaining issues on the table by one party, and the other has to decide to accept or counter the entire package.

Behavior at the Table

Maintaining discipline at the table is an extremely important bargaining skill. Team members must exercise self-control at all times. This is not to say that there is no place for righteous indignation, flared tempers or colorful outbursts. Rather, displays of emotion should be thoughtful, deliberate and tactical. It is much more credible for a bargaining team to lose its collective temper once, than it is for individual members to show their displeasure with every word or statement that is voiced by the other side.

It is best to maintain a "poker face" as much as possible. Members should refrain from uttering verbal responses and ought to resist displaying nonverbal reactions that demonstrate agreement or disagreement with the other side's positions and rationales. Rather than expending energy responding to management's arguments, it is generally more productive to observe and note the verbal and nonverbal communications coming from the other side of the table.

Unless agreed upon beforehand, the only person who should speak at the table is the chief spokesperson. The only exception to this rule is when the principal spokesperson directly asks a team member to answer a question, clarify an issue or provide background relating to something that is being discussed during the joint session.

Caucuses

A caucus is the place for the team to "let its hair down," editorialize, and openly discuss the attractiveness of the employer's proposals and the merits of its arguments. A caucus is simply a private meeting away from the table where a team discusses the other side's offer or develops its own proposal. It is a practice that should be used liberally and without artificial time limits.

While a unified front must always be maintained when sitting across from management, it is vital that caucuses be treated as open forums in order to reach the most informed decisions. It is the opportunity for all team members to weigh in on the issues and speak their minds. In fact, it is a disservice to the rank and file for any member of the bargaining team to not actively participate during a caucus. Problems that are not raised cannot be solved. Concerns that are not articulated cannot be addressed. Ideas that are not voiced cannot be considered.

Side Bars

A side bar is a brief meeting between one or two members of each team. It is typically used late in bargaining to identify sticking points, clarify priorities, or flesh out possible compromises. A side bar allows for candid discussions by the principal representatives absent the positioning that occurs when everyone is sitting together. Because it can raise suspicions, it should be used sparingly, and when a side bar does take place, it is a good practice for the chief spokesperson to bring another member of the team along to witness the exchange.

The above is a brief synopsis of the traditional bargaining process. It is important to note that there are several different forms of collective bargaining besides traditional that may also be appropriate for your local. Please consult your collective bargaining agreement and your LRC to help gauge which form of collective bargaining may work best for your local.

Finalizing the Collective Bargaining Agreement

Overview

After months of painstaking preparation and grueling negotiations, it would be nice if initialing that final TA brought closure to the collective bargaining process. Alas, such is not the case. Once the bargaining teams have reached a tentative agreement on all outstanding contract issues, several steps remain before the process is complete and the final negotiated agreement goes into effect.

The Tentative Agreement (TA)
During the course of contract negotiations, the parties will typically reach agreements on one issue at a time or a package of issues at the same time. An agreement on an issue is usually signified by the chief negotiators initialing the agreed upon language or terms. Each individual TA is set aside until an agreement on all outstanding issues is reached and an overall tentative agreement is achieved.

In instances where the parties are unable to reach an overall tentative agreement, it is not unheard of for the association bargaining team to agree to take an employer's proposal back to the membership for a vote. When this occurs, the bargaining team is under no obligation to seek member approval of the proposal or to even maintain a neutral posture. However, if a tentative agreement that is signed off by representatives of the bargaining team is reached, the team is legally obligated to endorse the TA. Nowhere in law is there a requirement of a ringing endorsement. However, it would be an unfair labor practice for any member of the team to speak against the tentative agreement or to attempt to sabotage the process by soliciting others to push for a "no" vote at ratification.

Dealing with Grievances and ULPs
It is generally in the best interest of both parties to attempt to resolve outstanding grievances that are related to issues that were addressed in bargaining and to settle any unfair labor practice charges (ULPs) that may have been filed during the course of negotiations. Typically, the aim of these ULPs is to spur negotiations, not to prosecute a matter for 1-2 years in the hopes of developing case law.

Review Local Association Constitution and Bylaws
The local association's constitution and bylaws should contain directions and procedures for the ratification of bargaining agreements. Some of the things the association must be aware of are the form in which contract changes are presented to the membership, the length of time the members have to review the changes before a vote on the tentative agreement, the number of meetings that must occur prior to a vote, and the manner in which ballots are cast.

Reducing the Agreement to Writing
It is a good idea for a subcommittee of the association and employer bargaining teams to review a draft of all tentative agreements in language form before the contract is finalized. Often, this review process is handled by the principal representatives. This is also an opportunity to make small housekeeping changes and corrections. However, it is better to leave these changes to the next round of bargaining than it is to get bogged down in disagreements over wording.

Membership Ratification
For the contract to go into effect, the tentative agreement must be voted on, or ratified, by the members of the association. Unless required by the local's constitution and bylaws, it is not necessary that the membership have the agreement in final contract form before the ratification, as long as they are provided accurate summaries of the major changes.

If the members vote down the proposed contract, the tentative agreements are voided and the team returns to the bargaining table and, technically, starts the bargaining process over again from scratch. Sometimes rank and file members are under the impression that the act of rejecting a tentative agreement gives the bargaining team new-found leverage over management in securing more favorable terms. More often than not, this impression is false. The only way to ensure that the bargaining team has greater clout when it returns to the table is by giving them the authority to issue a strike notice. Granting the team this authority should be tied to the rejection of the proposed contract. This does not mean that voting down the agreement automatically leads to a strike. Rather, it sends a clear message to management that the membership is willing to do whatever is necessary in order to get a fair contract. It is also a powerful organizing tool, incentivizing the membership to act concertedly and do their part in aiding the bargaining team in securing a good contract.

The bargaining team should not treat the rejection of a tentative agreement as a personal criticism. Disapproval of the proposed contract is not a repudiation of their efforts. Rather, it should be embraced as empowering them to go back to the table and face the employer knowing the entire membership has their backs.

Employer Ratification
It is customary for the association to vote on the CBA before the employer ratifies the agreement. The bargaining law does, however, require the employer to act on the tentative agreement within 30 days of its submission; otherwise, the agreement is "deemed approved."

Distributing and Filing Contract
Every member should be provided a hard copy of the final collective bargaining agreement. If the local association has a website, the agreement should also be posted in a members' only area.

Chapter 4117 requires public employers to file CBAs with SERB. SERB makes these agreements available on its website.

Contract Enforcement

An Association-school board contract is only print and paper unless it is implemented by the adherence of the parties to the contract. The building/worksite representatives (BR) must know the current negotiated agreement between the association and the school board. The BR makes certain that violations of the contract are corrected promptly by assisting members in taking appropriate action.

Who must enforce our contract?

All local association members should be involved. But contract enforcement is a special responsibility of the Grievance Committee, BR, committee chairpersons, officers, executive committee members – in short, everyone who is a leader in the local association.

What steps are necessary to enforce a contract?

Local associations must:

- Explain the new contract to members;
- Make certain the association is ready to take on the job of contract enforcement; and
- Establish appropriate grievance machinery to protect the rights of bargaining unit members.

What is the best way to explain our contract to members?

Local associations use different methods, based on local conditions. Some active associations have used all these ideas:

- Conduct briefing sessions for all members to explain the contract's major provisions. Members of the negotiating team, for example, can serve as a panel which conducts after-school meetings in each school building in the district.
- Write specific guidelines for new concepts and procedures in the contract. These guidelines should be given to BRs and other association leaders with specific suggestions for making certain the agreement is not violated.
- Print the contract and distribute it to all association members. (The BR is the logical person to distribute contracts personally to the members he/she represents.)
- Distribute copies of the district's other personnel policies to association members, or if that is too expensive, distribute policies to BRs for their use in informing members.

How can our association "tool up" for contract enforcement?

Local associations must be ready to uphold their duties under the new contract. Some suggestions:

- Encourage BRs to initiate checks on the contract's enforcement. As a vital association leader, the BR is best able to detect small problems at early stages, where they can be solved with less difficulty. The BR must enforce the contract.
- Distribute a contract enforcement questionnaire to all association members in mid-September and again later in the year. This questionnaire should ask members if specific contract provisions have been carried out. Members will be reminded that effective contract enforcement depends on their awareness of the provisions of the agreement, and leaders who tabulate responses will know which areas need additional enforcement.
- If the contract created new joint committees or council between the association and the board or administration, the association must appoint hard-working members who will serve the best interests of members. Leaders should check to see if the association has any standing committees that relate directly to the studies of the joint councils.
- Contract enforcement should be a regular agenda item at Executive Committee meetings.

Why is it important for our association to enforce the contract?

- Both sides agreed to the contract and should live up to what was agreed to.
- The Association, by law, must fairly represent all members.
- If the Association fails to enforce the contract, it weakens the contract.

Basic Grievance Facts

What is a grievance?

A grievance is a claim that the administration has violated, misinterpreted or misapplied the collective bargaining agreement (contract) between the Association and the Board.

- Your master contract is not worth the paper it is written on if you allow the administration to violate it.
- As local leaders, you will quickly learn the following three (3) lessons:
  1. Members have not read the master contract carefully. Their knowledge tends to stop after checking the dollar amount printed opposite their salary step.
  2. Administrators have not read the master contract carefully. They prefer to do things their way and want everything to run smoothly.
  3. If your contract is to live anywhere, it must live in the buildings.
- DON'T JUDGE – DEFEND! Members pay dues to be protected.
- Both members and the Association can file a grievance against the administration.
- Members cannot file grievances against other members.
- Administrators cannot file grievances against members.
- Support staff members cannot file grievances against teachers.
- Teachers cannot file grievances against support staff members.
- As Building/Worksite Representatives, you must know your master contract – most members don't.

Types of Grievances

Plain Violation of the Contract:

- An administrator commits an act which is contrary to the terms of the contract
- Simplest type to substantiate because it requires the simplest form of proof "did some act occur which violates a provision of the contract"

EXAMPLE:
A seven (7) hour employee is scheduled for a 20 minute lunch period
A vacancy is filled without the position being posted

Disagreement Over Meaning or Application

- The facts are not in dispute
- A contrary meaning is attached to a term or condition of the contract by the Association and the Administration

EXAMPLE:
"A member shall be granted professional leave to attend a workshop related to his/her teaching position."
Teacher is denied professional leave to attend a workshop on child abuse.

Inequitable Treatment:

- When an administrator exceeds his/her authority under the contract
- Issue is whether everyone is receiving fair and equitable treatment

EXAMPLE:
A member takes two days sick leave to attend to her sick aunt and is docked the pay. Another member has done the same and received her pay.

Dispute Over Facts:

- No question about the contract language, issue is whether the act did or did not occur.

EXAMPLE:
The principal says a teacher has been late handing in grade reports and issues a written reprimand. The teacher says the secretary misplaced the grade reports.

Past Practice:

- Claim that a working condition of a longstanding nature, unchanged by a new contract and uncovered by contract language, has been changed.

EXAMPLE:
For five (5) years the employees have always been allowed to leave with the students two (2) hours early on the day before Thanksgiving. A new principal at one of the schools tells his employees they must stay until the normal dismissal time.

Duty of Fair Representation

- The "Duty of Fair Representation" is delineated in Ohio Revised Code Section 4117.11 (B)(1) and (B)(6).
- Once a union/association has been designated as the "exclusive representative" for a group of public employees, that union/association must fairly and equitably represent all bargaining unit members whether or not they are dues paying member of the union/association.
- An association does not have to process any grievance which does not have merit or which is frivolous in nature.
- If a non-member has a valid grievance, the association must provide the same level of representation during the processing of the grievance as they would to any dues paying member.
- Every local association should have a process in place through which to review grievances and determine whether or not to pursue the grievance to arbitration.
- Every concern/complaint should be fairly investigated regardless of whether the individual is a member or non-member. All grievances should be fairly processed regardless of whether the individual grievant is a member or non-member.

Grievance Processing Checklist

Before you call for help, get the following information that your Labor Relations Consultant will need to know when a potential contract violation has occurred.

1. ❑ Date of the occurrence
2. ❑ Name and phone numbers of the affected employee(s)
3. ❑ The section(s) of the contract allegedly violated, misinterpreted or misapplied
4. ❑ The deadline for filing the grievance
5. ❑ The relief which is desired by the grievant(s)
6. ❑ The worksite assignment of the affected employee(s)
7. ❑ The job/teaching assignment of the affected employee(s)
8. ❑ Any documentation of the alleged grievance (written evidence, witnesses, statements)
9. ❑ Any available information regarding whether the same or a similar situation had ever previously occurred and how the Association responded to it
10. ❑ The bargaining history of the affected provisions
11. ❑ Information on any political problem which may occur as the result of filing (or failure to file) the grievance
12. ❑ Other