

Collective Bargaining

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Digital Handouts

Download an electronic copy of the slides, at

FanWil.com/SamFrancis2016

Collective Bargaining

Disclaimer

- *Every situation is fact-specific, so it is strongly recommended that you obtain legal advice from your solicitor or labor counsel, who adequately can assess your unique situation*

Collective Bargaining

- *Bargaining in Difficult Times*
- *Preparing for Bargaining*
- *Common Errors, Questions, and Misconceptions*
- *Hot Topics at the Table*

Bargaining in Difficult Times

- Many of the same strategies apply, but some issues may be more pronounced or more important
- “Tough times” can refer to more than just money – i.e. most issues are “economic” issues
 - Class size
 - Prep time
 - Voluntary and involuntary transfers
 - Performance evaluation
- Don’t give away rights just because you don’t have money to give

Bargaining in Difficult Times

- Tone: Tensions may be high already; *how* you communicate will impact substantive progress
- *What* you communicate will impact progress as well (i.e. explain yourself)
- Education is important
 - Employees, community, etc.
 - Not *just* while formally bargaining
 - Not *just* about your formal issues (e.g. explain your spending, your personnel moves, etc.)
- Focus on issues more than personalities

Bargaining in Difficult Times

- Financial considerations:
 - Know what everything costs (again, not just “economic” items)
 - Use detailed multi-year models, with as few guesses or assumptions as possible
 - Make shorter term commitments on items that contain greater risk (e.g. health insurance)

Preparing for Bargaining

- You ALWAYS are (or should be) preparing for bargaining
 - Administer agreement and other policies fairly, and treat employees well
 - Inconsistent enforcement often causes union to bring issues to the table that you won't want to address in the CBA
 - Inconsistent enforcement also causes disputes about what existing language may mean, impacting discussions of modifications
 - Know general state of employer/employee relationship
 - Saying to union, “Trust me,” carries different weight based on nature of relationship
 - Credibility matters. Will union believe you when you say what your priorities are and why, or when you describe your budget situation?

Preparing for Bargaining

- You ALWAYS are (or should be) preparing for bargaining
 - Know what problems you have had with language/grievances/arbitrations/etc.
 - This is very helpful for the bargaining team (board, labor counsel, etc.) to know what language items are important to administration
 - Helps to understand WHY you want to make a change to certain language items
 - Don't wait until it is time to bargain to begin preparing this list
 - Know your existing Memoranda of Agreement – eliminate surprises

Preparing for Bargaining

- Forming Your Team
 - Who Should Be on the Team?
 - How many Board members?
 - Which Board Members?
 - Which Administrators?
 - What About Supporting Roles?
(On the team but not at the table)
 - Considerations
 - Personalities
 - Politics
 - Ethics Act / conflict issues

Preparing for Bargaining

- Financial Preparations
 - Know your historical costs
 - Costs directly spent on the unit
 - Health insurance
 - Tuition reimbursement
 - Substitute costs
 - PSERS
 - Other significant District expenses
 - Special education
 - Transportation
 - Capital Expenses

Preparing for Bargaining

- Financial Preparations
 - Know your historical revenue and fluctuations to it
 - Significant retirements/attributional savings
 - Significant losses due to tax appeals or similar changes
 - Tax history
 - Know your budgeted/anticipated expenses
 - Both current year AND long term
 - Anticipated use of fund balance

Preparing for Bargaining

- Know (and understand) your incremental cost
 - Cost of moving CURRENT complement of teachers through the CURRENT salary schedule
- Mostly theoretical – you likely will not ever spend that amount
- Based on a snapshot, and should not change throughout bargaining despite fact that the ACTUAL complement will change

Preparing for Bargaining

- Know (and understand) your incremental cost



Preparing for Bargaining

- Determine how you will communicate
 - At the table – primary spokesperson?
 - To the full Board – How often and how much?
 - To constituents and media?
 - To employees directly: not at all.

Preparing for Bargaining

- Focus on the initial proposal
 - Perhaps the most important proposal of all
- Establishes roadmap and priorities
- You can reserve the right to modify or add to your proposal based on how discussions progress, but be careful
 - Loss of credibility
 - Potential unfair labor practice

Errors, Questions & Misconceptions

- Formal table position vs informal/floats/etc.
 - Table position
 - Latest offer formally presented to the union, generally at the bargaining table
 - Should not regress – potential ULP
 - Informal or similar options
 - Why?
 - Types
 - Sidebar discussions
 - “hypothetical floats” or “supposals”
 - Packages
 - Still should not regress, but often can be fluid

Errors, Questions & Misconceptions

- Status quo
 - Once existing collective bargaining agreement expires
 - No change to any terms or conditions of employment
 - Effect of “sunset dates”
 - What about step movement?
 - What about health insurance premium sharing, retirement bonuses, HRA/HSA contributions, etc.?
A: It depends. Check your Agreement

Errors, Questions & Misconceptions

- Past practice
 - Evidence of a past practice is admissible to shed light on parties' interpretation of vague or ambiguous language
 - Be careful making proposals intended to "clarify" or "interpret" existing language
 - Can be admission language does NOT mean what you want it to

Errors, Questions & Misconceptions

- Past practice - EXAMPLE
 - "District shall pay the sum of \$2,000, to each employee who otherwise is eligible for coverage on the District's health plan but who notifies the District by June 1 of each year that he or she declines to be covered on any district plan for the upcoming fiscal year."
 - Spouses both work in District, and one asks not to be covered but to receive the buyout while being covered as a dependent under spouse's plan.
 - To prevent employees from asking, or to give easy answer when they do, District wants to propose "...covered on any District plan, including as a dependent spouse on a plan provided to another employee..."
 - Bad idea!

Errors, Questions & Misconceptions

- Past practice
 - What if, in the example, the District did make a payment to the employee and wanted to clarify that it shouldn't have?
 - How do you end a practice that is inconsistent with the agreement?
 - Notify union of proposed end to practice
 - Make it union's burden to carry it on
 - Possibly go to arbitration

Errors, Questions & Misconceptions

- General Strategic Errors
 - Trying to move too far too fast – "cut to the chase" (No need to play games, but the process – which is legally required – does not include efficiency as a goal)
 - Not being able to articulate why you want what you want
 - Not caring about who develops salary schedule

Hot Topics at the Table

- Health insurance strategies
 - Premium Sharing vs. Plan Design Changes
 - Reimbursing portions of deductibles (HRA/HSA/etc.)
 - "Cadillac Tax" implications and means for addressing
 - Spousal coverage
- Cyber education (coming from unions)
 - Class size proposals
 - Pay per student
 - Limits on number of classes taught
 - How teachers are assigned

Hot Topics at the Table

- Teacher Evaluation
 - Building and grade/class assignment (since test scores impact evaluations)
 - Bargaining over Student Learning Objectives
 - Use of technology in observing and evaluating
- Clearances
 - Paying
 - Tracking of renewals and notice of deadlines

