



Tales From the Bargaining Table: Strategies for Successful Negotiations

OAPT Fall Conference

October 6, 2022

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Disclaimers

(After all, I am a lawyer.)

- I'm not giving you legal advice during this presentation. Please consult with legal counsel regarding specific circumstances affecting your organization.
- Feel free to ask questions about the material in the slides so that we can all learn together.
- The presenter's statements concern interpretations of Ohio's collective bargaining laws.

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Agenda

1. Playing Nice in the Sandbox and the Perils in R.C. Chapter 4117
2. Building the Right Bargaining Team
3. Preparing to Succeed
4. Putting Pen to Paper/Fingers to Keyboard
5. Tales from the Table
6. Strategies for Successful Negotiations



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Playing Nice in the Sandbox

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Playing Nice in The Sandbox

What is collective bargaining?

ORC 4117.01(G): Representatives of a public employer and of its employees have to “**negotiate in good faith** at reasonable times and places with respect to **wages, hours, terms, and other conditions of employment**” and also about “the **continuation, modification, or deletion of an existing provision of a collective bargaining agreement.**” They must bargain “**with the intention of reaching an agreement, or to resolve questions arising under the agreement.**”

"To bargain collectively" includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively **does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession.**

Mandatory subjects of bargaining:

R.C. 4117.08(A) states that bargaining is required for:

- all matters pertaining to wages, hours, or terms and other conditions of employment; and,
- the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.

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Playing Nice in The Sandbox

And the Perils in R.C. Chapter 4117

ORC 4117.08(C) - *Unless a public employer agrees otherwise in a collective bargaining agreement,* the employer retains the right and responsibility to:

- Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;
- Direct, supervise, evaluate, or hire employees;
- Maintain and improve the efficiency and effectiveness of governmental operations;
- Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
- Determine the adequacy of the work force;
- Determine the overall mission of the employer as a unit of government;
- Effectively manage the work force;
- Take actions to carry out the mission of the public employer as a governmental unit.

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Do I *really* have to bargain about that?

If it's a mandatory subject of bargaining, yes.

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Playing Nice in The Sandbox

Lesson learned...

- “Time Management's rights is one thing that can never be retrieved. One may lose and regain friends. One may lose and regain money. Opportunity, once spurned, may come again. But the hours management rights that are lost in idleness niceness can never be brought back to be used in gainful pursuits.”

— [Winston Churchill](#) [as adapted by Beverly Meyer]

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Building the Right Bargaining Team

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Building the Right Bargaining Team

It is critical that you assemble a good negotiations team.

What should you look for?



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Building the Right Bargaining Team

- **Skill Sets To Consider:**

- Familiarity with bargaining unit
- Spreadsheet ability
- Mathematical ability
- Note taking ability
- Willingness to work, be available and be part of a team

- **Roles to Consider**

- Chief Negotiator
- Historian
- Facilitator
- Hammer
- Caretaker

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Building the Right Bargaining Team

- **Characteristics to consider:**

- Patience
- Personal credibility
- Persuasiveness
- Objectivity
- Imagination
- Tact
- Discretion
- Flexibility/Creativity
- Experience and expertise in particular areas
- **Ethical**



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Team Ethics

Definition of ethics:

- “a system of moral principles or values; the rules or standards governing the conduct of the members of a profession; accepted principles of right or wrong.”
- It is the means of doing what is right, fair and honest



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How Important are Team Ethics?

Reputation (as ethical or not) plays a vital role in every negotiation.

- If counterpart believes you to be unfair or dishonest, will be less likely to negotiate a “win-win” outcome.
- If deemed “untrustworthy” – counterpart will default to “win-lose” strategies

Remember:

- Reputation takes years to build and only minutes to destroy . . .

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How Important are Team Ethics?

Don Carty, former CEO of American Airlines

- 2003 – forced to retire after 20-plus years
- He asked union employees to take deep pay cuts to “save the company”

- At same time – he put together a \$41 million pension funding program for executives (never disclosed during negotiations)
- Union found out through press release and felt he was dishonest with them.
- His reputation was ruined; deemed “unethical” by the union; would never be believed again.



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Preparing to Succeed

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Preparing to Succeed



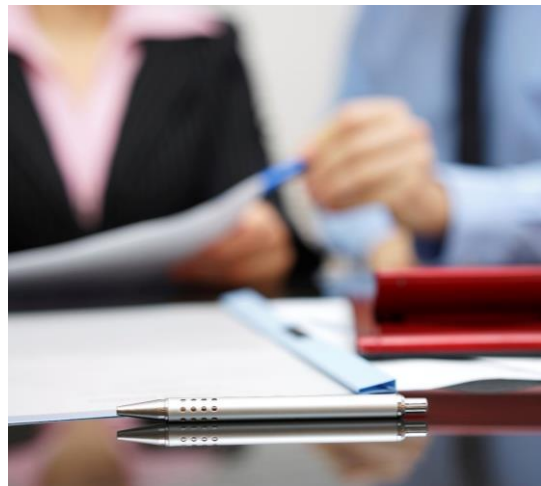
- Management rights
- Financial standing and the impact of ARPA (What do your forecasts really say?)
- Authority of the negotiating team (What is the position of your boss?)

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Preparing to Succeed

Know your facts

- Changes in the law
- Grievances
- Pressure Points
- Insurance Options
- Comparables
- Costs
- Data, data, data



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Preparing to Succeed

ORC 4117.14 - Settlement Procedures

Any time 45 days prior to expiration of the CBA

- Mutually-agreed dispute procedure
 - Mediation, conventional arbitration, interest arbitration, fact-finding, citizen conciliation council, any other agreed process
- Fact-finding
- Conciliation (police/fire/dispatch/nurses/corrections/rescue and EMT/PERS/etc.)

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Preparing to Succeed

Is it time to negotiate?

- Fear of the unknown is a huge motivator
- Don't take a position unless you're totally informed

The role of "the rollover"

- Limited
- Broader

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Putting Pen to Paper

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Putting Pen to Paper

ORC 4117.10(A) Terms of Agreement

*** Where no agreement exists or **where an agreement makes no specification** about a matter, the public employer and public employees are **subject to all applicable state or local laws** or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees. **All of the following prevail** over conflicting provisions of agreements between employee organizations and public employers:

(1) Laws pertaining to any of the following subjects:

- (a) Civil rights;
- (b) Affirmative action;
- (c) Unemployment compensation;
- (d) Workers' compensation;
- (e) The retirement of public employees;
- (f) Residency requirements;
- (g) The minimum educational requirements contained in the Revised Code pertaining to public education including the requirement of a certificate by the fiscal officer of a school district pursuant to section [5705.41](#) of the Revised Code;
- (h) The provisions of division (A) of section [124.34](#) of the Revised Code governing the disciplining of officers and employees who have been convicted of a felony;
- (i) The minimum standards promulgated by the state board of education pursuant to division (D) of section [3301.07](#) of the Revised Code.

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Putting Pen to Paper

Ground Rules

- Establish expectations

Initial Proposals (also Later Proposals)

- Words matter

- Understand how contract provisions (and any proposed changes) affect each other

- Format

- Packet v. Individual

Tentative Agreements

- Sign as you go

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Tales From the Table

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Tales From the Table

Bargaining issues we've been seeing...

- Increased wage demands (“cost of living” and “but we worked through Covid”)
 - *Covid Relief Funds*
 - *3-4% awards not unusual*
- Market adjustments
- Emergency pay
- Retention pay

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Tales From the Table

Bargaining issues we've been seeing...

- Additional leave time/personal days
- Recovery of sick leave/payment of attendance incentives
- ORC 9.44 - prior service with state or political subdivision counts towards vacation leave accrual (may be limited)
- Work from home/remote work demands
- Juneteenth

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Tales From the Table

Bargaining proposals we've been making...

- Cross-training
- Subcontracting
- Accountability through evaluation
- Drug and alcohol testing (marijuana/CBD)
- Insurance adjustments
- Employee recruitment and retention measures
- Reopeners
- Professionalism and services (voters matter)

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Strategies for Successful Negotiations

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Strategies for Successful Negotiations

Talk it through. Be willing to listen.

- Generally, use extreme caution renegotiating final terms after union “votes down” part of the signed tentative agreement
- Ask for the “intent” behind a proposal
- Rely on the numbers
- Identify common interests
- Try to get the other side’s “buy-in” by accepting some of their counter language changes to your initial proposal
 - More likely to accept it if they also start to “own” the proposal
- Use “supposals” and zones of agreement

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Strategies for Successful Negotiations

Be objective.

- Don't attack the person
 - Again, the issue is the "situation" and not the person
- Maintain a positive attitude
- Know the facts, not speculation
- Confront the difficult issues
 - Seek solutions, common ground...
 - "agree to disagree"

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Strategies for Successful Negotiations

Be aware of your blind spots. We all have them.

- Body language and tone of voice
 - Up to 80% of communication is non-verbal
- Positional imbalance/location
- Avoid interruptions
- Are you angry?
- Are you hearing everyone?

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Advancing the interests of political subdivisions for over 75 years



See what we're all about:

<https://www.bricker.com/industries-practices/political-subdivisions>

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**Thank you for
your kind
attention!**

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