Preparation Basics for Productive Contract Negotiations

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INTRODUCTION

When entering negotiations for the first time as the lead negotiator, I was not sure what to expect. My only prior experience in labor relations was taking minutes during negotiations when the designated note taker was on vacation. I was new to the City and hired as a Human Resources Generalist. This was a new position for the City; previous contracts were negotiated by the Deputy City Manager. Therefore, this change was an adjustment not only to me, but also to the union leadership. Within a few months, I was assigned to negotiate three contracts for the first time and not sure where to start. One was an interest arbitration contract and the other two were not. I felt being as prepared as possible was a good place to begin, and later I learned that you can never be too prepared. Preparation is one of the most important keys to successful negotiations, and if done properly, will most likely take more time than the negotiations themselves.

Know and Understand the Collective Bargaining Agreement Front to Back

From the labor classes I took through NPELRA, “The Basics of Collective Bargaining in Washington, The Collective Bargaining Process” presented by Bruce Schroeder and “Obtaining Parameters: Preparing for Bargaining” presented by Bruce Schroeder in the NPELRA Academy III The Negotiation Process, I learned that starting with a thorough understanding of the collective bargaining agreement (CBA) is a must. I read it cover to cover. Throughout the life of the current CBA, I kept a running list of issues that came up that needed to be addressed in the next bargaining session, and asked the department managers to do the same. When reading the CBA, it was helpful to the process to make notes in the margins, as well as highlight specific areas that needed clarification. Setting up a meeting with the department managers to discuss language gave me the perspective of the subject matter expert. Giving them at least a month’s notice gave them time to give the CBA a thorough review. In the meeting invitation, I asked them to review the contract and be prepared to discuss the language that needed to be added, eliminated or clarified along with specific reasons as to why the clarification is necessary. As time progressed, it was helpful to remind them a couple of times throughout the month to ensure they were prepared.

The class, “Contract Language-The Good, the Bad, and the Ugly” presented by Rod Younker, explained that clarifying ambiguous language and making the CBA precise, easy to read and understandable is essential in heading off misunderstandings and grievances in the future. I learned that it is essential that a CBA be straightforward and easy for anyone to read and understand is essential. Also, to assist in clarifying the language, I learned to avoid legal terms such as: whereas; hereafter; herein; shall and will. Numbers should be written out in words and numbers such as “five (5)”.

Understand Negotiating is a Give and Take Process

When looking at the contract and determining what changes in the language were needed, I kept in mind that the outcome should be a give and take process. There should be mutual gains and losses for both sides. There are issues the union and management want addressed. I reminded myself to listen and be sensitive to what the union was asking for just as I expected them to be respectful of the needs of the City. Therefore, if the City had something to takeaway, I needed to be prepared to think what might be given back in return.
RELATIONSHIPS

Know your audience before starting

A Human Resources colleague told me what worked best for her was to first establish a relationship with the union leadership prior to negotiating a CBA. Therefore, prior to entering negotiations, I scheduled regular meetings every couple months to talk about issues or answer questions. This helped to build trust, and allowed for working out issues before the negotiation process began. Listening more than speaking, provided the opportunity to learn what issues the union was concerned about and what they will most likely bring forward to the table during negotiations. Understanding union issues enabled me time to research the issue and be prepared to respond.

PREPARATION/HOMEWORK

Research Market & Data Information

Prior to entering negotiations with the union, it was helpful to give adequate time to all parties involved when analyzing and preparing feedback for discussion. The first place I started was with a review of the City’s compensation plan by analyzing and comparing the positions and salaries of comparable cities and market service areas. Then, I conducted a survey to understand what types of changes to health insurance and wages have occurred at other cities.

When selecting comparable cities for a market study, I looked at not only cities that are similar size and in population, but similar in assessed values, and property and sales tax as well. This was explained in the class, “Interest Arbitration, It’s Really Fun!” presented by Otto Klein and Bruce Schroeder. Additionally, I learned how to be prepared if the union disagreed with the chosen comparables and how the surveys were conducted. In the class, it was explained that there may be cities that are similar in one area, but not in others, or in the ability to pay the same salary as the revenue streams may be different. The presenters emphasized the need for graphs to show how the comparable cities were selected if challenged in interest arbitration.

Financial

In preparation for negotiations, I met with the Finance Director to gain a better understanding of the City’s financial outlook. It is a must to know how much it will cost the City if a salary increase is provided. To understand the impact of a salary increase, I had to first understand to what one percent of the total compensation amounted. Understanding first what one percent of current costs were as well as the future costs including health care coverage, was imperative since benefits are a substantial portion of the compensation package. Preparing several scenarios with the finance department provided me a clear understanding of the financial impact of each option. This allowed me to be prepared to address the impacts to the City and to the employees when discussing the options with the union.

One of the tools I used when looking at a multiyear contract, and strategizing the amounts of cost-of-living adjustments (COLA) for each year, was to use the method I learned in the CBA the costing class presented by NPELRA. It showed how much can be saved by offering a smaller COLA in the first year and increase the percentage each year thereafter. For example, if you are facing a three year contract and the City is prepared to pay a total COLA of 6% for the three years, start with 1% in year one, 2% in year...
two, and 3% in year three. By starting out low, the next year’s increase is based on a lesser amount which results in saving the City money. This example is similar to the example used in the “Structuring and Costing a Multi-year Settlement” class presented by Michael Kolb.

For example:

<table>
<thead>
<tr>
<th>Year One</th>
<th>15 employees earn $50,000 per year for $750,000. (wages only)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$750,000 x 1% = $7,500 bringing the annual salary to $757,500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year Two</th>
<th>annual salary $757,500 x 2% = $772,650</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Year Three</th>
<th>annual salary $772,650 x 3% = $795,829</th>
</tr>
</thead>
</table>

In this example, a 6% increase in over a 3 year period brings the total annual salary to $795,829

This next example shows how much a 6% increase would cost over a period of three years by moving the 3% increase to the first year:

<table>
<thead>
<tr>
<th>Year One</th>
<th>15 employees earn $50,000 per year for $750,000. (wages only)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$750,000 x 3% = $847,500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year Two</th>
<th>annual salary $847,500 x 2% = $864,450</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Year Three</th>
<th>annual salary $864,450 x 1% = $873,094</th>
</tr>
</thead>
</table>

In this example, a 6% increase over a 3 year period brings the total annual salary to $873,094.

The difference of offering the 3% in year three vs. in year one is $77,265, even though it is still a 6% increase over a period of three years.

Strategizing the Communications

Once I reviewed the CBA with the department managers and made all the suggested changes, I created a marked up version of the CBA from which to work. The note book I used to keep the gathered information in was a confidential working document. The next step in my process was to meet with the City Manager to discuss the priorities of the language changes. Together, we prioritized the list and identified what was most important (the absolutes), and what would be nice to have, but were not deal breakers.

The City was faced with three contracts expiring at the same time for which I was going to be the Chief Spokesperson. We strategized about which contract we wanted to resolve first, and determined which group would be the easiest and fastest to settle in order to set the expectation for the other contracts. We saved the interest arbitration (the most difficult contract) for last. Interest arbitration contracts can be long and drawn out. Since unions watch to see what each other settle for, we felt that if we started with a non-interest arbitration contract, we could settle quicker, and set the stage for the next negotiations.

Before going to the table, I needed to understand what my bargaining authority was. Bargaining authority is permission within set parameters, granted by the Council to allow me to make decisions on
behalf of the City. The City Manager and I strategized the conversation necessary to have with the City Council and how to present the information to obtain the necessary bargaining authority, without getting too far into the details.

**City Council**

The City Council provides the parameters of the negotiation authority; therefore, I needed to be prepared to discuss financial information including the cost of wage increases and health care costs. First I presented the history of contract negotiations with the unit and, shared information about how our wages compare to comparable cities. We discussed healthcare trends and the latest impacts that the Affordable Care Act has had on the health care industry. Additionally, I advised them that the union sometimes will contact council members directly to gain their support. The City Council needed to be aware of the potential dangers of the unions contacting them and their response. The impacts of such conversations could be detrimental to the negotiation process and we could be charged with an unfair labor practice. I encouraged the council to not make promises, but to direct the employees back to the negotiating team since they have been entrusted with the authority to bargain and see the process through.

**Building the Negotiation Team**

Establishing key players at the table and defining their roles is important to make sure there are people who can speak to their areas of expertise. The following were the members of our negotiation team:

- **Finance Expert** - The Finance Director, or designee, is able to give a presentation to both sides of the table on the current finances. The purpose of this presentation is to provide an understanding to both sides of the table of the City's financial capacity.

- **Subject Matter Expert**
  - This person is someone who is able to speak to the operational side of the CBA. This should be someone who is in a supervisory role who knows what the process is and what is needed to get the work done effectively and efficiently.

- **Recorder**
  - Discussing the format of the minutes and how the recorder will keep track of the information presented is a must. Together, we discussed what the form for Tentative Agreements (TA's) would look like and how we would keep track of what has been tentatively agreed upon during negotiations. We also discussed that if there is no change to a specific article that is also noted.

- **Lead Negotiator**
  - The chief spokesperson, which was my role, will be doing the majority of the speaking at the table.

The team and I met ahead of negotiations to review our game plan. We talked about our roles and brainstormed what issues we thought we would face during the negotiations process. We also talked about the personalities on the union side, and how they might react to certain issues. Another item we discussed was the ground rules and how they work. It is important for everyone to know that if they have an idea they would like to bring forward, a caucus is called first and the idea is discussed with the team in a separate room on how or if it will be brought forward to discuss with the union.
TALKS AT THE TABLE

First Meeting

At the first meeting I presented the ground rules for consideration. Unions typically do not like ground rules, and I knew that we could not make them abide by them because they are considered a permissive subject of bargaining. The Washington State Public Employee’s Relations Committee (PERC) will not enforce them; however, if the union refused to abide by ground rules, at least the expectation had been set about how the meetings should be conducted.

Common ground rules include:
- Confidentiality statement.
- Statements that include communications with outside parties or the media.
- All proposals must be in writing.
- All tentative agreements must be in writing and signed by both sides.
- Everyone will show up to the meetings on time.
- Payment of employees who miss work due to negotiations and how many would have to take leave time if they chose to be part of the process (mileage and overtime should not be included).
- Deadlines for new proposals.

Discussing Financials

Educating the unions on the financial outlook of the City before talking about changes to the contract started both side of the table with the same understanding of the City’s financial ability to take on additional costs. Meeting with the Finance Expert ahead of time about the information to present to the union along with graphs was a good way to start. The strategy we used for the presentation was to provide a short and simple and easy-to-understand presentation of the City’s financial picture. The union members did not like hearing the information, but it was helpful to set the stage for negotiations.

WAPELRA classes taught me to anticipate that there will be questions from the union for which I should be prepared to answer. Some questions and/or comments were:
- Why has the City Manager received such a big raise?
  - Answer – City Managers work under a contract that specifies their salary. The salary is determined by comparable cities, experience and performance.
- The employer does not care about their workers.
  - Answer – Let them explain why they feel the employer does not care about the employees and address each issue as they are presented.
- We are working harder with less.
  - Answer – Explain that the whole country was hit by the economic down turn and everyone had to work a little harder with less.
- Why can we not get the same COLA you gave other groups?
  - Answer – Because each contract is different, some are interest arbitration contracts and some are not. We are not able to compare them to each other for reasons that not only are they all different, but have their own industry standards.
Permissive and Mandatory Subjects of Bargaining

There are two types of issues that are discussed during negotiations, permissive subjects of bargaining and mandatory subjects of bargaining. Permissive subjects are issues that can be discussed but are not required to be. These are the issues you want to start with first, and then leave the mandatory subjects, such as wages, hours and working conditions for the end. This establishes conversation between the parties which makes them easier to resolve. This will also build trust between the parties.

Tentative Agreements are referred to as TAs. When the negotiators on both sides agree on language, it is put in a TA format and signed to show they both agree. TAs assists in making progress toward the total agreement of the CBA. The union representative I encountered did not want to TA anything along the way; he wanted to wait until the end to sign the CBA as a total package. At that time we needed to be persuasive in making him understand that by getting the non-economic side of the contract agreed upon, we could make progress towards the entire contract being agreed upon.

When it comes time to start negotiating the economic portion of the CBA, I let the union make the first proposal and proceeded from there. Sometimes, if lucky, they may come in at something lower than what you were anticipating.

What Issues will Likely be Discussed?

When planning out the order of issues that will be discussed, I started with the easy items first. This helped to get the conversation going and showed that we were able to agree. The first few items were language changes that everyone was able to agree upon. We were able to make progress in the contract and build trust. We saved the economic issues for last.

Being strategic about how and when to bring up issues and language changes enabled me to save some items to use later as a bargaining chip. Creating a timeline of when we brought up certain topics helped keep us on task; keeping in mind however that all items for discussion were placed on the table within the first three meetings. We set the date for the next meeting at the end of each negotiation session based on the team’s schedules. It would have been helpful if we could have had them close together, but due to the workload of the teams we were only able to set them up as we went along. At the end of the three negotiation sessions, we asked the union if they have presented all of their issues. At that point no more items were brought forward for discussion, to do so would be considered an Unfair Labor Practice.

I learned in the process the importance being comfortable with silence. A conversation with the team about not feeling the need to “fill the void” was helpful. Many people feel uncomfortable with silence and will say more than they intend. We were patient, we watched and we listened. It was surprising how much we learned when others become uncomfortable with the silence and started talking.

Mediation

When the parties decide they are not able to agree, one party or the other will complete a mediation request form from the Public Employee Relations Commission (PERC). Consent from the other party for mediation is not necessary. This form can be found on the PERC website along with instructions on how to request mediation. Once PERC receives a request, they assign a mediator to the case. The role of the mediator is to listen and help the two parties to understand and identify the issues that are preventing
them from settling. Once the issues are identified, they help bring the two parties together to resolve the conflict and come to an agreement. The mediator will not make a decision and only cares about what is not resolved. They are not there to be a confidant or a friend to either party and will put pressure on both sides to come to an agreement.

If negotiating an interest arbitration contract, it is important to be very careful to never expose your final bargaining authority. However, it is equally important to never make false statements either. Once one has tried to deceive, their reputation is destroyed. I avoided stating “The City is not willing to pay more towards wages”. Instead, I said, “I can’t get support for what you are asking, but I probably could get a settlement with something no higher than ‘x’ amount.” That way we were not locking the City in to a specific dollar amount.

When Both Parties are Stuck

Sometimes parties can get stuck and are unable to agree and mediation is used as the next step to a resolution. Washington state law allows for unilateral implementation of the last, best and final offer if the contract is a non-interest arbitration contract. Once the words “Last, Best and Final Offer” are used, then it must be true. This means the City can no longer offer anything else.

The law requires that impasse has been reached, and one year from contract expiration has passed before unilateral implementation can occur. Although there is no minimum number of bargaining sessions required during the year, there needs to be proof that both sides have bargained in good faith. Some of the hazards to unilateral implementation are, unions might file an unfair labor practice, or may start submitting multiple public records requests for information, or refuse to acknowledge that they are at impasse. It also creates a negative impact on the relations with the union members. Some of the pros to unilateral implementation are, it allows employers to make changes without union’s approval and stops the unions tactics to stall.

CONCLUSION

Remember that when entering into negotiations, one can never be too prepared. The more preparation done ahead of time, the better equipped you will be to answer questions and address issues with confidence. Preparation, if done properly, will most likely take more time than the negotiations themselves. It was extremely important for me to not be pushed into an answer of which I was not sure. Instead, I let them know that I would get back to them. Intentionally providing false information, or making up an answer damages credibility and is extremely difficult to regain.

I learned the best policy is to always be polite, and not to allow myself to be pushed into agreeing to something the City cannot support or that is outside the bargaining authority granted. Remember that the process should have incremental gains and losses to both sides. Therefore, if we wanted to take something away, it is essential to be prepared to give something in return.
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