

## Understanding the Labor Negotiations Process

Under California law,<sup>1</sup> when county or city employees are represented by a union, the agency must negotiate with that union regarding their pay and benefits, working hours, and working conditions.

Although the face-to-face negotiations will be done by agency staff, elected officials have an important role in negotiations: determining the agency's bargaining position and consulting with staff throughout the negotiation process. To do that, it can be helpful for elected officials and the public to understand the basics of the bargaining process.

### Before Bargaining

Prior to meeting with the union, the agency's negotiators will meet with elected officials to discuss how to proceed. The agency's negotiators will have the information you need to make an informed decision, such as:

- Anticipated increases in current employee expenditures
- Money available for salaries and benefits
- Cost of salary and benefit enhancements
- What comparable employers are paying
- Turnover statistics

They will also share their understanding of what it would take to reach a settlement with the union. The agency's governing body will then give your negotiators an initial bargaining position.

### During Bargaining

The agency will have an "initial" bargaining position. No matter how reasonable the agency's position, it is unlikely that the union will immediately accept it.

The negotiation process seldom goes exactly as planned. The agency's negotiators may have misread the union's posture, the union representative may have misread the employees' mood, new issues may arise, or there may be internal divisions within the union negotiating team that make it impossible to get agreement within the guidelines authorized.

The Institute is grateful to Dr. Rhonda Albey for preparing this piece. Dr. Albey has worked in labor relations for Los Angeles County since 1990.

**Working with the agency’s negotiators.** This means that the agency’s negotiators may ask for modifications in the bargaining position. The modifications need not require that the agency increase total expenditures - it may be a matter of changing the way the money is distributed. They may want to move money from benefits to salaries, or vice-versa. If decision-makers have authorized higher increases for some jobs than others, they may ask to even it out. In any event, don’t be surprised if it is necessary to have repeated sessions with your negotiators during the course of bargaining.

**Working with the Union.** As negotiations continue, the union is likely to seek a meeting to get the agency to change position in its favor. The delegation will include employees, some with compelling arguments as to why they should get more, and others with less compelling arguments. As with any group of constituents, an elected official can choose to meet with them. However, be careful when meeting with employees without their union representative – it can give rise to accusation of unlawful “direct dealing”.<sup>2</sup>

Expect to be misquoted. People tend to hear what they want to hear. Someone may say something like “I’ll speak to the negotiating team,” and mean exactly that – they’ll speak to them. The employees hear “He/she will speak to the negotiating team and tell them to give us what we want.” Don’t meet with them alone; have someone take notes so there will be an accurate account of the conversation.

## Deal!

Congratulations! The agency has reached agreement. That’s good, but the agreement still has to be ratified by the rank and file. The union needs to sell the agreement as a “win” for their employees, so they may post flyers or e-mails saying how they “Beat management down!” or “Forced management to accept our demands!”

On the other hand, you may hear from constituents complaining about the agency giving in to the union and “using *my* tax dollars to overpay *those* lazy public employees.” It could be helpful to prepare a public statement that does not validate either extreme, but says something to the effect that “We reached a deal to provide adequate public services at reasonable cost.”

## No Way!

What happens if the agency can’t reach an agreement? There are procedures under state law for resolving impasse.<sup>3</sup>

### Remain Neutral in Union Affairs

There may be employees who want to meet with an elected official because they are not happy with how the union is representing them. Don’t let it appear that the agency is interfering in the union’s relationship with their employees.

### Don’t Be a Sore Winner

Even if it’s true (especially if it’s true), it’s unwise to brag about how the agency forced the union to accept terms. The employees won’t ratify the agreement if they think they lost.

## Mediation

A mediator may be brought in to try and resolve differences between the agency and the Union. Mediators have no authority to impose a settlement, but can be useful in helping the parties look at the problem from a new perspective and to move past personal differences. The state Division of Mediation and Conciliation can provide a mediator.

**Fact-finding.** Whether or not mediation occurs the union may request fact-finding as a next step. With the assistance of the Public Employee Relations Board (PERB), a fact-finding panel is appointed which reviews both parties' proposals, holds hearings, and ultimately recommends a settlement.

**Unilateral implementation.** After exhausting the impasse procedure and holding a public hearing, the agency may impose its final financial offer upon the employees. Management cannot force the union to accept a whole new contract.

Unilateral implementation cannot be used to impose work rule or operational changes and can only be implemented for one year. After that year, the agency must bargain again with the union to try and reach a mutual agreement.

While the agency won't have to negotiate again during the term of the contract, an elected official may occasionally hear from your labor relations staff. Things inevitably come up between negotiations that require changes. With luck, these will be few and simple.

### Rough Road Ahead

The path to agreement can be rough. There may be demonstrations, coordinated phone and e-mail campaigns and people yelling.

Don't take it personally – it's all part of the process. Both sides may need to show they are doing their job. Union negotiators need to show their members that they are fighting for them and elected officials need to show they are working hard for the community.

### An Expired Contract is not the Same as No Contract

If the contract has expired and you do not yet have a new one, the agency must maintain the status quo until there is a new agreement.

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## References and Resources

<sup>1</sup> California Government Code 3500, known as the Meyers-Milias-Brown Act, (MMB) requires negotiation in good faith with the recognized employee representative on specified subjects. It also permits local governments to adopt their own rules and regulations for the governance of labor relations.

<sup>2</sup> If employees have chosen to be represented by a union, management must deal exclusively with that union on negotiable matters. Meeting with employees without the union representative may be considered "direct dealing" and is an unfair labor practice.

<sup>3</sup>The impasse procedures provided here are those in state law. There may be a local labor relations resolution or ordinance in your jurisdiction which outlines another method. If that is the case, you would follow the procedure in your local ordinance.