

Understanding the Labor Negotiations Process

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Under California law,¹ 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. This paper explains the key elements of that process.

Roles

Elected officials determine the agency's bargaining position and consult with staff throughout the negotiation process. Agency staff report back to decision-makers about the face-to-face negotiations' progress and any impediments to reaching agreement.

Before Bargaining

Prior to meeting with the union, the agency's negotiators will meet with elected officials to discuss how to proceed. Having this meeting well in advance of negotiations gives elected officials time to consider relevant issues and develop a set of questions.

Early conversations also give staff time to compile necessary information for decision-makers. Examples of such information may include:

- 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

Just as elected officials need time and information to make well-informed decisions, staff will need time to prepare and provide accurate information. As with any issue, limited staff resources may make it advisable to prioritize information requests.

Conversations about the agency's initial bargaining position typically take place in closed session.² The agency's negotiators will share their understanding of what it will take to

Additional Resources

The Institute has two glossaries to assist local officials as they engage with constituents, bargaining representatives and each other about labor relations and public pension issues:

- Labor Relations Terminology:
<http://www.ca-ilg.org/post/labor-relations-terminology>
- Public Pension Terminology:
<http://www.ca-ilg.org/post/public-pension-terminology>

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.

reach agreement with the union. The agency's governing body will then give negotiators an initial bargaining position.

During Bargaining

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

The Process Can Be Rough

During the negotiations process, the union may organize demonstrations and/or phone and e-mail campaigns. Discourse may become bullying and emotional.

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.

The negotiation process is unpredictable. The agency's negotiators may have misread the union's priorities and goals. Union representatives may have misread the employees' mood. New issues may arise. There may be internal divisions within the union. These challenges may make it impossible to get agreement within the original parameters authorized.

Working with the Agency's Negotiators. As challenges arise, the agency's negotiators may ask for modifications in the bargaining position. This is normal in the course of any type of negotiation, as each party learns more about the interests of the other. Multiple meetings with the negotiating team may be necessary.

Modifications may not involve increases in total expense. An example is moving money from benefits to salaries (or vice-versa). Another example is if decision-makers have authorized higher increases for some position classifications than others, employee representatives may ask to even increases out.

Meeting with Union Officials. As negotiations continue, the union may seek meetings with individual elected official(s) to discuss the agency's bargaining position. As with any group of constituents, an elected official can choose to meet with them or not. If an elected official does meet with union officials, the official should be clear that the official is not speaking on behalf of the governing body.

A word of caution about meeting with employees *without* their union representative during labor

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 may hear "He/she will speak to the negotiating team and tell them to give us what we want."

Some strategies for minimizing miscommunication are to take notes during the discussion and not to meet with union representatives alone.

negotiations: such meetings can lead to an unfair labor practice accusation of “direct dealing.”³ Avoid any action that makes it appear that the agency is interfering in the union’s relationship with the employees it represents.

If the elected official meets with union representatives, it is helpful to share the conversation with the agency’s bargaining representatives. The conversation may provide insights that will help the agency’s negotiators move the process forward.

If Agreement Is Reached

The agreement still has to be ratified by the rank and file. The union may feel it needs to sell the agreement as a victory for its members. The union may post flyers or e-mails trumpeting their win over management.

For their part, elected officials may hear concerns from constituents that the agency is spending too much on employee salaries and benefits. Agency officials are well-advised to be moderate in their public discourse relating to the agreement. Anything that might be construed as bragging about the agency’s victory in the bargaining process may jeopardize the agreement. The employees won’t ratify the agreement if they think it is a

Post Agreement Issues

While the agency will not have to negotiate during the term of the agreement, issues may arise between negotiations that may require changes.

bad deal or their representatives weren’t sufficiently aggressive on their behalf.

A helpful practice can be 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.”

If Agreement Cannot Be Reached

What happens if the agency can’t reach an agreement? There are procedures under state law for resolving impasse. A local labor relations resolution may provide further guidance on procedures.

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

An Expired Contract is not the Same as No Contract

If the contract has expired and agreement has not been reached on a new one, the agency must maintain the status quo until there is a new agreement.

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, or during the year, if the union indicates it has a significant change in its position, the agency must bargain again with the union to try and reach a mutual agreement.

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The Institute welcomes feedback on this resource:

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References and Resources

¹ 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 agencies to adopt their own rules and regulations for the governance of labor relations.

² See Cal. Gov't Code § 54957.6, which provides:

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

³ See Cal. Lab. Code § 1156; *Ruline Nursery Co. v. Agricultural Labor Relations Bd.*, 169 Cal. App. 3d 247, 266, 216 Cal. Rptr. 162, 172 (1985)