

BARGAINING START TO FINISH

**Nuts and Bolts for Bargaining Fire
Fighter Contracts under the PECBA**

Hank Kaplan



Bennett Hartman Morris & Kaplan

FOUR PHASES OF BARGAINING:

- ☞ PREPARATION
- ☞ OPENING AND EXPLORING BARGAINING
- ☞ FOCUSING AND AGREEING
- ☞ END GAME - SETTLEMENT OR ARBITRATION

I. PREPARE TO BARGAIN

- ☞ Select the bargaining team
- ☞ Gather information
- ☞ Prepare your proposals
- ☞ Satisfy any reopener notice requirements

BARGAINING TEAM

- ▶ Chief spokesperson - good communication skills
- ▶ Requires Serious time commitment
- ▶ Share the workload
- ▶ At least one number-cruncher
- ▶ Group should be representative of the union

GATHER INFORMATION

- ▶ ORS 243.746 (4)
- ▶ What are your comparators?
 - Population figures.
- ▶ Get the contracts and insurance info.
 - Workweek
 - Vacation, Holidays, and Sick leave
 - Health Insurance – Employers’ cost: use either weighted average, composite cost, or most expensive option
 - Pension: PERS pickup; OPSRP local option
- ▶ CPI – Portland/Salem, West Coast, All-Cities CPI-W
- ▶ Budget Documents and CAFR
- ▶ Most recent bond offering prospectus

Gather Information (cont'd)

- ∞ Recruitment and retention data:
 - Total turnover, net of retirements
 - Lost members to other departments?
 - Lowering of standards?
 - Increasing probationary wash-out rates?
 - Bargaining unit members involved in recruitment or hiring process

Prepare your proposals:

- ☞ Poll your membership: rank-order priorities
- ☞ Prepare some draft language that can be presented at first session
- ☞ Anticipate the employer's interests:
- ☞ 1. What have they raised with other groups? 2. What are the hot button non-economic issues? Payroll changes? Drug testing? Sick leave reform?

What to bargain:

- ⌘ When there's money, bargain for money.
- ⌘ When there's no money, bargain for language and reopeners.
- ⌘ Proposals can cover BOTH mandatory and permissive subjects.
 - Let the employer raise objections to permissive proposals; ignore objections until after mediation

“Non-economic” items:

- ☞ Maintenance-of-standards clauses
- ☞ Minimum staffing
- ☞ Subcontracting
- ☞ Discipline and personnel files
- ☞ Safety-related issues; equipment
- ☞ Union issues: email, union business leave

Maintenance of Standards Language:

- ∞ “All conditions of employment relating to wages, hours of work, benefits, and working conditions which are mandatory subjects of bargaining not specifically mentioned in this agreement shall be maintained at the level in effect at the time of the signing of this agreement. Any disagreement between the Union and the Employer with respect to this section shall be subject to the grievance procedure.”

Bargaining wages:

- ∞ What is the Association's wage proposal?
 - Wrong: "How much you got?"
 - Right: "This is what is justified by our comparator analysis."

- ∞ Flush out employer's position on Ability-to-pay issue.
 - Ability-to-pay litmus test: Are people being laid off?

STRATEGY TIP:

Use Your Demographics

- ∞ Long-term: Negotiate for the future.
 - older demographics – raise base; get OPSRP local option
 - younger demographics – add longevity pay; increase health insurance benefits
- ∞ Early retirement incentives provide short-term savings

II. OPENING AND EXPLORATORY BARGAINING

- ∞ Ground rules
- ∞ First proposals
- ∞ Employer Issues

GROUND RULES:

OPTION 1- NO GROUND RULES

Fall back: The PECBA ground rules:

- ☞ Tentative agreements are tentative
- ☞ The bargaining team must recommend a final TA to the unit
- ☞ End run communications are allowed
- ☞ Communications with press and elected officials are allowed.

MORE OPTION #1

- ▶ Both sides have an obligation to share information under ORS 243.672(1)(e)
- ▶ Any obligation to grant release time is contractual
- ▶ Anybody can represent the union, even lawyers
- ▶ 150-day period of negotiations commence with first meeting at which proposals are exchanged.
- ▶ No change in status quo (except possibly grievance procedure and health insurance - check contract)

Option 2

Some variations from PECBA rules:

- ☞ No end runs until mediation, no talking to press, no lawyers without notice.
- ☞ Order of presentation: who goes first on each issue
- ☞ Procedures for TAs
- ☞ Time and place of meetings
- ☞ Grievance procedures remain in place during bargaining
- ☞ Other status quo issues

Bargaining dynamics: Initial proposals

- ∞ Each side present proposals
- ∞ Ask for more than you need; include some throw-away proposals
- ∞ Mode of presentation:
 - This is what we want;
 - This is why we want it;
 - This is why it's justified.

Forms of justification:

- ⌘ Statutory criteria - other jurisdictions do it this way
- ⌘ Hard luck stories
- ⌘ Bad consequences, unworkable systems
- ⌘ Increase efficiency
- ⌘ Professionalism
- ⌘ Public sentiment

AT THE BARGAINING TABLE:

∞ ..

Bargaining Demeanor: Receiving proposals

✂ Wrong:

- “That’s a really dumb proposal.”

Right:

“None of the comparator jurisdictions do it that way.” “Why is this important to management?”

Bargaining Demeanor: Rejecting proposals

∞ Wrong:

- “The day you try to implement that dumbass proposal, every firefighter in the unit who doesn’t suddenly get the flu will be out responding to the car fire in front of your house”

Right:

“The Association team understands your proposal, and rejects it.”

Team Conduct At The Table:

- ☞ A single chief spokesperson; nobody has a “new idea” at the table.
- ☞ Ask questions to clarify the proposal; **then caucus**
- ☞ If you don't understand something, say so and ask questions
- ☞ If the employer has missed something important, caucus before you point out the error

III. Focusing and Agreeing

- ☞ Modify proposals incrementally
- ☞ Exchange written drafts
- ☞ Leave room for later concessions
- ☞ Generally, leave wages and big-ticket economic items for the end

Anticipate Interest Arbitration

- ☞ Narrow the number of issues to bring to interest arbitration:
- ☞ Be sure to put on the table any proposal that you may want to take to interest arbitration later

Communications

- ⌘ Membership poll results are for bargaining team only
- ⌘ Communications with the membership:
 - Update the membership often; it will avoid problems when time comes for ratification vote
 - Assume that management will see ALL communications with membership – do not reveal bargaining priorities or weaknesses

IV. Bargaining End-game:

- Mediation
- Impasse
- Final offer
- Cost summary
- Interest arbitration

Mediation

- ☞ Last chance to make proposals that you may want to take to interest arbitration
- ☞ Good time for end run (subject to ground rules)
- ☞ Re-assess bottom line with bargaining team

Impasse

- ⌘ May be declared any time beyond 15 days from start of mediation, even if the parties only met once

Final offer and Cost summary

- ∞ Serves no useful bargaining function
- ∞ Satisfies the public notice requirements of the PECBA
- ∞ Cost summary should state assumptions used to get figures; there are no grounds to challenge accuracy

Interest Arbitration

- ∞ Last Best Offer can be much different from Final Offer, but all proposals must have been explored in bargaining
- ∞ Abandon any proposals that have permissive elements
- ∞ Bargaining team will be a key resource for hearing preparation

Settlement

- ☞ Tentative agreement is subject to approval by membership
- ☞ **Bargaining team should not approve TA if they are not willing to recommend it to the membership**
- ☞ Don't recommend a TA package unless you are fairly confident the membership will approve