

Agenda

1. Primary Purpose of Negotiations
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Primary Purpose of Negotiations

The primary purpose of all collective bargaining is to reach an agreement on wages, hours and other terms and conditions of employment and to reduce those agreements to an enforceable contract or memorandum of understanding which can be administered on behalf of the unit employees for the life of that agreement.

Rome Aloise

VP, International Brotherhood of Teamsters

Primary Purpose of Negotiations

The denial by some employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial strife which has the effect of burdening or obstructing commerce. Thus, it is the policy of the United States to mitigate these obstructions by encouraging the practice and procedure of collective bargaining.

Labor Management Relations Act

29 USC Section 151

Primary Purpose of the MMBA

The purpose of the MMBA is to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.

Meyers-Milias-Brown Act

CA Government Code Section 3500

Counterpunching: Managing Collective Bargaining To Avoid Impasse



By
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Collective Bargaining Defined (Private)

Under the National Labor Relations Act, collective bargaining is defined as the “obligation of the employer and the representative of the employee to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, ... and the execution of a written contract incorporating any agreement reached, but such obligation does not compel either party to agree to a proposal or the making of a concession.”

NLRA, 29 USC Section 158(d)

Collective Bargaining Defined (Public)

Under the MMBA, public agencies shall “meet and confer in good faith” regarding wages, hours and other terms and conditions of employment with representatives of recognized employee organizations and shall consider fully such presentations made by the employee organization prior to arriving at a determination of policy or course of action.

Meyers-Milias-Brown Act

CA Government Code Section 3505

Collective Bargaining Defined (Public)

“Meet and confer in good faith” means that the parties representatives shall have the mutual obligation personally to meet and confer promptly upon request and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for resolution of any applicable impasse procedure.

Meyers-Milias-Brown Act

CA Government Code Section 3505

Rules Governing Collective Bargaining

The content of the parties' negotiations in the private sector are almost completely unregulated under the law. The few prohibited or unlawful subjects include:

- closed-shop clauses
- hot cargo clauses
- hiring hall provisions discriminating against financial core members
- clauses which discriminate based on protected status (race, religion, gender, etc.)

Rules Governing Collective Bargaining

The content of the parties' negotiations in the public sector may be significantly restricted under the law. For example, under each of the major California public sector labor statutes (EERA, HEERA, SEERA and MMBA), the scope of bargaining borrows from the NLRA language requiring bargaining on “wages, hours and other terms and condition of employment.” However, each Act then adds definitions, enumerations and/or exclusions to that basic language.

Knowing the scope of bargaining under the applicable statute is critical to knowing how to avoid impasse.

Rules Governing Collective Bargaining

The process of collective bargaining in the private sector is regulated in a few discreet ways. The duty to bargain in good faith requires the parties to:

- meet at reasonable times,
- meet at reasonable places,
- confer in good faith,
- about mandatory subjects of bargaining,
- with the intent of reaching agreement.

Rules Governing Collective Bargaining

The process of collective bargaining in the public sector is frequently regulated in similar ways. For example, under the MMBA, the duty to meet and confer in good faith requires the parties to:

- meet promptly upon request, and
- meet for a reasonable period of time,
- in order to freely exchange information,
- and endeavor to reach agreement,
- about matters within the scope of representation.

Rules Governing Collective Bargaining

Golden Rule No. 1

To satisfy the duty to bargain in good faith, employers have an obligation to furnish relevant information to union representatives during contract negotiations. Unions cannot be expected to represent employees in an effective manner where they do not possess information that is necessary to properly discharge their duties as the certified bargaining agent.

NLRB v. Truitt Mfg. Company
351 US 149 (1956)

Rules Governing Collective Bargaining

Golden Rule No. 2

One of the most fundamental of all the rules governing collective bargaining is that an employer may not make any unilateral changes to any wages, hours, terms or conditions of employment until either:

- (a) the parties reach an agreement, or
- (b) an impasse in negotiations is reached.

Rules Governing Collective Bargaining

Impasse Defined

“Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors in deciding whether impasse exists.”

Taft Broadcasting, 163 NLRB 475 (1967)

Rules Governing Collective Bargaining

Impasse Defined

“Impasse means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.”

Educational Employment Relations Act (EERA)

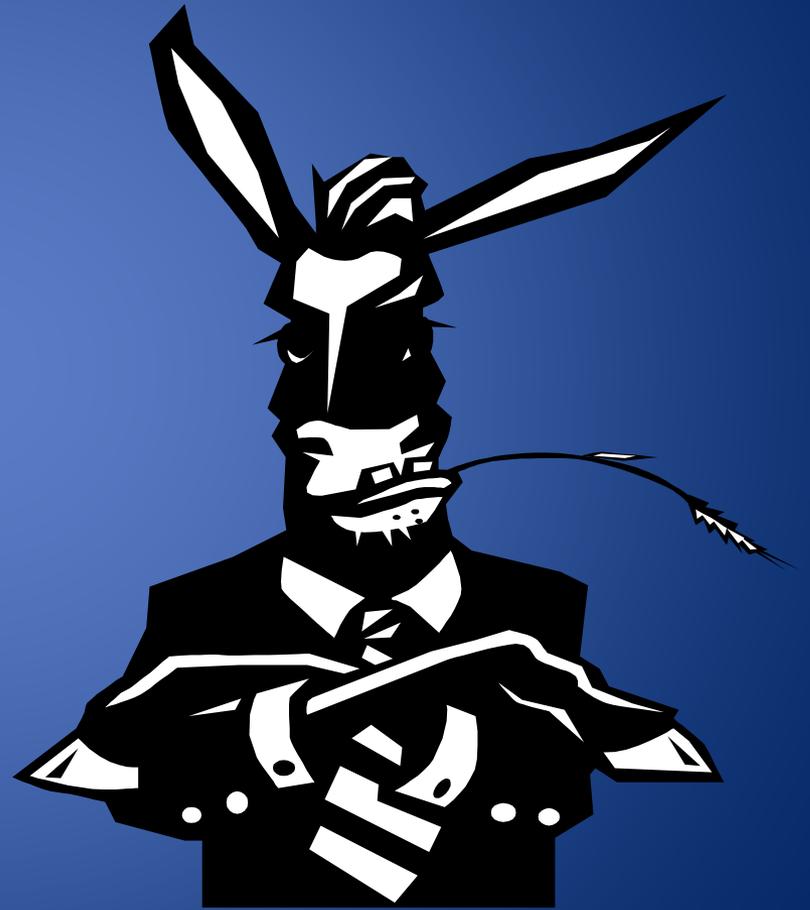
CA Government Code Section 3540.1(f)

Principled Negotiations

1. Parties have sufficiently prepared for bargaining.
2. Reasonable ground rules are negotiated.
3. Proposals are sunshined and exchanged.
4. Information is requested and exchanged.
5. Proposals are rationally probed and analyzed.
6. Reasonable counter-proposals are exchanged.
7. Joint sessions, caucuses and side-bars utilized to reach agreement on separate issues or packages.
8. Final agreement reduced to writing for ratification by the unit and approval by the public entity.

Recalcitrant Employers

Recalcitrant (adj.):
marked by a stubborn
resistance to and
defiance of authority or
guidance; unruly;
disobedient;
unreasonable;
perversely unyielding;
bullheaded; difficult to
deal with; a jackass.



Types of Recalcitrant Employers

Those employers which engage in delay tactics and seek to negotiate the union to death in order to delay implementation of certain benefits.



Those employers which engage in hard bargaining and seek to reach impasse quickly in order to implement proposed contract concessions.



Purpose for Alternative Strategies

- To garner data to assist in negotiations?
- To create potential unfair labor practices?
- To protect employees in case of a strike?
- To make recalcitrant negotiations expensive?
- To demonstrate determination to the unit?
- To make life miserable for the employer?

TO GET A CONTRACT!

Strategies to Counter Delay Tactics

Once the union is recognized as a certified bargaining representative, the Union should consider the following strategies if the employer employs delay tactics:

1. develop ground rules which enhance flexibility;
2. schedule bargaining as frequently as possible;
3. reduce bargaining demands to essentials;
4. prioritize all remaining bargaining demands;
5. engage the employer's legal counsel only if necessary;
6. submit only necessary targeted RFIs;
7. create firm time lines for bargaining at each session;
8. promptly confirm all arrangement in writing;
9. reach impasse according to Union's desired time line.

Strategies to Avoid Impasse

1. Scheduling Dates and Locations: Dates and locations of negotiations are a mandatory subject of bargaining. Given your busy calendar, it is not improper to set half day sessions a couple times per month. Do not necessarily agree to suggested neutral sites. Consider several options. Consider changing locations and bargain over that issue. Cancellation of bargaining sessions are an unfortunate fact of life.
2. Ground Rules: The rules governing your negotiations can cover almost every conceivable subject and, if you are creative, require significant time to complete. Insist that the ground rules are subject to modification during the negotiation process. Modify ground rules as necessary.

Strategies to Avoid Impasse

3. Preparing Proposal for 1st Session: Unless required by a statutory public notice requirement, don't! Spend your time negotiating ground rules instead. Then work off the employer's proposals. If the employer insists on receiving the union's proposals, submit "problem statements" and engage in interest-based negotiations. If public notice is mandated, require the letter of the law be met. Challenge the employer's failure to satisfy any aspect of the public notice requirement.
4. Do Not Reject Employer Proposals: Regardless of how outrageous or concessionary the proposal by the employer, do not reject it. The more draconian the demand by the employer, the more you will want to bargain the proposal to death.

Strategies to Avoid Impasse

5. Equal Proposal Priority: Regardless of what the employer may say, treat every proposal with equal priority. Negotiate every minor change as if it were equivalent to a major contract concession.
6. Caucuses: It is legitimate to take the time necessary to evaluate complex proposals. Take the time needed to review the data requested and received (see RFIs below).
7. Consultations with Professionals: Meet with any necessary professionals (attorneys, industrial engineers, auditors, trust administrators, international officers and representatives, etc.).

Strategies to Avoid Impasse

8. Use Information requests: Information requests are entirely legitimate both before and during bargaining. Generally speaking, an employer has a statutory obligation to produce requested relevant and necessary information. Where the union requests “confidential information,” the union’s need for the information will be balanced against the legitimate confidentiality concerns of the employer (i.e. OSHA Logs). A “liberal discovery-type standard” for information requests is generally applied.

Strategies to Avoid Impasse

8. Use Information requests (cont.): Legitimate information requests include financial data prepared by or for the public agency. A Comprehensive Annual Financial Report (CAFR) is a set of public financial statements compiled by state, municipal and other governmental agencies and audited by an external certified accounting firm utilizing Governmental Accounting Standards Board (GASB) requirements. A CAFR shows the total of all financial accounting which a general purpose budget report does not. The obligation to produce such data is not dependent upon an employer's claim of financial hardship or "inability to pay."

Strategies to Avoid Impasse

9. Piecemeal Bargaining: Negotiate over each individual topic or issue one at a time. Do not submit a comprehensive package of proposals. Submit RFIs separate for each topic as it is being discussed.
10. Bargaining Notes: To substantiate the employer's potential ULPs, the Union will require sufficient evidence. This frequently can be established through bargaining notes. Take comprehensive notes regarding each session. Verbatim notes may slow negotiations, but you need to build a record.

Strategies to Avoid Impasse

11. Confirming Correspondence: Confirm everything in a light most favorable to the union, including RFIs, progress being made at the table and any statements or conduct by the employer which reflects bad faith.
12. Insist on Written Agreements: Before reaching any agreement, insist on a written draft and carefully review each word and phrase proposed by the employer. Suggest alternatives and bargain over the every nuance of the draft.

Strategies to Avoid Impasse

Impasse Resolution Procedures

Many public sector labor statutes have either voluntary or mandatory impasse resolution procedures which may include provisions for mediation and/or fact finding, as well as the respective rights and obligations of the parties in the event of an impasse. Utilize these procedures to further avoid the implementation of concessionary bargaining proposals.

Questions and Answers



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