

LABOR NEGOTIATIONS STRATEGY



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James R. Stadler

CLARK HILL

FACT REGARDING NEGOTIATIONS

THE BEST STRATEGY WINS!

Overview

- **Keys to A Winning Bargaining Strategy**
 - Understand the Context of Negotiations
 - Know the Laws
 - Know what Tools you have
 - Set Achievable/Realistic Goals given the Context

Context

- **First Contract – Be Greedy!**
 - Best Opportunity to Preserve Clear and Unequivocal Management Rights
 - Best Opportunity to Establish Sound Economic Principles and Framework
 - Many Bargaining Sessions over Many Weeks and Perhaps Months

Context

- **Mid-Term Negotiations – Be Measured**
 - Narrow Scope of Compelling Issues
 - If Concessionary, Low Probability of Success
 - Few Meetings over a Few Weeks
 - Require Ratification Vote over Final Offer

Context

- **Expiration of Labor Agreement – Be Balanced**
 - Broad Range of Economic and Non-Economic Issues (Must Haves, Needs, Wants, Throwaways)
 - Weeks of Negotiations

Context

- **Moving from Public Operated to Public-Private**
 - State Law may Dictate certain Outcomes
 - Recognition of Unions
 - First Right of Transfer/Hire for New Jobs
 - Equal or Greater Wages/Benefits

Context

- **Economic Realities/Necessities**
 - Economic Improvements to Bargaining Unit
 - Break Even
 - Economic Concessions from Bargaining Unit
 - Pending Insolvency/Bankruptcy

Context

- **Bargaining History**
 - Past Behavior of Union Committee in Negotiations is Indicative of Future Behavior
 - Will Dictate Tools Needed to Achieve Goals
 - Will Dictate Strategy

Context

- **Personalities of Union Bargaining Committee**
- **Personal Agendas of Each Bargaining Team Member**
- **Which Bargaining Team Member(s) have Credibility with Influence over the Bargaining Unit?**

Context

- **Other Outside Forces**
 - Scope of Departments/Employees Covered by CBA
 - Political Forces
 - Ability to Hire Replacements if a Labor Stoppage Occurs
 - Community Pressure/Public Opinion

Laws

- **Public Sector Bargaining: Creature of State Laws**
- **Each State has Different Laws**
- **Laws in 40% of States have Recently Changed**
 - Limiting or Eliminating Right to Strike
 - Implementing Right to Work (Ind. and Mich.)
 - Strengthening Right to Subcontract/Outsource
 - Mandating Health Insurance Premium Contributions
 - Reducing/Changing Future Retirement Benefits

Laws

- **Know the Laws**
- **Know the Tools the Laws Give/Don't Give You**
- **Get Active with State Legislatures to Continue to Legislatively Change the Laws**
- **In the Absence of Legislative Response, Consider Ballot Initiatives**

Tools

- **Depending on Your State Laws**
 - Mediation
 - Fact Finding
 - Interest Arbitration
 - Impasse and Implementation
 - Strike or Lockout
 - Unfair Labor Practice Charges
- **Public Opinion / Press**

Tools

- **Mediation**

- State-Appointed/Assigned
- Typically do not get Involved while Negotiations are Proceeding Reasonably Well
- Get Involved when Bargaining Stalls
- Makes Non-Binding recommendation as to
 - Proposals
 - When to Schedule Negotiations
 - Goal is to Inch the Parties to Tentative Agreement

Tools

- **Fact Finding**
 - Mediation Typically a Prerequisite
 - Fact Finder Selected from a Panel
 - Non-Binding Recommendations on an Issue-by-Issue Basis
 - Often Splits the Baby on each Issue
 - Period of Bargaining Usually Required after Report Issued

Tools

- **Interest Arbitration**

- Generally in Lieu of Right to Strike/Lockout
- Know whether it is Baseball Arbitration or Issue by Issue
- Binding Decision

Tools

- **Impasse and Implementation**
 - At Loggerheads: Neither will Budge nor Consider Budging
 - Difficult Standard to Prove before Employment Relations Commissions
 - Implementing without Impasse is ULP
 - On-Going Duty to Bargain

Tools

- **Strike or Lockout**
 - Uncommon Today – Tools of Last Resort
 - Unpopular within Communities
 - Always have a Strike/Lockout Contingency Plan or Risk Being Held Hostage/Mugged at the Table

Tools

- **Unfair Labor Practice Charges**
 - Employers have a Right to File ULPs Against Unions who Bargain in Bad Faith
 - Refusal to Meet at Reasonable Time/Places
 - Dilatory Tactics
 - Regressive Bargaining
 - Employment Relations Commissions can be Reluctant to Find ULP by Unions

Tools

- **Public Opinion / Press**
 - Mutually Agreed-Upon Ground Rules May Limit Use of Press Releases
 - Normally, Not a Good Idea to Bargain through the Press
 - Public Opinion and Press can, however, be Very Helpful in the Right Circumstances

Goals

- **Pre-Bargaining, Detailed Economic Analysis**
 - Long-Term Revenue and Cost Trends
 - Recent Events that will Affect Both
 - Summarize to Union at Opening Session
 - Importance of a Detailed Costing Model

Goals

- **When Seeking Concessions, What is Good for the Goose is Good for the Gander!**
 - Shared Sacrifice
 - Implement Sacrifice with Non-Union Workforce Prior to Negotiations with Union
 - Don't Overreach

Goals

- **Don't Chase Ghosts**
 - Focus on Real Issues, not Theoretical Issues
 - Have Facts and Data to Support that the Issue is Real rather than Theoretical

Goals

- **Be Mindful of Sacred Cows**

- Don't Fight over Turf unless it is Necessary to Fight over Turf
- Acknowledge it when you need to Address a Sacred Cow and be Prepared to Demonstrate Need
- Raise Sacred Cows Early in Negotiations – Need time to “Cook”

Goals

- **Comparative Data**

- Similar Communities/Agencies in your State
- Develop Case for Why your Community/Agency should be treated the Same or Different under the Circumstances

Goals

- **Keep an Eye on the End Game**
 - Given Bargaining History, What is the Most Likely Path to Reach your Goals?
 - Smooth March to Ratified Agreement
 - Mediation - Fact-Finding - Ratified Agreement
 - Impasse and Implementation
 - Interest Arbitration
 - Strike/Lockout
 - Expected Path Dictates Proposals and Strategy

To “Win” in Labor Negotiations

- Understand the Context
- Know the Laws
- Know what Tools you have in your Toolbox
- Set Appropriate goals given the Context(s)
- Be Strategic, Patient and Persistent
- Be Armed with Facts and Data
- Be Prepared for the Worst

Thank You



James R. Stadler

jstadler@clarkhill.com

616.608.1164