

Bargaining Basics

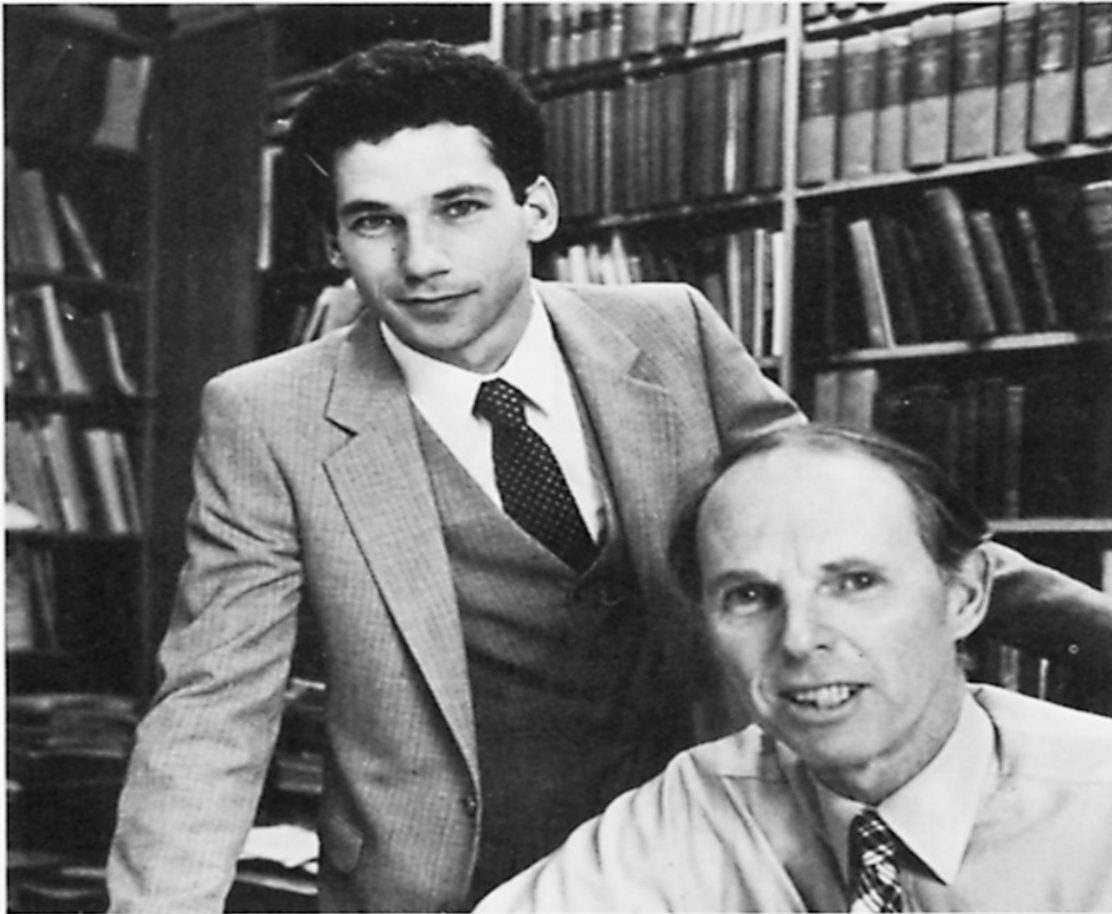
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Getting to Yes

ALEXANDRA DOR-NER



William Ury and Roger Fisher

You Can Negotiate Anything!

"Power is based upon perception — if you think you've got it then you've got it. If you think you don't have it, even if you've got it, then you don't have it."



Types of Bargaining

- Hard Bargaining
 - Adversaries
 - Win/Lose
 - Threats
 - Deception
 - Pressure
 - Contest of Wills to WIN!

Types of Bargaining

- Soft/Friendly
 - Goal is Agreement
 - Focus on Maintaining Relationships
 - Trust Others
 - Search for Answer “They” Accept
 - Easy Concessions
 - Avoid Contest of Wills

Types of Bargaining

- Principled Negotiations
 - Problem Solving
 - Separate People from Issues
 - Focus on Interests/Not Positions
 - Open to Reason and Logic
 - Establish Principles for Settlement
 - Brainstorm Options for Mutual Gain

Bargaining Styles

- Hard Bargaining Dominates Soft!
- Too Much Focus on Relationship May Yield a Sloppy Agreement
- Principled Negotiations Works With Either
- How About a Mix?

Overview: Labor Relations Terms

- PERA-Public Employment Relations Act
- MERC-MI Employment Relations Committee
- Mediation
- Impasse
- Fact Finding
- Last Offer Implementation
- Bargaining Issues
- Contract Ratification
- Unfair Labor Practice (ULP)

PERA

- Public Employment Relations Act-Act 336.1947 as amended.
- A Michigan law that prohibits strikes by public employees and defines and protects the rights and privileges of public employees to organize and engage in collective bargaining with their employer.

Labor Relations Process

- Preparation
- Negotiation
- Mediation
- Factfinding

PERA

- Section 15-MCL 423.215
 - Duty to bargain
 - “Meet at reasonable times and confer in good faith”
 - Does not “compel either party to agree to a proposal or require the making of a concession.”

MERC

- Michigan Employment Relations Commission—
The tribunal provided under the Michigan Public Employment Relations Act whose members are appointed by the Governor with consent of the Senate. The commission has responsibility for general administration of the act.

MERC

- Mediators
- Fact finders
- Administrative law judges
- Commission review

MEDIATION

- Use of a third party in resolution of contract disputes.
- The mediator attempts to assist the parties in reaching an agreement through conciliation or making of informal recommendation.

IMPASSE

- A deadlock in negotiations
- Unable to agree on the terms of a mandatory subject
- “at the end of their rope”
- “Further negotiations would be futile”

FACT FINDING

- An independent neutral party conducts a hearing and issues a recommendation
- Non-binding

LAST OFFER IMPLEMENTATION

- After impasse
- Before/After petition for fact finding
- Entire contract
- Sections of contract
 - “business reasons”

RATIFICATION

- Formal approval of a newly negotiated agreement by vote of the general membership or union members.
- Formal approval of the board.

UNFAIR LABOR PRACTICE

- An act by an employer or labor organization forbidden by the Public Employment Relations Act.
- Most common
 - Bad faith bargaining
 - Refusal to meet/bargain
 - Interference

STRIKE

- The concerted failure to report for duty; the willful absence from one's position; the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in employment conditions, compensation, or the rights, or obligations of employment.

MANDATORY BARGAINING ISSUES

- ...are related to wages, hours and other conditions of employment.
- Examples: wage systems, bonus plans, pensions, vacations, holidays, grievance procedures and management rights.
- You do not have to make a concession.

ILLEGAL BARGAINING ISSUES

- ...are not bargainable, and it's illegal for the parties to insert them into the labor contract even if they are in agreement over the issue.
- Examples: violations of law, PERA, FMLA, ADA, FLSA

VOLUNTARY ISSUES PERMISSIVE

- Benefits for past retirees
- Ground rules for bargaining

PAST PRACTICE

- A consistent response to a given set of circumstances which as been enunciated or acted upon over a significant period of time and has therefore been mutually known and accepted by the parties.

Communications During Negotiations with Your Staff

- Do so with caution, planning and forethought
- Factual information only – best if it has been shared at the table
- Don't criticize or cast aspersions at the union

Communications During Negotiations with the Media

- In the past management has done this rarely
- It may be time to be more open
- How you do it is as important as what you do

Communications During Negotiations with the Media

Why communicate with the media during negotiations?

- Frame the issues and provide facts
- Get an accurate district perspective known
- Gain support for your position

Roles and Responsibilities

What is right?

- It depends
- History, personalities and abilities, situational

Roles and Responsibilities: The Board

May serve on bargaining team

- Why or why not?

The Board

- Sets parameters for settlement
- Supports bargaining team
- Ratifies tentative agreements

Roles and Responsibilities Administrators

May serve as mgmt spokesman

- Why or why not?

Should start by going to board to obtain direction and set parameters

Collect necessary background information

Roles and Responsibilities Administrators

Keep the board well informed – check back often

Lead the bargaining team

Important Things to Remember

Support your team and stay together!

Don't get caught in a "friendly" sidebar unless you are the spokesman – easy to do more damage than good

Important Things to Remember

Be prepared for pressure tactics

- Calls at home
- You are unfair!
- We need a contract!
- Picketing at board meetings
- Splitting the board and administrators

Important Things to Remember

Good communication and mutual respect is the foundation of a good relationship with staff/unions

However, be prepared if things don't go as you wish – be realistic about tactics that unions use

Getting to Yes

Judge negotiations outcomes by 3 criteria:

1. A wise agreement
2. Efficient
3. Improve or not damage relationships

Issues

- What are your objectives?
 - Cost reductions?
 - The going rate?
 - Staying competitive?
 - Relationships?
 - Your community?

Issues

- Finding Your Comfort Zone
- Balance of Interests
- Providing Leadership Within Your Community
- Being Strategic

Negotiations Key Factors

- Time
- Information
- Power

Negotiations Process

- Establish Trust
- Obtain Information
- Piggyback on Their Ideas
- Transform to Collaboration
- Take Some Risks
- Get Their Help

Techniques and Strategies

- Principled Negotiations
 - Problem Solving
 - Fairness
 - Reducing Costs
 - Addressing BOTH Parties Needs
 - Maintaining or Improving Relationships
 - Burden on Moving Party

Techniques and Strategies

- Transparency and Sharing Information
- Doing the Unexpected
- Openly Discuss Feelings/Perceptions
- Provide Rationale for Rejections
- Put Yourself in Their Shoes
- Permit Reasonable Release of “Steam”

Techniques and Strategies

- Questioning
 - Ask for Information to Evaluate Proposals
 - Specify Purpose Explicitly
 - Ask for Intended Effect of Proposal
 - What's the Problem?
 - Have You Considered Other Ways?

Techniques and Strategies

- Questioning
 - Ask and then Pause
 - Don't React to Emotional Outbursts
 - Dumb can be Better than Smart

Dirty Tricks?

- Deliberate Deceptions
- Applying Pressure/Stress
- Personal Attacks
- Good Guy/Bad Guy
- Threats (GNDR)
- Lock-in to Positions

Responding to Dirty Tactics

- A Tactic Revealed is a Tactic Defeated
 - Specifically Identify Tactics as Such
 - What You Reward is Repeated
 - Don't Fear Conflict

In the End

- Mutual Respect and Trust Work Best
- Fight Fires Without Burning Bridges
- Trust Is the Universal Lubricant
- Keeping Your Eye on the Ball