The IEA-NEA Collective Bargaining Series

IEA has a series of three booklets, available through your UniServ Director, to help you advocate for change through collective bargaining.

- The Bargaining Process
- Understanding K-12 Public School Finance
- Matrix Salary Schedules

These booklets are designed for negotiators who are using an interest-based or a position-based bargaining process to give you the best “inside scoop” on how you can be the most effective advocate you can be.

THE BARGAINING PROCESS

Chapter 1 OVERVIEW OF COLLECTIVE BARGAINING
- What are your bargaining responsibilities as the exclusive representative? .....1
- What is bargaining? .................................................................2
- What items can we bargain? ....................................................2
- What processes can we use to bargain? ....................................4
- When do we bargain?.................................................................5
- How do we create bargaining as a conversation or dialogue? ..........6
- What are the paperwork requirements related to bargaining? ........6

Chapter 2 THE MECHANICS OF BARGAINING
- Determining a strategy ..............................................................7
- Building a team .........................................................................10
- Setting goals .............................................................................16
- Bargaining as a conversation ...................................................18
- Reality testing ...........................................................................19

Chapter 3 PEOPLE ISSUES IN BARGAINING
- Effective bargaining behavior ...................................................22
- Troubleshooting .......................................................................27
- Managing conflict among people ..............................................29

Chapter 4 CLOSING THE DEAL
- Working toward settlement .......................................................33
- Using a mediator .......................................................................36
- Reducing the agreement to writing ............................................36
- Ratifying the tentative agreement .............................................37
- Life after ratification ................................................................39

This series of booklets is the result of a collaborative effort by the Field Services, Program Development, Legal and Communications Departments. August 2007
Chapter 1: OVERVIEW OF COLLECTIVE BARGAINING

INTRODUCTION

This booklet is designed to introduce local association leaders and negotiators to various concepts related to collective bargaining. The first chapter is organized to give you, the negotiator, a basic overview of the negotiations process.

OBJECTIVES

The purpose of this overview is to help you prepare for a successful bargaining experience. In preparation for bargaining, you’ll need to know some answers to important questions:

• What are your bargaining responsibilities as the exclusive representative?
• What is bargaining?
• What items can we bargain?
• What processes can we use to bargain?
• When do we bargain?
• How do we create bargaining as a conversation and/or dialogue?
• What are the paperwork requirements related to bargaining?

Your UniServ Director can help you answer the questions above, but here are some guidelines to get you started.

OVERVIEW OF BARGAINING

A. What are Your Bargaining Responsibilities as the Exclusive Representative?

Employees in Illinois public schools, community colleges, public colleges and universities are covered by the Illinois Educational Labor Relations Act (IELRA). This act permits employees to organize and form employee organizations to represent them “for the purpose of collective bargaining.” Once your local association has been recognized by the Illinois Educational Labor Relations Board (IELRB) as the exclusive representative for all employees in your bargaining unit, you have a legal obligation “to bargain on wages, hours, terms and conditions of employment” for those employees (Section 3 of the IELRA). As the exclusive bargaining representative, you have a legal obligation called the duty of fair representation (DFR) for all the employees you represent. A central tenet of this duty is that individuals you represent, regardless of their association membership status, may not be treated in an intentionally arbitrary and capricious manner as a part of association decision-making. You should discuss this duty and its implications with your UniServ Director.
B. What is Bargaining?
In order to answer this question, we need to look at bargaining from different perspectives, including a legal definition, how the bargaining process is defined, what bargaining has to do with conflict, and the difference between good and bad faith bargaining.

- **Legal Definition** (as contained in Section 10a of the IELRA). Collective bargaining is the performance of a mutual obligation of the association and board representatives to do the following:
  - meet at reasonable times
  - confer in good faith with respect to wages, hours, and other terms and conditions of employment, provided such obligation does not compel either party to agree to a proposal or require making a concession
  - execute a written contract incorporating any agreement reached

- **Process Definition.** Bargaining by definition implies conflict or disagreement. The relationship between the local association and the employer is an ongoing and continuous relationship. Every interaction between the parties, both positive and negative, adds to that relationship. Bargaining is a process designed to manage conflict and produce a written document outlining the work relationship between the parties.

- **Managing Conflict.** Even though it’s important to understand legal definitions, it’s even more important to understand how bargaining really works in terms of interpersonal interactions. Managing the conflict is how you handle disagreements among individuals, teams and/or organizations involved in the process. If there is no disagreement, there is nothing to bargain.

- **Good/Bad Faith Bargaining.** Even though bargaining is sometimes frustrating, you need to remember that disagreement doesn’t mean one or both parties are engaged in illegal or bad faith bargaining. This is because there is no obligation for either party to agree to a proposal or make a concession. Saying “no” is not necessarily bad faith bargaining; moving “backward” or “regressing” from a previously offered proposal may be. You need to contact your UniServ Director if you have any questions in this area.

C. What Items Can We Bargain?
The law is specific on this question. The association may bargain over “wages, hours, terms and conditions of employment” referenced in the labor act. The Illinois Educational Labor Relations Board and the courts have divided potential subjects of bargaining into three types: mandatory, permissive, and prohibited subjects of bargaining.

- **Mandatory Subjects.** The question of whether a subject is a mandatory subject of bargaining is based on the facts of the specific situation. What may be mandatory in one situation may not be mandatory in another. However, based
upon labor board decisions, certain issues have generally been accepted as required (or mandatory) subjects of bargaining. This means the employer cannot refuse to discuss these subjects or make a decision surrounding these subjects without first engaging in good faith bargaining with the Association. Mandatory subjects of bargaining include, but are not necessarily limited to, the following:

**Wages**—
- Salary
- Early retirement bonuses
- Extracurricular pay
- Health insurance
- Compensatory time for overtime
- Mileage and stipends

**Hours**—
- Hours of employment
- Length of work year
- Required meetings
- In-Service days
- Length of workday
- Lunch period
- Parent conferences
- Number and length of teaching periods
- Release time for committee work

**Other Terms and Conditions**—
- Class size
- Addition or elimination of extra-duty positions
- Establishment of new bargaining unit classifications
- Evaluation procedures
- Assignment of extra-curricular activities
- Grievance procedure, including binding arbitration
- Job bidding procedures
- No strike clause during life of the Agreement
- Parking
- Promotions
- Reclassification of positions for economic reasons
- Impact of reorganization on employees
- Impact of Reduction in Force (RIF) and restructuring
- School calendar
- Subcontracting of bargaining unit work
- Transfers
- Transfer of bargaining unit work to administrators
- Leaves and leave requirements
- Workload

- **Permissive Subjects.** In addition to the mandatory subjects of bargaining listed above, the labor act, labor board and court rulings also allow for additional
bargaining which is permitted (but is not considered mandatory). This means the employer and/or the association may agree, or not agree, to discuss certain subjects. The employer may or may not make unilateral decisions regarding these subjects. However, if the Employer’s decision affects wages, hours or other terms and conditions of employment, the association may bargain the impact of that decision. Permissive subjects include, but are not limited to, the following issues:

- Evaluation criteria
- Exclusions from arbitration
- Extending or reducing hours of operation
- Negotiation ground rules
- Reorganization decisions
- Broad waiver of mid-term bargaining

- **Prohibited Subjects.** Certain laws, the court’s interpretation of laws, the labor act and the labor board’s interpretation of the act do not allow the employer or the association to bargain certain subjects. These prohibited subjects include the following:
  - Hiring
  - Changing inter-district to intramural activities
  - Just cause K-12 tenure teacher dismissal
  - Notice to Remedy for K-12 teachers
  - A policy that allows smoking on school grounds
  - Provisions that would be in violation of, inconsistent with, or in conflict with, any statute enacted by the Illinois legislature, or any provisions that negate, diminish or limit any employee rights, guarantees or privileges provided by law

In looking at potential topics for negotiations, the good news is the longest list falls under “Mandatory Subjects.” There are very few topics that can’t be bargained! You are limited more by imagination than by law or regulations. Your UniServ Director is a valuable resource in helping you and your team determine bargaining topics.

**D. What Processes Can We Use to Bargain?**

There is no one “right” way to bargain. The approach to bargaining you choose is best determined by you, your team and your UniServ Director and depends on your local situation—history of bargaining, current relationships with board and administration, as well as your goals and interests.

- **Positional Bargaining.** This is a negotiations process in which each party to the negotiations starts out holding a fixed idea, or position, regarding what it wants on a particular issue. That party then presents information, debate and argument for that position and that alone, in an attempt to convince the other side of its rightness and determination. Each party starts with its “solution” to the issue (its position), presents supporting evidence, then waits for a similar positional response from the other side. The debate continues, often involving concessions from one or both parties. Underlying interests may or may not be disclosed
during the process. Eventually a compromise may be reached. That compromise may or may not necessarily be the best solution for the issue. Positional bargaining is a time-tested method of negotiating that can be quite appropriate in any educational institution. Depending on the veracity of the parties, it also can be frustrating and produce an intense struggle to prevail over the other side.

• **Interest-Based Bargaining.** This is a negotiations strategy in which the parties strive to find mutually beneficial solutions to their disagreements or disputes. Each side starts with its underlying interests in the issues without overtly stating proposed solutions. Those interests may include the needs, desires, concerns, and fears that are important to each side. The parties jointly develop options that may meet those expressed interests and mutually agree to a solution. Interest-based bargaining does not mean a local association or board of education gives up advocacy on issues. In fact, it may be the toughest bargaining of all because it requires teams to take the other party’s interests into consideration.

The parties may be drawn to different methods of negotiations on different issues or at different times. What approach you use may depend on the relationship between the parties at that time and the issues being discussed. Either of the approaches above can be used regardless of the type of bargaining in which you are engaged (e.g., successor or mid-term bargaining). Again, a discussion of these processes with your UniServ Director may be quite beneficial. (See Chapter 3 of this booklet for more information on bargaining approaches.)

**E. When Do We Bargain?**

The decision on when to bargain is determined by timing and circumstance: Is your contract an initial contract, a successor agreement, or are you bargaining during the term of your contract, while it’s still in effect (mid-term bargaining)?

• **Initial Contract.** This is your local’s very first contract because you’ve just been certified by the labor board as the exclusive bargaining representative for your group of employees. Bargaining an initial contract must begin within 60 days of labor board certification. No doubt you and your team will need and benefit from assistance from your UniServ Director in preparation for this experience.

• **Successor Contract.** Generally, all collective bargaining agreements contain expiration dates, usually occurring around the end of the fiscal year (June 30) or the beginning of the academic year. Lengths of contracts vary. Contracts after your initial contract are called “successor” agreements. In successor contracts, language may be modified, improved, or expanded upon. In preparing to bargain successor contracts, your UniServ Director is your best resource.

• **Mid-Term Bargaining.** In general, if you are currently in the middle of an unexpired contract and your collective bargaining agreement contains no language prohibiting midterm bargaining, your association may bargain matters not already covered by the agreement as long as the subject wasn’t fully
negotiated when you bargained the contract that is currently in force. You may also engage in mid-term bargaining even if your contract contains a “waiver” clause as long as both parties agree to bargain. Usually midterm bargaining occurs because of a change in practice or because the board desires a change in policy which effects wages, hours, or terms and conditions of employment. Because your right to midterm bargain depends on a number of circumstances, be sure to contact your UniServ Director regarding your rights and obligations.

F. How Do We Create Bargaining as a Conversation or Dialogue?
It’s important to keep in mind that bargaining is often built around relationships and desires of the parties. Relationships are built on a history of interactions, desire of the parties to engage in problem-solving, openness and honesty or lack thereof, and personalities of the parties. Approaching bargaining as a problem-solving endeavor, with open dialogue and respectful interaction, takes agreement and desire by all parties to engage with each other as equal partners. It takes open and respectful relationships. Change happens one conversation at a time, and bargaining is about how we create change. Talk to your UniServ Director and see Chapter 2 of this booklet for more information about this topic.

G. What Are the Paperwork Requirements Related to Bargaining?
First, you will want to file a written demand to bargain with your employer. Generally under the labor act, bargaining must commence within a reasonable period of time after the employer’s receipt of your demand to bargain. Check with your UniServ Director about the language to use in your demand and the timelines that will apply.

The labor board requires regular “status of bargaining” reports to be filed on official labor board forms at certain intervals, ranging from 15 to 90 days before the start of the next school year. Check with your UniServ Director about these reporting requirements.

Also, there are labor board forms to use and legal requirements to follow if you anticipate your local association may go on strike. Once again, consult with your UniServ Director if you believe your local may be headed for a strike to ensure your compliance with the law and labor board rules.

SUMMARY
Now that you have a basic overview of the negotiations process, you may wish to read the other chapters in this booklet to get more information on the various aspects of bargaining.
Chapter 2: THE MECHANICS OF BARGAINING

INTRODUCTION

The purpose of this chapter is to provide association leaders and/or bargaining team members with an overview of the mechanics of bargaining. It will also cover how a local leadership group should proceed when a local bargains a first agreement or when a current agreement is due to expire.

As an overview, this booklet is not a substitute for advice and consultation with your IEA UniServ Director. Additionally, you should consider attending formal IEA training programs that provide more detailed knowledge and comprehensive skill building sessions.

OBJECTIVES

This chapter will address the following topics:
- Determining a strategy
- Building a team
- Setting goals
- Understanding bargaining as a conversation or dialogue
- Grounding yourself and your team in reality

DETERMINING A STRATEGY

Most IEA local association contracts contain an expiration provision [e.g. “This Agreement shall be effective on July 1, 2007 and shall expire on June 30, 2010.”]. As the expiration dates nears, your association leadership may grapple with such questions as:

- “When do we begin to bargain?”
- “What previous agreements shall we propose for change?”
- “What new issues do we want to bring to the table?”

These are commonly asked questions, and there are two other key questions to ask: “What method or approach should we take to bargaining?” How open should we be about how we feel and what we know? These questions and their possible answers represent one dilemma of bargaining. This dilemma is the first analysis you should undertake.

This dilemma is driven by whether and by how much you choose to share your interests. The premise for this analysis is that all bargaining is driven by interests. Interests are the
underlying motivations, concerns, fears and aspirations that are imbedded in the problem or issue that you intend to address or submit to the bargaining process. Interests are answers to the “why” questions that should be asked in your preparation phase of bargaining. “Why is this issue important to you?” “Why is it a problem?” “What fears or concerns are raised by this issue?”

The dilemma then can be framed as whether or not (or to what degree) you disclose your interests to the board representatives and whether you need to assess and encourage the disclosure of interests from the board team.

A strategy focused primarily on your team’s predetermined concept of solutions to problems suggests a “positional” approach to bargaining. Using this approach, your team presents its solutions in the form of proposals prior to discussion with the board team. This process usually leads to an exchange of written positions with the school board (and/or its representatives). Table discussion takes the form of arguments, counter-arguments and exchange of selected facts designed to convince the other side to agree with your “plan”. The bilateral exchange of positions as proposals drives the process and there may or may not be a disclosure of underlying interests.

A strategy focused structurally on the interests of both sides suggests an “interest-based” approach in which both teams seek to understand underlying interests first, then move to joint problem solving as a mutual effort to find options that meet the needs and interests of both sides. Options are analyzed as to whether interests are met and whether they meet certain standards. In this approach early disclosure of interests drives the process to find a solution acceptable to both sides.

Although neither approach is perfect for bargaining – both have their assets and liabilities – you’ll need to decide on one or the other prior to entering into negotiations. You may want to consider the following questions as you consider the possibilities:

- Are you normally addressing and resolving differences of opinion without unnecessary grievances or litigation?
- Does each side truly recognize the role of the other side?
- What is the history regarding cooperation?
- Are the key players on both sides trustworthy?
- Are all the power actors from both sides willing to commit to the time it will take to reach a mutual agreement on all issues?
- Are both sides willing to commit more time to bargaining, as may be required by an interest-based process?
- Do both sides understand the district’s finances?
- How willing is each side to share important and relevant data?
Regardless of where you are on the continuum of positional versus interest-based approaches to bargaining, you will benefit by seeking the advice and training programs available through IEA. You will also recognize that one issue might lend itself to a problem-solving approach while another may need a more positional approach. The correct strategic approach is the one that you believe will maximize your chances of a successful negotiation – one that meets the needs and desires of your constituents.

A second analysis that can assist the strategy dilemma is to determine where your relationship is on the cycle of power:

The above diagram is explained as follows:

If you are too worried about your relationship with the board/administration, you may be in a “dependent” power relationship in which you are soft on the people and soft on the issues. You may see power as avoiding a disagreement with the other side. In an “independent” power relationship, your focus is on your issues and relationship with your members. This power approach is hard on your relationships with the board/administration and hard on your issues, but it builds relationships with your members. In an “interdependent” power relationship, you and the board/administration are both hard on problems each brings to the table and soft on relationships, allowing each side to cooperatively manage the constituent relationships of both teams.

This power is cyclical. For example, if in the last negotiations there was a high degree of interdependence, the power cycle may shift to “dependence” or “independence.”
A. Selecting the Team

The Process. Your Association’s governing documents (e.g., constitution and/or bylaws) may specify how the team members are to be selected, so you should review that document before you begin the process. Some local bylaws require that the bargaining team be elected. Others charge the executive committee with making appointments. If your bylaws do not address the method of selection for bargaining team members, then you, your team or your executive committee may determine what selection process to use. For example, the president may nominate team members for confirmation by the executive body. Or members of the executive committee may nominate and the whole group then votes on the appointments.

Although electing your bargaining team members would be a very democratic method of selection, it may not be the most effective one. Team members should be selected based on considerations described in this section, not necessarily on their ability to win an election.

Personal Characteristics. Unless your local governing documents provide otherwise, the executive officers of your association probably should not be appointed as bargaining team members. Those members already have important association responsibilities!

Ideally, your bargaining team should include a mix of members with varying levels of bargaining experience, ranging from the seasoned bargainer to the beginner. The experienced bargainers will bring continuity to your negotiations process as well as provide training for the beginners. In this way, each time you negotiate a successor agreement, your association continues to develop the skills of current and future bargainers.

When selecting members for the team, there are many personal characteristics that should be considered. Bargaining team members should be . . .

- knowledgeable about the workplace
- able to articulate ideas and arguments persuasively
- able to get along with other people and work as a “team” member
- able to function under pressure
- able to look at problems and issues objectively
- willing to take risks
- respected by other association members
- committed to advancing the interests of the association and its membership
- energetic and dedicated to their responsibilities on the bargaining team

Some consideration may be given to how each potential team member will be perceived by the board’s team. Is the member respected? Will the member be viewed as someone to whom other association members will listen? Or will the member be viewed as an obstructionist or a hindrance to the process?
Constituencies. The membership of the bargaining team, to the extent possible, should mirror the demographics of the bargaining unit. Your bargaining unit is probably comprised of employees of different genders, from different cultural backgrounds, working in various job categories, at different worksites and possibly even on different shifts. There may be many constituency subgroups that your team must represent at the negotiations table. Such representation is important for seeking input as well as getting support from the various subgroups for your negotiations proposals and eventual settlement.

| Some Examples of Constituency Subgroups by Position: |  |
| K-12 Education | Higher Education |
| Coaches | Adjunct/Part-Time Faculty |
| Elementary Teachers | Clerical/Administrative Support |
| High School Teachers | Faculty by Department |
| Middle School Teachers | Non-teaching Professionals |
| Probationary Teachers | Non-teaching Technical Staff |
| Tenured Teachers | Non-tenure Track Faculty |
| Psychologists | Tenured Faculty |
| Social Workers | Tenure Track Faculty |
| Technical Staff | Probationary Faculty |
| School Nurse (Certified) |  |

ESPs
Paraprofessionals
Bus Drivers
Custodians
Secretaries
Cafeteria Workers
Building Maintenance Workers
Bus Mechanics
Playground Supervisors
Lunchroom Supervisors
School Nurse (Registered)

<table>
<thead>
<tr>
<th>Some Examples of Constituency Subgroups by Issue:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retirement: Those near retirement age</td>
</tr>
<tr>
<td>Insurance: Those with single coverage, those with family coverage</td>
</tr>
<tr>
<td>Rights: Those employees who are probationary; those who are non-probationary</td>
</tr>
</tbody>
</table>

Team Size. The team should be large enough to represent the major constituency subgroups, but not so large that decision-making is hindered. In many instances a single team member can represent more than one constituency subgroup.
The team should be large enough that the members can equitably share the work of the team through the assignment of the functional roles of each member. You will want to consider the style and/or process of bargaining you will be using. If, for example, the process calls for a number of subcommittees to work between negotiation sessions, then the team would need to have enough members to serve on those subcommittees.

You might also think about the size of the association’s team in comparison to the board’s. But remember, equal numbers do not guarantee a balance of power.

B. Assigning Functional Roles

The roles discussed below are descriptive of the functions that need to be performed by team members. Except for Chairperson and Recorder, these roles are not necessarily meant to be rigid assignments that are made to individual team members and performed only by those team members. For example, an Issue Advocate may act as an Observer when an issue other than his/her own is being discussed at the table.

**Chairperson.** This member is the team leader. (S)he leads the team during bargaining preparation, at the bargaining table, and during caucuses. However, this member should **not** be the only member who speaks at the table (see Issue Advocate below). The Chairperson also acts as the official contact with the board’s bargaining team.

**Recorder.** This member takes complete notes at team meetings, bargaining sessions and caucuses. It is particularly important that the recorder captures the “intent” of the parties—those statements made at the table that reflect what the parties meant by their proposals and counter-proposals and, ultimately, the meaning of the language that was accepted as the tentative agreement in the negotiations.

The Recorder is responsible for keeping a copy of each proposal and counter-proposal that is exchanged across the table. If the document is not so labeled, the Recorder should write the name of the party that presented the proposal along with the date and the time the document was distributed at the table (e.g., Board Proposal, June 1, 2007, 6:34 p.m.). When using an interest-based bargaining approach, the Recorder takes notes of all the interests, standards, and options for each issue.

After settlement is reached, the Recorder’s notes and all bargaining proposals, arranged in chronological order, should be filed in the Association’s permanent files as its official record of the negotiations. These notes will be needed if there is ever confusion or disagreement over the meaning of the language that was ratified. In the grievance process, arbitrators usually accept notes from negotiations sessions to use in determining the intent of the contract section in dispute.
While taping bargaining sessions is legally permissible (but only with the express agreement of every individual involved), it is NOT recommended as it may impede the free flow of discussion.

**Issue Advocates.** These members speak at the table to advocate for specific issues as assigned by the team. It is not necessary for the Chairperson to be the only speaker at the table. In fact, assigning all the speaking to one member is usually counter-productive. It’s extremely tiring to be the expert and do all the talking on every single issue!

By assigning a team member to a specific issue, it allows that team member to become the expert on that issue—to have all the relevant data, documents, materials and the association’s talking points pulled together and ready for use at the table.

**Observers.** These members note the reactions of the board’s team members to the association’s proposals, counterproposals and discussion at the table. The team can analyze those noted reactions to determine bargaining strategy.

Observers can also act in team meetings and caucuses as document collectors and file organizers to assist the Recorder.

**Analyst.** This member analyzes the board’s finances as part of the bargaining preparation process. (S)he also is responsible for preparing the association’s salary proposals and analyzing the board’s salary proposals.

**UniServ Director.** The team and the UniServ Director should discuss the role the UniServ Director will play in bargaining.

C. **Building the Team**

Any team must go through a team-building process to become a high-performing team. As the team’s leader, your Chairperson may wish to employ different group exercises or techniques to help your team members work through the team building process. Contact your UniServ Director for information about training or facilitating team building.
The four stages of team building are shown in the diagram and described below.

Stage One
Forming

Stage Two
Storming

Stage Three
Norming

Stage Four
Performing

**MATURE CLOSENESS**
- Resourceful
- Open
- Effective
- Close and supportive

**TESTING**
- Polite
- Impersonal
- Watchful
- Guarded

**GETTING ORGANIZED**
- Developed skills
- Establishing procedures
- Confronting issues
- Giving feedback

**INFLICTING**
- Controlling conflict
- Confronting people
- Opting out
- Difficulties
- Feeling stuck

**Forming:** *Who am I in this team?*
In this stage, members are dealing with their identity and place in the work team. Their interactions can be described as polite, yet impersonal, watchful and perhaps even guarded.

**Storming:** *Who am I with others in this team?*
Members begin to deal with relationships in the team. Some team members may act to control conflict or confront people. Some members might opt out or feel stuck. Authority is sorted out, skills are compared, and alliances and cliques are formed.

**Norming:** *What are we going to do?*
Once relationships have been identified, the team begins to define its mission and tasks. Members begin to develop their skills on the team and give feedback to each other. Issues are confronted and procedures are developed.

**Performing:** *How are we going to do it?*
With the mission clearly defined and agreed upon, the team applies its energies to address the tasks. This includes the assignment of responsibilities, the development of action plans, and the refinement of team norms regarding working relationships. Team members become more open, close and supportive of each other. They also become more resourceful and effective in their work.
D. Joint Association/Board Teams

In an interest-based bargaining process, the association team and board team work together and form a joint negotiations team. Therefore, the team building process plays out at the table.

_Scenario on Team Building:_

Your local park district sponsors a mixed gender volleyball league. Mid-season, the park district director selects members for an all-star team that will play in a series of games as a fundraiser for park district programs. The best player from each of the 10 league teams is selected. The following is how team formation might play out in this scenario.

Stage One: The coach calls a team organizational meeting and the players assemble on the volleyball court. Each team member introduces himself/herself, gives some personal history and describes his/her skills and experiences as a volleyball player. Everyone is excited to have been chosen as an all-star, but there is unstated apprehension: “I was the star on my team, but what will be my role on the new team?”

Stage Two: The coach calls the first team practice. The players exhibit their skills as servers, spikers, and setters. After practice, the coach announces that the team needs to select a captain. Susie, the best spiker, has a very fiery personality. She gets four votes. Bob, the best server, has a very calm and quiet demeanor. He also gets four votes. Two team members said they didn’t feel comfortable voting. The coach tells the team they can deal with that decision later.

Stage Three: Two weeks have gone by when the team decides to go out for pizza after practice. At the restaurant, Joe, one of the players who did not vote the first time, brings up the issue of team captain. “Susie is our best spiker and Bob is our best server, but Marcy is the person who really holds our team together. She recognizes the skills that each of us bring to the team. I nominate Marcy to be our captain.” All ten players vote for Marcy as team captain.

Stage Four: At the first game of the all-star series against a neighboring team, the team enthusiastically endorsed Marcy’s rotation that had Susie in the middle for communication and energy and Bob as the #1 server. In the final game of the final set, Bob’s overpowering serve ties the game as the team came from three points down. The winning point is scored by Susie saving a potential spike with Marcy setting up the winning spike by Joe. The team wins the series!
SETTING GOALS

A. Analyzing the Contract

Bargaining History. Bargaining should be thought of as an ongoing process. The efforts of the current bargaining team should build on the efforts of past teams. To that end, the current bargaining team needs to analyze the association’s bargaining history. This analysis should include meeting with members of previous bargaining teams and reviewing the bargaining notes to see what issues and proposals were brought forward and how they were resolved.

The team should also review any agreements that were bargained mid-term to determine if those provisions should be included in the successor contract.

Grievances. The bargaining team should also meet with members of the grievance committee and other leaders who are familiar with the grievance history of the association. An analysis of grievance activity will show which contractual provisions have been in dispute. If there were settlement agreements related to those grievances, the association may wish to incorporate those agreements into the successor contract. There also may be some provisions that have an unclear meaning and should be clarified through the bargaining process.

Other Committee Work. Your association may have other committees, or even joint committees with the administration/board, working on issues that may be relevant to bargaining (e.g., insurance committee, calendar committee, professional development committee). The bargaining team’s preparation should include meeting with the association members of those committees.

B. Involving the Members

In addition to examining the past for bargaining issues, the team also needs to determine what current issues may need to be addressed at the negotiations table. Your bargaining team may uncover problems or concerns members have through one-on-one conversations, written surveys, small group meetings, full membership meetings, or through a combination of those techniques. Keep in mind that using only one method may not provide all of the information that may be helpful to your team. It’s advisable to use more than one method to gather input from your membership.

Soliciting input from the membership is, at least, a two-part process. First, the team needs to identify what issues your bargaining unit members have, then the team needs to sort out of the importance of each of those issues.

One-on-One Conversations. Your team may wish to divide up the membership and assign each team member to have an individual, face-to-face conversation with those bargaining unit members on his/her list. Through these conversations, you will learn what issues matter to your membership. The raw data gathered through these conversations can then be refined through a written survey that asks your bargaining
unit members to prioritize those issues that were identified through the one-on-one conversations.

**Small Group Meetings.** Your team may wish to call a series of small group meetings of bargaining unit members. To be most successful, your team should think about what the logical small group breakdown of your bargaining unit would be. You want to make sure that those in similar circumstances are grouped together, as they probably share the same issues and interests. See the examples of constituency subgroups previously listed in this book.

**Surveys.** Surveys are a good method to use when trying to get a sense of the importance of the issues. They are best used either as a follow-up to the face-to-face conversations or small group meetings you had to identify the issues. The form of your survey can be to ask members to give a priority-ranking on a list of issues and/or to answer open-ended questions on various aspects of particular issues.

**Approval.** The specific results of your conversations/meetings and surveys are for the bargaining team’s use only. They should never be shared with your bargaining unit membership or with the board’s team. However, you will need to share general information about the bargaining priorities and attitudes that were revealed to keep your members informed. Members’ priorities may shift over time and in response to changing events. Therefore, it is necessary to communicate the bargaining priorities and attitudes that were revealed by the conversations, meetings and surveys. Keeping your members informed lets you periodically test their sincerity and commitment to their bargaining priorities.

C. **Checking Policies**

Existing policies, rules and regulations should be carefully assembled and then studied to determine if any areas of the contract need modification or improvement.

D. **Checking Comparatives**

Your bargaining team may wish to review certain contract provisions of other local associations that may be comparable to your association. Contact your UniServ Director if your team is interested in looking at comparatives.

E. **Anticipating the Employer’s Goals**

Through the conversations the bargaining team has with the association’s leadership, past bargainers, and members of the grievance and other committees, it may be able to identify the interests the employer has in issues that may be on the negotiations table. By studying those interests, the team can anticipate what the board team’s goals for the successor agreement may be.
BARGAINING AS A CONVERSATION

Scenario: At 7 a.m. on Saturday you are awakened by the phone ringing. It’s your neighbor, who rather gruffly tells you that your barking golden retriever kept the neighborhood awake for several hours last night. Your neighbor says you should put your dog to sleep.

What do you say or do?

To say the least this is a difficult situation requiring self-control and a planned response. In that sense it is not unlike an employer-association relationship – a relationship in time and space in which both must face the reality that they must work out differences rather than avoid them.

If we avoid a real problem, events may cascade while the situation worsens. However, if we approach it as we would a neighbor we value, resolution is more likely.

How would we converse with a neighbor and how does it relate to the way in which a “conversation” is managed at a formal bargaining table?

<table>
<thead>
<tr>
<th><strong>Barking Dog</strong></th>
<th><strong>Bargaining</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Agree to talk about the problem</td>
<td>• Agree to talk about a problem(s)</td>
</tr>
<tr>
<td>• Set up a time and place to meet</td>
<td>• Set up a schedule of time and places</td>
</tr>
<tr>
<td></td>
<td>for meetings</td>
</tr>
<tr>
<td>• Prepare a list of issues</td>
<td>• Prepare a list of issues/demands</td>
</tr>
<tr>
<td>• Tell your story</td>
<td>• Tell your story in terms of data</td>
</tr>
<tr>
<td></td>
<td>history comparatives</td>
</tr>
<tr>
<td>• Listen to your neighbor’s story</td>
<td>• Listen to the board’s story</td>
</tr>
<tr>
<td>• Discuss options</td>
<td>• Discuss options in the form of</td>
</tr>
<tr>
<td></td>
<td>proposals/counter-proposals or</td>
</tr>
<tr>
<td></td>
<td>“possibilities”</td>
</tr>
<tr>
<td>• Analyze the effect on</td>
<td>• Communicate with constituents and</td>
</tr>
<tr>
<td>family/neighbors/self</td>
<td>the public</td>
</tr>
<tr>
<td>• Hard on the problem of barking dog</td>
<td>• Hard on the problem presented as</td>
</tr>
<tr>
<td></td>
<td>proposals</td>
</tr>
<tr>
<td>• Soft on family/neighbor</td>
<td>• Soft on people but not at expense of</td>
</tr>
<tr>
<td></td>
<td>issues</td>
</tr>
</tbody>
</table>

As you can see, the concepts of approaching a neighbor with a problem(s) are analogous to a formal legally recognized relationship between your local association and the board/administration. The difference is the formality of bargaining as required by the law.
and the nature of the association being comprised of more than one person and the board/administration being regulated by law and public accountability.

But if you strip away the law and the organizational stresses on both sides, bargaining can be characterized as a conversation between individuals.

REALITY TESTING

Of course bargaining occurs in the real world and often individuals, no matter how cooperative, may have differences caused by organizational pressures, e.g. “Association members do not want and will not vote for a 1% raise”; “The board cannot fund that proposal since the public won’t approve a local tax increase to fund it.” Knowing that reality, what can you do?

A. Focus on Interests

In our barking dog scenario it is easy to see that you and the neighbor can lock into an either/or solution. The neighbor wants the dog killed and you believe the dog can roam free. A third way is to understand your interests and be open to other solutions that meet your needs. In other words, how do we allow the dog to be a dog (your interest), but not deprive your neighbor of sleep (his/her interest). Another option might be for the neighbor to pay to train your dog not to bark at night. Sometimes in bargaining we find ourselves arguing over a position. Rather than continuing that back-and-forth argument, wouldn’t it be more helpful to discuss your interests first and then brainstorm options after each party has a clear understanding of the other’s interests? When you are stuck between two positions, it’s extremely helpful to focus on the questions, “Why?” or “Why not?” to surface the needs of both parties. Then look for options that meet those needs.
Case Study on Interests: You propose a 6% across-the-board salary increase and the board offers 3%. Rather than going back and forth on 6% versus 3%, with either party potentially becoming more positional as time goes on, the parties each identify their interests.

<table>
<thead>
<tr>
<th>SALARY INTERESTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BOARD</strong></td>
</tr>
<tr>
<td>Attract new faculty</td>
</tr>
<tr>
<td>Community image</td>
</tr>
<tr>
<td>Fiscal responsibility</td>
</tr>
</tbody>
</table>

After each party understands the other’s interests, they work together to brainstorm options which might meet those interests and eventually reach agreement on an economic package, as follows:

- 2.5% cost-of-living salary increase  
  (Interests Met: Family Needs, Fiscal Responsibility)
- Full payment of Insurance Premiums at 1% cost  
  (Interests Met: Family Needs, Reward for Services)
- Additional 1% salary increase if state funding increases above 5%  
  (Interests Met: Fiscal Responsibility, Community Image, Family Needs)

B. Equalize Power

With power comes confidence. With confidence, we believe we are capable of addressing any issue or solving any problem. Sometimes, however, when conflict creates great tension and high emotion, we assume the other party has more power. So in analyzing and preparing a bargaining strategy it is always useful to give yourself a power infusion. Here are four sources of power that can pump you up:

Legitimate. Under the Illinois Educational Labor Relations Act (IELRA), as a bargainer/leader you are equal with your employer. You have power as the exclusive representative of your members to do the following:

- appoint your own representatives
- determine who signs and binds the association
- speak for the group (make sure you know their thoughts and feelings first)
- mutually agree with the board to meeting times and places
- make proposals and counterproposals
- make demands that require a board response
**Information.** Under the IELRA and Freedom of Information Act, you can request and receive all pertinent information necessary to support your proposals, including:

- salary of all members
- insurance
- leave usage
- budgets and audits
- any public records

**Expert.** Under the IELRA, you can use other resources at the table to give you the credibility of an expert, such as:

- Your UniServ Director
- IEA specialists in Legal, Research, Legislation, and Instruction and Professional Development
- IEA Insurance Consultants
- Any individual you believe has special knowledge

**Referent.** We all have personal qualities and characteristics that are viewed favorably, even by the other party, and which can be used at the right time to continue that “conversation” or dialogue at the bargaining table, including:

- Honesty
- Trustworthiness
- Being articulate
- Being a good listener
- Facilitator skills
- Using humor
- High energy

If you analyze these sources of power, there is always a plan of action.

**SUMMARY**

At this point in the process, you have information on how to organize your bargaining team, identify and assess your potential issues, develop your strategy, set your goals and identify the sources of power you may employ to achieve those goals. You are on your way to achieving a settlement!
Chapter 3: PEOPLE ISSUES IN BARGAINING

INTRODUCTION

Few activities in the world enjoy the mystique of bargaining. It is a process designed to manage disagreement between parties and has been used to resolve international conflicts and settle difficult legal disputes. In a local association, negotiators determine the salary, benefits and working conditions that affect all employees. That’s a very important responsibility. Even experienced negotiators can feel anxious about going to the bargaining table, since fear is a normal reaction to conflict. When faced with conflict, a person’s natural response is to “flee” or “fight.” The key to becoming a good negotiator is learning how to overcome the urge for “fight or flight.” With practice, you can learn to overcome reactive responses and use effective bargaining behaviors which will productively impact other people in the process.

OBJECTIVES

The purpose of this chapter is to familiarize negotiators with how people issues affect bargaining. The following aspects of negotiations will be addressed:

• Effective bargaining behavior
• Troubleshooting
• Managing conflict among people

This chapter will help you understand the tools you need in your toolkit in order to more successfully manage people in the process. Your UniServ Director has a wealth of training tools which can assist you in strengthening your people skills in negotiations.

EFFECTIVE BARGAINING BEHAVIOR

The good news is that everyone has the basic potential to negotiate. Most adults already have many of the interpersonal and communication skills needed to bargain effectively. You probably exercise some of the most important skills every day. The following interpersonal skills form the foundation for negotiators:
A. Interpersonal Skills

**Active listening.** Constant attention to your counterpart pays off in many ways. You are much more likely to understand how to reach a good agreement if you listen to the words, thoughts and actions of the other party.

Do:       Look him/her in the eye whenever either of you speak.  
           Watch for little clues to emotion behind his/her words.  
           Work hard to understand what’s behind his/her point of view.

Don’t:    Look away and try to focus on what you’re going to say next.  
           Assume emotion is directed toward you.  
           Try to dominate the conversation.

**Articulate speech.** Expressing your thoughts clearly and succinctly is important. You can’t reach a meeting of the minds unless you are able to accurately convey your message across the table.

Do:       Work hard to understand your own underlying interests.  
           Identify the means by which you can measure your own success.  
           Practice talking about your interests with your team or your UniServ Director.

Don’t:    Find one “catch phrase” and rely on it.  
           Talk around your interests without stating them clearly.  
           Fall in love with your own voice.

**Assertiveness.** Being assertive means watching out for your own interests at all times. It really is up to you. Your counterparts can be counted on to protect their own interests, and they will expect you to protect yours. You have to speak up and not be afraid of straight talk.

Do:       Be direct.  
           Avoid “loaded” language.  
           Ask for clarification about what the other party has said.  
           Seek verification that you have been understood.

Don’t:    Make assumptions about the other party.  
           Swallow things you should say.  
           Use humor or sarcasm unless you know the other party extremely well.

**Poised demeanor.** Confidence goes a long way in negotiations. If you’re afraid and therefore act in an aggressive manner, you will inadvertently affect the tone of the negotiation. If you are overly confident and therefore act in an arrogant manner, you will also set a bad tone. Your goal is to be relaxed and self-assured.
Do: Practice relaxation techniques.  
Get plenty of rest and eat properly during negotiations season. 
Exercise and let off steam. 
Rely on your support systems.

Don’t: Let frayed nerves affect your health. 
Shut out the rest of your life during negotiations. 
Burn the candle at both ends during negotiations.

**Open and non-threatening behavior.** Whenever people walk up to the bargaining table and shake hands, they immediately begin to measure their opponent. It’s a good time for you to exercise your good manners. All of the “trash talk,” cheerleading, and victory dancing in the world will not win a football game. The same is true in negotiations. Swaggering, yelling, fist pounding and frowning just strengthen the defenses and steel the resolve of the other party. Truth, persuasion and appeals to the other party’s own best interests result in good bargains.

Do: Stay relaxed. 
Show interest and even smile when appropriate. 
Sit up straight and keep your side of the table tidy.

Don’t: Maintain a poker face or frown. 
Shake your head or otherwise non-verbally reject another’s thoughts before (s)he has finished expressing them. 
Use a threatening tone of voice.

**Productive team behavior.** Complex negotiations like those in collective bargaining require a number of people to be successful. The team members need to be comfortable with each other, and need an accurate understanding of the strengths of each other. They need to know each other well. The team members need to be tuned to the verbal and non-verbal signals that will allow them to act without excessive delays and lengthy caucuses. Everyone needs to do his/her job so that the rest of the team can trust him/her unquestionably.

Do: Get to know the rest of your team. 
Let the rest of the team get to know you. 
Define roles and make sure everyone plays an important part. 
Start small, but practice building trust until you know you can.

Don’t: Just go to the table without building your team. 
Have people at the table without purpose. 
Settle for one superstar flanked by a group of observers.
Take a Second Look at Interpersonal Skills

Negotiation is basically a conversation. If you pay attention to all the things that make conversations successful, you will gain insight into the process! Pay attention. Listen. Get engaged with the topic at hand. Be respectful and polite. Contribute your thoughts. Really consider the other viewpoint. Look for differences because they offer the potential for new and better ideas.

B. Positive Communications
There are three basic kinds of communication – verbal, vocal, and visual. The way you use verbal and non-verbal communication techniques greatly impacts your believability at the table (see chart below).

As you can see, slightly more than half of the message you communicate is received by your audience through non-verbal cues. So, it is important to spend some time analyzing the body language you wish to use as you deliver your verbal message.
In any communications exchange 7% of the message is delivered through the words that you say, 38% by the way in which you present the words, and 55% through non-verbal forms of communication. The most productive bargaining communication has these three methods in alignment.

C. Defusing Power Tactics

Many of the most unpleasant tactics associated with negotiations come about because of situations where power is not balanced. If either the board or the association perceives itself as not being as powerful as the other, that party will tend to utilize tactics designed to equalize the imbalance. Either party may feel the need to enhance its perceived power by employing some of the following tactics:

- Deliberately causing fear (e.g. spreading rumors about a strike/lockout or suggesting that increased wages will lead to loss of jobs/outsourcing).
- Showing intense anger (e.g. negotiators storming out of a bargaining session).
- Making an ultimatum or a “take it or leave it” offer (e.g. threatening a strike/lockout or presenting “last and final” offers).
- Setting up artificial time constraints (e.g. “This offer is good for 30 minutes and then it’s off the table”).

These tactics (and many others) generally are meant to weaken the will of the other party and ultimately break it. In fact, such tactics will lead to the use of countermeasures by the other party to try to rebalance power. The conflict will inevitably escalate and negatively impact the relationship of the board and the association beyond the bargaining table.

As a negotiator, you need to use your sources of power (discussed in Chapter 2 of this booklet) to increase your power at the table to equal that of the board. If the board is using the negative power tactics described above, you must defuse them. While it sounds simplistic, the best way to deal with a tactic is to name it. When the board’s team puts a deal on the table and says it’s their last, best offer (a take-it or leave-it deal), your team could walk out the door and pick up strike signs. Or, you could defuse the tactic by ignoring it and instead responding with, “Look, we know you’re trying to make this a take-it or leave-it offer, but our membership just won’t accept it. We could tell you some ways to improve the offer so that they would. Do you want to hear them?” You might be surprised at their answers. Who knows? It’s always worth the effort to try to understand the board’s actions. It’s also helpful to remember that virtually every negotiation gets resolved one way or another. Negative power tactics may get you a deal in the short-term, but their use will harm the relationship over a number of contract periods.
**Case Study on Communication:** One of our locals went to the brink of a strike. Throughout the mediation process, the board continued hard-line behavior. The association, in defending itself from that stubborn and angry behavior, also held the line. The mediator finally pushed both parties and they grudgingly accepted a settlement both parties felt was a bit of a loss. They all walked away feeling discouraged and angry with the other party.

The next morning, the association president ran into the board president. He said, “You folks were being such stubborn jerks that we almost had a nasty strike.”

The board president was shocked. He responded, “But you all were the ones that just wouldn’t move!”

Our president said, “But all we wanted was…..”

The two of them soon came to realize that they could have settled hours earlier if they had just talked about why they were angry. In fact, they began to understand that they could have reached a much better agreement if they had talked about their anger earlier in the process.

**TROUBLESHOOTING**

There are many early signs along the way to settlement that might alert a negotiator to trouble. There are many types of trouble, which are listed and described below. When such trouble appears, it’s important to deal with it as soon as possible, before it becomes a real blocker to settlement. See the suggestions below for advice on how to deal with each type of trouble you may encounter.

A. **Team trouble.** Members seem divided, angry at each other. Decision-making becomes forced, with members feeling like winners or losers. Team members feel disenfranchised. One member of the team disagrees with the rest and warns that the members will not accept the decision of the team.

   *Possible response:* An open discussion with the team about what’s happening.

B. **Constituency trouble.** Some bargaining unit members begin to talk and agree with the board’s position. Segments of the membership might begin to fight with other segments of the association, and may even demand other individuals need to be added to the bargaining team. Another example of constituency trouble is when association leaders try to organize activities which show collective action and unity, but few members choose to participate.

   *Possible response:* A full member or special interest member meeting.
C. **Table trouble.** The parties become more entrenched and positional. Civilities begin to slip. One or the other party becomes confused about which issues have been resolved and which have not. Someone insists they heard something that the other denies.

*Possible response:* A sidebar with your counterpart from the other team to discuss the problem and inventory the issues.

D. **Communication trouble.** People stop talking about issues and start talking about other people. A negotiator acts as though he has not heard an explanation that’s been given a number of times. Someone keeps repeating the same message.

*Possible response:* A table session to clarify issues and answer questions and surface any “elephants in the room.” *(See Case Study below.)*

---

**The Elephant in the Room**

Psychologists refer to the “elephant in the room” phenomenon as a condition where people talk about everything except the most important issue.

**Case Study:** The association and board teams sat at the bargaining table, sharing snacks, discussing basic proposals and counter-proposals, taking notes and hoping to reach agreement. While there was a surface of civility at the table, in the association’s caucus, feelings of resentment against the board team surfaced. Some team members grumbled, slammed notebooks on the table, sneered derisively about the board’s team members and anticipated needing to strike. When the association chairperson asked them for an explanation, they described how, in bargaining ten years earlier, the board’s chairperson had said they were “a dime a dozen.” These team members had believed from that time forward that the employer had no respect for the employees and the employer would take advantage of the association whenever possible. The team members discussed this and realized they were letting themselves feel like “second class citizens” at the table instead of employees who command respect.

Their perception of being disrespected was an “elephant” and it was growing! That’s the thing about elephants. Pretty soon you can’t even move around them. They just stand there trumpeting and threatening and eventually force everything else out of the room.

Once the association team members understood that “respect” was an issue that had to be discussed at the table, they were able to find some solutions. During the discussion, the board’s chairperson apologized and made assurances that employees were indeed valued. After the air was cleared, and the elephant was banished from the room, the parties agreed to measure professional respect through contract language that guaranteed quality treatment of employees.
E. Decision making trouble. An issue that was closed keeps cropping up. Progress suddenly stalls. Members of the association begin to avoid meetings.

Possible response: A review of agreements and any other issues to which they might relate.

F External environment trouble. Parents try to intervene to get the contract settled. The newspaper prints a negative editorial about bargaining.

Possible response: A meeting with the editor or editorial board of a newspaper or inviting community members to a town-hall meeting.

As you can see, the solution in almost all cases is to go back and develop a people-orientated approach that involves clear communication. In any troubleshooting situation, your UniServ Director can serve as an excellent facilitator or advisor.

MANAGING CONFLICT AMONG PEOPLE

A. Choosing the Approach

In bargaining, there are usually two dimensions to consider: achieving your desired outcome (horizontal axis on the matrix below) and managing your relationship with the other party (vertical axis). There are five approaches to managing any given issue about which you are in conflict. These approaches lead to different effects on the outcome and the relationship.

When the parties focus on . . .

\[
\begin{array}{|c|c|}
\hline
& \text{High} & \text{Compromise} \\
\text{Low} & \text{Avoidance} & \text{Collaboration} \\
\hline
\end{array}
\]

. . . this is what happens.

- **Avoid.** You avoid the issue and seek no outcome; therefore there is no apparent effect on the relationship.

- **Accommodate.** You withdraw or accept an unfavorable resolution to your issue in order to maximize the effect on the relationship.

- **Compete.** You maximize your outcome at the expense of the relationship.
• **Collaborate.** You maximize your outcome and maximize your relationship.

• **Compromise.** You achieve a less than desirable outcome with the least harmful effect on your relationship.

As you can see from this matrix, when both parties put a high value on both their relationship and the outcome of the process, a collaborative environment is created.

**B. Understanding Diversity**

Factors such as gender, ethnicity and age affect communication and, hence, negotiations. Everyone filters an incoming message through his or her own perspective. People have different lexicons, communication styles and personality types. The same string of words may be interpreted as an entirely different message by different people, based on their individual differences. Biases, stereotypes and preconceived notions also impact perceptions and responses. It is important for negotiators to plan ways to identify and address these communication issues.

IEA has training available to help you with diversity issues. Sessions have been offered at the Summer Leadership Academy and the Winter Advocacy Conference. You may also contact your UniServ Director for more information about these topics.

**C. Reaching Consensus**

As an association leader it is important to have a strategy for ensuring your team has reached true consensus. There are a number of methods available for this exercise. The important point is that you ensure that everyone on the team agrees that “they can live with the decision.”

**A Group Reaches Consensus When . . .**

1. It finally agrees upon a single alternative, and
2. Each group member can honestly say:
   a. I believe that you understand my point of view, and
   b. I believe that I understand your point of view, and
   c. Whether or not I prefer this decision, I support it because:
      i. It is arrived at openly and fairly, and
      ii. It is the best solution for us at this time

While the goal is consensus, there are pitfalls which affect a group’s ability to reach true consensus. One pitfall is described as Groupthink, another as the Abilene Paradox.
Groupthink. Groupthink is a concept that refers to faulty decision-making in a group. It occurs when a group is highly cohesive and when its members are under considerable pressure to make a quality decision. The members of a group experiencing groupthink do not consider all alternatives. Instead, they may desire unanimity of viewpoint at the expense of quality decisions. Some symptoms of groupthink are:

- Believing in the group's invincibility
- Sharing stereotypes which guide the decision
- Exercising direct pressure on people to agree
- Team members not expressing true feelings
- Maintaining an illusion of unanimity
- Ignoring negative information

You can employ a number of tactics to avoid groupthink, including:

- Keeping the team leader impartial
- Using outside experts
- Using a designated devil’s advocate to question all the group's ideas

Abilene Paradox. This is a well-known parable which demonstrates how members of a group can falsely believe they have reached consensus when in fact, they have not. In this situation, individuals in the group do not communicate their true beliefs because they falsely assume that their opinions are different from the others. They fear that expressing their “differing” opinions will separate them from the group. As a result, the group makes a bad decision based on the failure of individuals to express their true beliefs.

The Parable of the Abilene Paradox

Four adults are sitting on a porch in 104-degree heat in the small town of Coleman, Texas, some 53 miles from Abilene. They are engaging in as little motion as possible, drinking lemonade, watching the fan spin lazily, and occasionally playing the odd game of dominoes. The characters are a married couple and the wife’s parents. At some point, the wife’s father suggests they drive to Abilene for dinner. The son-in-law thinks this is a crazy idea but doesn’t see any need to upset the apple cart, so he goes along with it, as do the two women. They get in their un-air-conditioned Buick and drive through a dust storm to Abilene. They eat a mediocre meal and return to Coleman exhausted, hot, and generally unhappy with the experience. It is not until they return home that it is revealed that none of them really wanted to go to Abilene—they were just going along because they thought the others were eager to go. Naturally, everyone sees this failure to communicate openly and clearly as someone else’s problem!
To avoid a trip to Abilene, a group must:

- Identify the real conflict
- Confront the real issues in conflict
- Encourage each individual to express his/her honest opinion to the group
- Honor specific points of view, without attributing beliefs or feelings of others
- Be open for feedback
- Process the resolution as a group

SUMMARY

This chapter has described ways to more effectively manage people in the bargaining process. It has identified potential bargaining troubles and offered methods to avoid or resolve those troubles. With this knowledge, your team will be more prepared to successfully negotiate your contract!
Chapter 4: CLOSING THE DEAL

INTRODUCTION

It’s sometimes difficult to end a negotiation because one or both parties can become locked into intractable positions that make it almost impossible to find a settlement.

Closing the deal in any bargaining requires knowing your bottom line, knowing your best alternatives to a bargained agreement, and knowing when you’ve reached a good agreement. Sometimes you may need the assistance of a mediator to reach agreement. But, once you’ve reached agreement, you need to reduce the agreement to writing and get it ratified by your membership. You can then evaluate the bargaining process and build on your success. Part of that success will come from making sure your new contract is enforced.

OBJECTIVES

The purpose of this chapter is to help you manage agreement and close the deal once it’s been reached. The following aspects of negotiations will be addressed:

• Working toward settlement
• Using a mediator
• Reducing the agreement to writing
• Ratifying the tentative agreement
• Life after ratification

WORKING TOWARD SETTLEMENT

A. Knowing Your Bottom Line

How many times has your bottom line moved? If you answered, “all the time,” you are not alone! Some of our locals go to the table before they’ve ever really discussed what it is that they hope to gain. That is one of the biggest mistakes negotiators can make!

Your bottom line tells you how best to make intelligent proposals. It can also signal the other party as to where settlement can be reached. If you don’t know your bottom line, how can you do either? The answer, of course, is that you can’t. You need an accurate sense of where your members’ bottom line is, and then you can guide the negotiations to something better without crossing the other party’s bottom line.

B. Knowing Your BATNA (Best Alternative to a Negotiated Agreement)

Sometimes in negotiations you just cannot reach mutual agreement on a particular issue. But, there may be other ways to meet your needs on that issue without
negotiated contract language. Fisher and Ury, in their book *Getting to Yes*, promote the idea that a negotiator should always know the best alternative to a negotiated agreement. BATNA, as it is called, is simply the best you can do on your own if you can’t reach a negotiated settlement.

**Case Study on BATNA:**

Our local went to the table year after year demanding a decrease in class size. Every time, the board would insult our team by suggesting that we were lazy and didn’t want to work. They would cite bogus research about class size that showed it made no difference whatsoever. They would accuse our team of whining. Every time, we would almost strike over the issue, but eventually pull it off the table in exchange for the salary settlement.

Each year our association would, somewhere in the bargaining process, decide that we should reach out to parents and get them to support our contract negotiation. One year we finally did. The parents supported our association and helped us reach a good settlement after a long, tough negotiation. Still we did not get better class size language.

However, the parents now understood our issue! They pushed the board to make improvements, knowing that the teachers had the data and the rationale to support their arguments. In other words, we had a good alternative for accomplishing what we wanted without relying on a negotiated agreement with the board! We had a BATNA.

When thinking about a BATNA, negotiators should ask these critical questions:

- Is there a way to achieve this goal without the board’s agreement?
- Is the board rejecting one idea of how to reach a goal, but possibly still “open” on other ways?
- Have we done everything possible to get the board’s agreement?
- Does the board really understand how united we are on this issue?
- If we can’t get agreement without it, will our members strike over this issue?

**C. Analyzing the Settlement Points**

At different times during the bargaining process, team members may be feeling any number of emotions—euphoria, a sense of accomplishment, pride, solidarity, buyer’s remorse, grief or anger. Every negotiator struggles at some point with the question of whether his/her resolve and expectations are appropriate. Have you gone as far as you can and/or should go? Have you gone farther than you ever thought you could? Unless you simply want to ride that emotional roller coaster and perhaps react on those emotions by making outrageous demands and rattling sabers, you need some objective measures or standards! You can measure the settlement against agreements covering employees of comparable employers. You may wish to gather information on the salary and benefits of employees working in private industry. You can also
perform an analysis of the employer’s finances to determine how much money may be available for the settlement. See your UniServ Director for assistance with such financial analysis.

Your members will measure the agreement against the cost of living, against what they believe to be your efforts, how they perceive the board has treated them, and what others say about the settlement. If you don’t understand where your members are coming from, you can’t begin to guess where they will be at the end. (For tips on gathering information from your membership, see the “Setting Goals” section of Chapter 2 in this booklet.)

When you have gathered the data needed for objective measures, you can examine your settlement point in a calm and rational manner. The team should consider the following questions as a part of that examination:

- What will it take to ratify the contract?
- What issues are needed as part of the settlement and to what extent?
- Is this as good as we can get?

By using objective standards, you can help manage the emotions that sometimes affect negotiators during bargaining.

Sometimes all of the pieces for a settlement may be there, but we are unable to explore ways in which to get those pieces to come together. You may want both teams to explore those issues and settlement points together in an informal (off-the-record) meeting. Or, you may want one or two representatives from the association to meet (side bar) with representatives of the employer to explore settlement points.

You certainly would not explore settlement points when you have many tough issues still on the table and there does not appear to be a meeting of the minds on any of them. However, informal meetings between the two bargaining teams or their representatives could get negotiations back on track or help surface attitudes and/or interests which have not been fully articulated at the table.

THREE SETTLEMENT SKILLS

There is a group of settlement skills (or maybe they are more of an art, or an intuition, or a gut-feeling) which almost all negotiators have difficulty recognizing and practicing:

- The ability to know what a settlement must contain.
- The ability to recognize when there is a settlement.
- The ability to know if it is the right time for a settlement.
USING A MEDIATOR

Sometimes agreement just escapes us. When that happens, we utilize the services of a mediator. You may use a private mediator or the services of the Federal Mediation and Conciliation Service (FMCS), a federally-funded service whose mission is “to improve labor-management relations, to promote collective bargaining and to enhance organizational effectiveness.” The mediator is not a judge—(s)he is a third-party neutral, a shuttle diplomat, a sounding board, a barometer who knows the climate of both caucus rooms and has access to information you may not know. (S)he is not there to make a decision for you.

Locals are required by law to have used mediation “without success” before striking. If you think you may be headed to mediation, keep in mind that mediators work best when there are a few (but not too many) issues still on the table. That leaves more room for the mediator to help you find a creative settlement. The mediator needs to have some room to work, and that means getting him/her before you are down to the last couple of items on which both parties have become very positional.

It can take time to get a mediator scheduled, and a lot can happen during the time between bargaining and mediation. Some of it can be good and some can be detrimental to the negotiations process. You should involve your UniServ Director in the decision to go to mediation, the process of preparing for mediation, and the actual mediation. If mediation doesn’t resolve the issues, your UniServ Director will be key to helping you manage your crisis.

REDUCING THE AGREEMENT TO WRITING

Once there has been a meeting of the minds, by law the parties are to reduce their agreement to writing. Both teams need to be very careful to ensure that the final draft of the language is exactly what they intend it to be. It’s important to test the drafts for accuracy. The devil really is in the details. You must hammer out the language together and make sure it truly represents the real and complete agreement.

When the parties have confirmed that the written language accurately reflects all of the mutual agreements reached, both parties “sign off” on that language. That final acceptable proposal then becomes what we call a “TA” or a tentative agreement. It doesn’t become a full agreement until it is part of the whole contract and is ratified. A representative from each party should sign and date (or execute) an original copy of each page of a TA. Each party will then get a set of original, executed TAs. Keep your set in your official bargaining file, which should be a permanent file of the association. It will be your official record of the new agreement. It will show how your old agreement was modified through your bargaining to become your new agreement. The TAs, along with all of your bargaining notes and any written proposals or counter-proposals will be extremely important documents in the event of a contract dispute.
RATIFYING THE TENTATIVE AGREEMENT

Ratification of the tentative agreement is one of the most important aspects of the negotiations process. Even before agreement has been reached, the leadership should start planning a strategy for ratification. One of the key elements to consider is communication—what information should be shared, when should it be shared, and with whom it should be shared. Members who feel they have been kept informed are more likely to trust their bargaining team members and support the team’s recommendation at the ratification meeting.

While ratification is an exercise in democracy, it is also an exercise in educating the membership as to why the agreement should be ratified. Making regular reports throughout the bargaining process is an important element of member education. The bargaining team should keep members informed about the issues under discussion, the tone at the table and other general information. However, specific details about “who said what” at the table should not be disclosed.

A. Planning for Ratification

Tentative agreements on individual issues should not be shared with the membership until the complete package of agreements is ready for ratification. Releasing tentative agreements piecemeal could result in some members lobbying against the entire contract before they’ve even seen it simply because they are displeased with the agreement reached on a single issue.

Leaders who receive “advance copies” of the complete package of tentative agreements should be alerted not to share the information with the media. Only general statements should be made. (e.g., agreement has been reached, time and place of ratification meeting, etc.). If a news leak takes place, no details should be
confirmed. Details of the settlement should only be released after both parties have ratified.

Every detail of the ratification meeting must be considered and planned, including the following:

- What procedure will you use for ratification? Check your Constitution and Bylaws first. If they don’t specify those procedures, then research what has been used in the past.
- Who will be invited to the meeting? Who will be allowed to vote? (e.g., all bargaining unit members or only association members?)
- How will they be notified of the meeting (e.g., phone tree, U.S. mail, e-mail, building announcements)?
- When will the ratification meeting be held? At what time are most members available? Schedule the date so that the association holds its ratification vote first, and that the board holds its vote soon thereafter.
- What would be a good meeting site (e.g., convenient location, available parking, adequate meeting space)?
- Who will arrange to have all necessary items available at the meeting, including:
  - Membership list for recording attendance.
  - Membership forms and payroll deduction authorization cards for new members.
  - Copies of the tentative agreements and any audio/visual equipment needed for presentation of the tentative agreement.
  - Pre-printed ballots (see sample below).
  - A ballot box and a table where the Election Committee members can oversee the ballot box and count the ballots.

<table>
<thead>
<tr>
<th>Ratification Ballot</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Association Name)</td>
</tr>
<tr>
<td>(Date of Vote)</td>
</tr>
</tbody>
</table>

Do you accept the tentative agreement as the ratified contract for the period (year) to (year)?

☐ Yes       ☐ No

B. **Conducting the Ratification Meeting**

Below is a general outline for conducting a ratification meeting. However, you may wish to consult with your UniServ Director to get specific advice for your local association.
• Check your bylaws to see if there are requirements as to who must conduct the meeting. If you have the ability to choose the leader, select a strong leader to conduct the meeting.

• The Negotiations Chairperson should announce that, by committee action, the Negotiations Team moves (or perhaps the Negotiations Team and the Executive Committee both move) to accept the tentative agreement as the ratified contract for the period (year) to (year). Since this motion is made by committee(s), it needs no second. **The motion made should match the text that is printed on your ratification ballot.** (Be careful if a motion comes from the floor because it could be worded differently than your pre-printed ballot.)

• Once the motion has been made, debate on the motion can begin. Start with a presentation of the tentative agreement. Review some of the problems that have been overcome throughout the bargaining process. Point to member unity as an important factor that made the difference. Thank the members for their support of the Bargaining Team during the negotiations process.

• Open the floor for questions related to the tentative agreement or the ratification process. Have individual team members prepared to answer specific questions on the contract. (Team members should role play answering anticipated questions in advance of the ratification meeting.)

• After debate has closed, explain the balloting procedures that will be used. It is up to your local association to determine who will be eligible to vote on your contract ratification. There is no legal requirement that all bargaining unit members must be allowed to vote. If you decide that only Association members may vote, you should have membership forms available and, prior to the balloting, provide non-members the opportunity to join the association and vote.

**LIFE AFTER RATIFICATION**

A. **Debriefing the Bargaining**
Take the time after the ratification to evaluate the bargaining process. This evaluation should be done by the leadership and the negotiating team and should also involve input from the membership. Evaluate the local’s performance in the following areas:

**Goals.** Were bargaining goals achieved? Why or why not?

**Leadership.** How did the leadership perform?

**Communications.** How successful was the communications program?

**Membership.** Was membership loyalty and solidarity maintained throughout the bargaining process?

**Process.** What was done well? What should have been done that wasn’t? What might have been done better?
You can use the information gleaned from this debriefing to improve your performance in conducting the day-to-day business of the association as well as in the next round of bargaining.

B. Enforcing Your Contract

No matter how you get to the end, you still have several important jobs left. First, you must make sure that the contract accurately includes everything that was agreed upon in negotiations before it is signed and printed. Collect all the signed tentative agreements and carefully compare them to the proof copy of your new contract. It’s advisable to have several team members involved with this proofreading. Remember, once the contract is signed, it becomes your new Agreement.

You also need to make sure that any remaining issues that were diverted to a different resolution process, such as a labor management committee, actually get on the agenda.

Finally, you need to make sure that all of the agreements are properly implemented. Make sure that members understand how any new contract provisions are to be applied so if they discover any implementation problems, they can alert a building representative to that problem.

For assistance with contract enforcement, check with your UniServ Director and request a copy of the IEA Grievance Processing Handbook.

C. Building on Your Success

A local association cannot do a good job for the members unless the members appreciate and feel good about what the association has done for them.

Take advantage of your newly ratified agreement and capitalize on it as an association victory. Use the information from your bargaining debrief to define your successes and spread that good news to your membership! Remember that sometimes success is defined as just keeping what you had.

Ask your building representatives to personally distribute the contracts to all bargaining unit members. This provides them the opportunity to share the association’s success with non-members and ask them to join. After all, wouldn’t everyone want to be a part of your success?

SUMMARY

Your overall strategy is always working towards agreement. This chapter has described strategies, resources and skills you can use to close the deal and reduce it to writing. But your work doesn’t just stop there. You must also learn from your experiences and vigilantly enforce your new contract.
RECOMMENDED READINGS


