THE IMPORTANCE OF GROUND RULES
IN THE NEGOTIATIONS PROCESS
BY
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You wouldn’t think of building a house without a well developed set of plans, yet many labor relations professionals start negotiations without giving much thought to ground rules. And just as blue prints are engineered to give the house a strong foundation, the negotiations process also needs its foundation. A carefully crafted set of ground rules can be that foundation and provide structure to successful negotiations.

Most of us don’t put a lot of effort into developing ground rules, choosing instead to dust off the set we used last time, changing names and dates and figuring we’re good to go. The origin of these ground rules is usually unknown, having been found in some file at our current employer’s or perhaps retrieved from a previous one. The truly creative (or desperate) among us will use the Internet and politely request ground rules from colleagues based on the assumption that one size fits all or that some ground rules are better than no ground rules. In truth, the structure you need in your negotiations won’t be found in an off-the-shelf, pre-packaged, worked-well-somewhere-else version. What will work well in your agency, and with the various groups within the agency, are those rules you developed specifically for the task at hand.

This article seeks to provide both the seasoned labor relations professional, as well as the novice, with useful information and insight, which can be easily applied in their own agency. While the information provided is intended to apply to negotiations conducted pursuant to the Meyers-Milias-Brown Act, the basic tenets discussed are applicable to most contract negotiations. Although sample language is used throughout this article to illustrate certain points, it is a basic premise that the best ground rules are those you’ve written to fit your situation and specific needs.

INTRODUCTION OR PURPOSE

Every set of ground rules should have an introductory paragraph consisting of a short description of the purpose of the parties in establishing these rules. Because these rules will be a record of how the parties chose to conduct negotiations, stating your purpose at the beginning is important.

Example: “The undersigned representatives of the (Agency’s name) and the (Union/Association’s name) hereby agree to the following ground rules to govern the procedural aspects of the meet and confer process between the parties. As used herein, meet and confer process includes any and all impasse procedures.”
With the potential for binding interest arbitration for police and fire safety employees, it is important the ground rules stay in effect until every impasse procedure has been completed.

**GOOD FAITH BARGAINING**

Under the Meyers-Milias-Brown Act, both the representatives of the governing body of a public agency and the recognized employee organization have the obligations to meet and confer in good faith. Even though it is the law, it is a good idea to memorialize this in the ground rules so that everyone involved understands and commits to conducting negotiations with integrity.

Remember, not everyone at the bargaining table understands the negotiations process or is as experienced in such matters as you are. People sitting across from you could be Police Officers or Account Clerks or Public Works Maintenance Workers and not professional labor negotiators.

**Example:** “Both the Agency and the Union/Association agree to meet and confer in good faith pursuant to State law.”

This may prompt questions from the other side concerning the definition of good faith and bad faith bargaining. Be prepared to give a few basic examples to illustrate your mutual commitment to good faith bargaining.

**MEETINGS**

When and where meetings will be held and who is authorized to attend should be decided at the outset. Do you want to be the one responsible for scheduling the meetings, securing the meeting room and notifying all the individual team members? While it may make sense for you to arrange for the meeting room, you might not want to assume the responsibility for contacting the Union/Association’s team members.

**Example:** “The meet and confer sessions shall be scheduled by the Chief Negotiators of each party through mutual agreement. The Chief Negotiator for each party shall be responsible for notifying their respective negotiating team members as to the meeting times, dates, locations, etc. Appropriate meeting sites that also allow each side to hold a confidential caucus shall be agreed to by the parties at the first meeting. Sites may be changed from time to time as the need arises by mutual agreement of the parties.”

On occasion, a group will not want to hold meetings in the convenient location you’ve proposed. If this is the case, try to find a neutral meeting site that is centrally located and meets everyone’s requirements. The meeting location needs to have sufficient space to provide for the face-to-face meeting, as well as caucusing, and should have easy access to a copy machine.

Who can attend negotiations is another issue to be worked out at the beginning. If at all possible, avoid a parade of people who are not committed to the process. Also avoid having spectators.
Negotiation sessions should not be viewed as a spectator sport.

**Example:** “Attendance at the meet and confer sessions shall be limited to the two bargaining teams. Any resource people or guests shall only be invited and allowed to attend by mutual agreement of the parties. Requests by either party to invite anyone other than the declared negotiating team members shall be made in advance of scheduled meetings whenever possible.”

- **UNION/ASSOCIATION REPRESENTATIVES AND RELEASE TIME**

Each team decides the make-up of its respective negotiating team without influence by the other party. Employees sometimes request that the CAO, City Manager or some other high-ranking manager be present during bargaining. You are not obligated to include anyone on management’s team other than individuals you choose. Conversely, you cannot tell the Union/Association to exclude the known trouble-making employee or include one of your more reasonable co-workers. In addition, the Meyers-Milias-Brown Act requires that you allow a reasonable number of employee representatives reasonable time off without loss of compensation or benefits, when formally meeting and conferring.

**Example:** “The Union/Association shall be represented by (name of Chief Negotiator) as Chief Negotiator, who shall have the authority to present, amend and receive proposals for discussion and to reach tentative agreement. The parties agree that reasonable release time, without loss of pay or benefits, shall be arranged for up to (insert #) employees of the Agency to attend meet and confer sessions. Employees so released shall not be eligible for overtime or other expenses as part of their duties representing the Union/Association, and no employee who is not scheduled to work when meet and confer sessions are held shall be entitled to paid release time. Employee representatives shall be released from duty up to (insert #) hour(s) before meet and confer sessions and up to (insert #) hour(s) following the meet and confer session, if requested and agreed to by the Agency, in order to review the meeting and plan the next meeting(s). Each employee representative shall be responsible for properly notifying his/her supervisor and/or department head when requesting to be released from duty to attend negotiations.”

The greatest difficulty is agreeing on what a reasonable number of employees means. If the size of the bargaining unit is twenty employees, is paying release time to six team members reasonable? Probably not. But if the size of the unit is two hundred and fifty employees and they comprise two dozen separate departments, would paying release time to ten or twelve employees from different areas within the Agency be unreasonable? Again, probably not. A prudent guide in this area is what you have allowed in prior negotiations and by how this issue was handled with the other groups in your Agency. Remember, although you cannot dictate how many members the union brings to the bargaining table, you can limit the number that receive pay for this time.
**AGENCY REPRESENTATIVES**

The decision on the composition of the Agency’s negotiations team is generally left to the Personnel or Labor Relations Director with occasional input from the Chief Executive or the Governing Board. Some agencies hire outside labor consultants to negotiate on their behalf and assign a few staff members to assist in the process. Whatever the case, the ground rules must identify who has the authority to speak on behalf of the Agency.

**Example:** “The Agency will be represented by (insert name), who has the authority to present, amend and receive proposals and act as Chief Negotiator and to reach tentative agreement. Other members of the Agency’s negotiating team will be identified at the first formal meeting.”

**COMPOSITION OF NEGOTIATING TEAMS**

Continuity in team members is important. Lack of continuity can negatively affect negotiations and can disrupt or delay negotiations. The Union/Association team may have members present who are only there because of a single issue and when it becomes obvious that their issue will not be agreed to, they stop coming. Others members may become bored with the process and lose interest. Still others find they are too busy to honor the time commitments that contract negotiations require, and their involvement is sporadic or nonexistent. These situations do not have a positive effect on the process.

When a member of the team drops out, the Union/Association may substitute a replacement. It requires time to brief the new member, and the give and take which is central to successful negotiations may be lost on a new player. The latecomer may also bring a new and different agenda to the table. This will have to be addressed. The trust and goodwill that has developed between the teams may be tested. For these reasons, adding new members in the middle of the negotiations process should be avoided if at all possible.

**Example:** “Once formal negotiating teams have been established, and by no later than the second meeting of the parties, all members of both teams should be present to conduct formal negotiations. Every effort will be made by both parties to have all members present at each meeting. In the event unforeseen circumstances prevent a member from attending a scheduled meeting, the meeting shall be held with that member absent. If any member misses two scheduled meetings, they shall be automatically and permanently dropped as a member of the negotiating team. No new members may be added after the second meeting. It is the intent of the parties to include members on the negotiating teams who are committed to good faith bargaining and who are committed to being involved in the entire process. The parties acknowledge that the free exchange of complete and accurate information, ideas and opinions can only
occur if team members of both parties attend each and every negotiation session.

Nothing contained herein shall prevent either Chief Negotiator from canceling a scheduled meeting prior to the time set for the meeting.”

If you have a history of members deserting the process or if you think this might be a problem, stress the need for a commitment to the process from the very beginning.

**PROPOSALS**

Only Santa Claus has seen a longer wish list than the one you will receive from the employees, and some measure of control should be asserted to keep this manageable. While both sides have the right to make proposals on matters within the scope of representation, some limitations on when new proposals can be presented should be agreed upon. Failure to do so could result in eleventh hour proposals that delay or derail the process.

There is no standard number of meetings after which no new proposals may be submitted. It is a matter of what both sides believe is reasonable and how well prepared the teams are in presenting all of their constituents’ important issues. A small group, with homogeneous interests, may require only two or three meetings to present all issues. On the other hand, a large and diverse group may not feel comfortable unless they have had ample time to insure that all of their members have been heard. This may require significantly more meetings. Regardless of the group, the goal should be to have a definitive cut-off date which signifies to the parties that all the issues to be negotiated have been placed on the table.

*Example:* “All proposals from either side shall be in writing. Any verbal proposals offered during the course of negotiations shall be committed to writing prior to the response from the responding party. Counter proposals shall also be in writing and any verbal counter proposal offered during the course of negotiations shall be committed to writing prior to the next formal meeting.

Except by mutual agreement, no new proposal unrelated to proposals on the table, shall be submitted by either party after the (insert #) meet and confer session. This is in no way intended to interfere with either party’s ability to make counter proposals, but is intended to identify all areas of bargaining.

“Package Proposals” may be made by either party at any time in an effort to conclude negotiations and reach agreement. Package proposals may contain new issues if they are intended to further the interests of the parties in reaching agreement and such package proposals shall not be considered bad faith bargaining. Package proposals are understood to mean a proposal in which all items offered must be accepted or rejected as a whole.”
While it may seem obvious that all proposals should be in writing, nothing will derail the process faster than discovering that the other side has a different view of your position on an issue. Imagine your surprise when late in the process you discover the Union/Association remembers their position on a significant concession differently than you do. If both sides have a written copy, there should be no dispute.

- **REQUESTS FOR INFORMATION**

Frequently, the Union/Association will ask you to produce many types of documentation so they can verify the facts. To avoid guesswork, stipulate that all requests for information must be in writing.

**Example:** “All requests for information by either party shall be in writing and in enough detail to specify the document or type of information requested.”

- **NOTES, RECORDS AND MINUTES**

You are unique if you can talk and take notes at the same time. Most of us do not have this skill so we must rely on some form of record keeping. Negotiations are made easier when you have someone sitting beside you who can create an accurate record of the proceedings and, more importantly, who said what. Employees may complain that they do not have a good note taker so they want the meetings tape-recorded. Don’t do it. It is guaranteed that your words will be taken out of context and will return to haunt you. Besides, if you are being tape recorded, how can the parties engage in the unbridled ebb and flow of spirited debate that is, at times, an essential part of the negotiations experience?

**Example:** “Each side shall take their own notes and keep their own records and meeting minutes. No mechanical recording devices such as a tape recorder shall be allowed nor shall the services of a recording stenographer be used.”

If the Union/Association team members continue to complain about being at a disadvantage in keeping minutes, consider offering to exchange minutes at the start of each subsequent meeting. In this way, both sides would have a record of each other’s “version” of your last meeting. If there is disagreement about any issue it can be cleared up sooner rather than later.

- **CONFIDENTIALITY**

The negotiations process works best if the proceedings are private and your efforts are kept confidential. The Union/Association will generally acknowledge the need for confidentiality during actual bargaining, but frequently will attempt to draw the line when an impasse is
reached. If the employees have been unable to convince you to agree to their position at the bargaining table, they often believe they will have better luck with the public. They don’t want to be barred from speaking to the press or at service clubs or taking out ads to condemn your “woefully inadequate” and “obviously unenlightened” position on their “reasonable” proposals. They may appear at the Governing Board’s next public meeting accompanied by friends, relatives and neighbors to press their case. However, a confidentiality agreement will cut both ways, keeping management and the elected officials from publicly discussing details of negotiations. Since everyone’s goal is (or should be) to conclude the negotiations process with a mutually acceptable agreement, public commentary offers little in the way of furthering that goal.

Example: “Both parties agree to the best of their abilities that the confidentiality of the bargaining process will be maintained until such time as a total agreement has been reached or a formal declaration of impasse has been made. Specifically, no press releases, TV or radio ads shall be made, or interviews conducted until either party declares that an impasse has been reached and a discussion on procedures for attempting to resolve the impasse has been held.

No part of this section is meant to restrict dissemination of information to each teams’ constituent groups. This includes copies of minutes and proposals, as well as free discussions of topics, direction, and overall climate of the meetings.”

Your agency’s employer-employee relations policy will likely provide guidance on how the parties handle impasse resolution procedures. If you use mediation, fact-finding or advisory arbitration, the Mediator or Arbitrator will generally require that these proceedings be kept confidential. Thus, your exposure is the period of time between when impasse is declared and the date upon which the parties commence the impasse resolution procedure. Each agency must decide the value and importance of having a process that remains confidential until all impasse procedures have been exhausted.

- **TENTATIVE AGREEMENTS**

A few statements about the mechanics of the negotiation process should be included in the ground rules. As the parties become successful in resolving issues, proposals are either withdrawn or tentatively agreed to. Setting aside issues in this manner allows the parties to focus their attention on the more difficult items where consensus has not yet been reached.

Example: “The parties agree that they will sign off on tentative agreements as they are reached. No proposal shall be binding until an overall agreement is reached and ratified by the parties. Once a total tentative agreement has been reached, each party shall have the obligation to recommend adoption of the total package to their respective constituents.”
Once an item has been tentatively agreed to, it is removed from the bargaining table and from further consideration.

- **WITHDRAWN PROPOSALS**

Like tentative agreements, withdrawing a proposal removes it from further consideration. It is an important concession that one party makes to the other by indicating that the issue no longer warrants discussion. A clear understanding of how withdrawn proposals are handled can avoid problems later.

**Example:** “Once either party has withdrawn a proposal, that proposal shall no longer be considered during negotiations, and if applicable, may not be considered in arbitration. Unaccepted package proposals shall not constitute withdrawals.”

With the potential for binding interest arbitration for police and fire safety employees, it is more important than ever to establish from the beginning what happens to withdrawn proposals. Absent language expressing the specific intent of the parties, an Arbitrator could consider an argument to revisit a proposal which had previously been withdrawn.

- **CAUCUSES**

Throughout the negotiations process each party will need time to privately consider the relative positions of the parties, redefine their goals, review their strategies and ponder the meaning of life.

**Example:** “Caucuses shall be permitted at the request of either party. The party making the request shall normally have use of the meeting room. Both parties agree that caucuses shall be reasonable in length and when taken, an estimate of time will be given to the other party.”

Sometimes it’s important to take a caucus just to regroup or to let a particularly angry moment pass.

- **MEMORANDUM OF UNDERSTANDING**

When all the hard work comes to fruition, the paper work still must be done and the agreement must be submitted for adoption.

**Example:** “When a total agreement is ratified the parties will enter into a written Memorandum of Understanding (MOU). Each side shall make a good faith effort to obtain ratification/approval of their respective constituents. The MOU shall be
submitted to the Union/Association membership and upon ratification be submitted to the Agency’s Governing Board. No MOU shall be binding or in effect until it has been approved by the Agency’s Governing Board.

It is wise to agree in advance that each team will make a positive recommendation for approval by their constituents. Should either side have one or two rogue members who won’t provide their support, the team as a whole, must honor its commitment.

❖ TERM OF THE GROUND RULE AGREEMENT

The intent of the parties to have ground rules that cover the entire process should be memorialized.

Example: “These ground rules shall remain in effect until an agreement has been reached or until an impasse resolution procedure or arbitration hearing, if any, is completed. Any and all of the ground rules may be modified by mutual agreement of the parties.”

The reference to arbitration only applies to employees who are subject to binding interest arbitration.

The following sections may be included in ground rules used with police and fire safety employees subject to binding interest arbitration.

❖ MEDIATION

To the degree possible, and to insure equitable treatment of both parties, how the parties will attempt to resolve the impasse should be addressed before the formal negotiations process begins. Arbitration should be the last option, and utilized only when every other option has been tried and proven unsuccessful.

Example: “The parties agree to utilize a State Mediator and mediation as part of the bargaining process prior to any request by the Union/Association for arbitration.”

❖ PRE-ARBITRATION MEETING

If all efforts fail to reach a mutually acceptable agreement and arbitration is inevitable, the ability to hold a meeting in advance of a hearing will be in your best interest.

Example: “In the event the Union/Association demands arbitration, the parties agree to hold a pre-arbitration meeting to identify issues of mutual interest such as
stipulations and timing and present each party’s last, best and final offer.”

A pre-arbitration meeting may allow the employer the opportunity to formulate and present its last, best and final offer. It could also give the parties the ability to reconcile any format differences such as term of agreement.

SUMMARY

Ground rules are the foundation upon which successful negotiations can be built and even if the parties cannot reach agreement themselves, the ground rules can provide additional opportunities to overcome differences and find acceptable solutions. This article has discussed the important issues the personnel or labor relations professional should consider when heading into negotiations. It is intended as a guide and should be tailored to the specific needs and situations encountered in your negotiations.

Finally, it must be remembered that the matter of ground rules is not a mandatory subject of bargaining and as such neither party can insist on its position to a point of impasse. Since ground rules are a permissive subject, bargain what you really want but accept what you can get. In the end, if you have a set of ground rules, your negotiations will benefit.

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