
By: Kandice Taylor Sherwood

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Introduction

Collective bargaining is a process whereby representatives of management and workers negotiate over wages, hours, and other terms and conditions of employment (Mathis and Jackson, 2011). The National Labor Relations Board (1936) cites Collective Bargaining as the “Check and Balance” between management and labor that serves as an orderly mechanism for resolving conflict.

Recent media reports have portrayed an increasingly challenging environment regarding the rights of Public Employees (Cutcher-Gershenfeld & Rubinstein, 2012). Various States have become battlegrounds of ongoing fights between labor and conservative groups over collective bargaining (Weiner, 2011). For example, in November of 2011, a Republican–backed law restricting collective bargaining was repealed by voter initiative in Ohio. And in Madison Wisconsin, a similar debate occurred when a judge struck down a state law effectively ending bargaining rights for public workers that that had been in effect for about a year (Huffington Post, 2013).

While collective bargaining (CALPELRA Labor Relations Academy 3, 2012) is a give and take process between representatives of Management and Union to establish conditions beneficial to both, it is also a relationship based on relative power (Mathis and Jackson, 2011). Because the power relationship in collective bargaining is typically characterized by the degree and the threat of conflict, when a group of unionized employees negotiate with their employer, various patterns of relationship dynamics can emerge. For example (Mathis and Jackson, 2011; pg. 563), when conflict occurs and the distance between parties during a negotiation are great, parties often see each other as enemies, which may lead to impasse, strikes and lockouts. Alternatively, when the distance between both parties is moderate and trust and understanding prevail, parties are more likely to accommodate each other and cooperate, which enhances opportunities for creative problem solving.

Regardless, that the power relationship between parties does not end when agreement is reached. It continues for the life of the labor agreement and beyond; therefore, a significant aspect of collective bargaining is maintaining positive relationships built on trust. Additionally, the manner in which an organization approaches its negotiation process exposes the values and philosophies of the organization, determines whether all parties have the opportunity to influence the process and provide input, and greatly influences conflict management and the likelihood of effective future negotiations.

While the collective bargaining process within the public sector has parameters mandated by laws, there are within this framework recommended practices that increase the likelihood of success and help to sustain positive, long-term working relationships.

Purpose of Paper

This paper aims to (1) identify factors that facilitate effective negotiations; (2) present research on a Benchmarking Study conducted with Southern California agencies about the degree in which individuals responsible for managing the negotiation process agree with the factors and the extent by which they align their philosophies, attitudes, and behaviors to the practices supported by CALPELRA; and (3) identify areas of strength and opportunities for improvement in how individuals in participating agencies (i.e., respondents) manage negotiations.
Best Practices in Labor Negotiations

A collective bargaining process (Mathis and Jackson, 2011, pg. 563), consists of several stages:

- Preparation and initial demands,
- Negotiations,
- Settlement or impasse, or
- Strikes/lockouts.

Throughout the process, management and labor must deal with their relationship. The California Public Employee Labor Relations Academy (CALPELRA; 2012) suggests that understanding the nature of the Union/Management relationship is foundational to building an effective negotiation philosophy and process. Further, they suggest that in successful negotiations (CALPELRA, 2011) all parties should gain something; therefore, the best results are achieved during negotiations when the process is approached with a “mutual gains” mentality. Specifically, CALPERLA has provided guidelines -- dos and don’ts -- for any negotiation. For purposes of this paper, the suggested guidelines and tips are grouped in to three sections: Building a Foundation; Planning and Preparation, and Managing the Process.

This paper will provide a brief overview of each of the three sections, the importance of each section and recommended activities, mindsets, and tips to enhance effectiveness. Additionally, within discussion of each section, this paper will also include several sample survey questions the author used in the Benchmarking study. The survey questions in the study measured the degree in which individuals responsible for managing negotiations agree with the factors and the extent by which they align their philosophies, attitudes, and behaviors to the practices recommended by CALPELRA.

Section 1: Building a Foundation

Overview Typically, both parties in any negotiations want a harmonious collaborative relationship. Building a Foundation relates to the way negotiators interact with others during negotiations. Developing an effective and collaborative Union-Management relationship is essential to achieving goals, providing good service and sustaining the life of the organization; however, the challenge is to foster such a relationship in the face of social, political and economic pressures. If the relationship between the parties is not strong and healthy, each party must take responsibility for their part. Seeking opportunities to cultivate strong working relationships built on trust, respect and collaboration is essential for effective negotiators.

Recommendations

Goals: Both sides should collaborate in developing, articulating and revising shared goals. Before during and after negotiations these goals should be revisited—especially when conflict erupts. Keeping goal setting in the forefront will help create common ground. Recognition and acknowledgement that we may not share the same perceptions, values and priorities is also important to building relationships with a strong foundation. On an ongoing basis, both sides should develop a thorough understanding of the needs of the other party. Decisions should be made based on merits, principles and fair standards as
opposed to haggling, which focuses on what the players will and will not do, and continually looking for opportunities to reach mutual gains.

**Simple courtesies:** Maintain open communication, speak positively about others, listen actively by paraphrasing what others say, allow others complete their thoughts without interruption, and keep members informed (CALPELRA Labor Relations Academy, 2011). These simple courtesies are critical for building trusting relationships. Avoid surprises so that when something unfavorable occurs, provide information promptly and explain the reason for the action as soon as possible (CALPELRA Labor Relations Academy, 2012).

**Survey questions used to measure the degree to which targeted agencies agreed with the factors discussed above:**

- “On a scale of 1 (not very important) to 10 (very important), how imperative it is to you that you understand the needs and concerns of the other party?”

- “Based on your experience, what recommendations would you make ensure effective long-term relationships during the negotiation process?”

- “In general in dealing with others, to what degree (1 meaning Seldom to Never to 10 meaning Almost Always) do you maintain a calm demeanor during times of stress and disagreement?”

**Section 2: Planning and Preparation**

**Overview** An often overlooked aspect of negotiations is the required depth of planning and preparation. Insufficient preparation could cost an agency thousands of dollars.

Examples of activities that characterize the planning and preparation (Krill, 2009) are:

- Identifying mandatory issues of bargaining (issues identified by labor laws or court decisions);
- Identifying permissive issues of bargaining (issues that are not mandatory that relate to certain jobs);
- Gathering data and facts on industry wages, benefits, working conditions, absenteeism, etc;
- Writing initial /preliminary proposals;
- Identifying expectations and needs of both sides;
- Selecting competent negotiators.

The amount of rancor or calmness that occurs during the Planning and Preparation phase may impact the tone of negotiations.

**Recommendations**
Anticipate questions: CALPELRA (Labor Relations Academy 2012) recommends that negotiators take the time to anticipate union and leader reactions and questions about initial proposals and data and have pre-prepared answers.

Assemble facts: Develop a document of written facts and preliminary proposals.

Pre-negotiations: Set up pre-negotiation meetings to agree on ground rules and sources of data.

Review contract issues: Review arbitration decisions under the current contract as an aid in proposing changes in contract language; meet with local union leaders (stewards, shop committee members) to discuss operational effectiveness of the contract.

Data collection: Collect and analyze economic data (wage comparability, agencies’ ability to pay, etc.) and on other matters important to upcoming negotiations;

Power: Determine the power the other side has to negotiate and plan accordingly.

Survey Questions:

- We review arbitration decisions under the current contract as an aid in proposing changes in contract language (Rating scale used: 1= Seldom to 10= Almost Always).

- We conference with local union leaders (stewards, shop committee members) to discuss operational effectiveness of the (Rating scale used: 1= Seldom to 10= Almost Always).

- Before an upcoming negotiation, we send trial balloons regarding our ideas for change. (Rating scale used: 1= Seldom to 10= Almost Always).

- We utilize a commercial reporting service so that we can keep up to date/about developments that may affect upcoming contract negotiations. (Rating scale used: 1= Seldom to 10= Almost Always).

Section 3: Managing the Process

Overview: Managing the Process refers to the actual negotiation meeting. After sharing initial positions (Mathis and Jackson, 2011) each side attempts to determine if concessions can be made and attempts to form initial agreements. State Law requires that both parties negotiate in good faith. Effective negotiation processes (also known as Meet and Confer) are important components of collective bargaining and requires exhaustion of applicable impasse procedures before a decision or course of action by the employer may be made without agreement by the Union (Labor Relations Academy, 2011). Ultimately, the parties return to their constituency to determine if an agreement is acceptable. A critical stage is ratification of the labor agreement by a vote of Union members. The manner in which negotiations is managed can impact the tone used by representatives when communicating what takes place at the bargaining table.

Recommendations
CALPELRA Labor Relations Academy, 2011, stated that; "experience and a thorough realization that everything you say or do at the [negotiation] table will be the basis for your success” (pg. 57 of the training manual).

Meeting tips:

- Keep notes of who said what, when and why;
- Meet at the same location when possible;
- Make concessions important to the other side, early in negotiations;
- Keep the number in attendance manageable;
- Assume command of meetings by directing seating, suggesting lunch, and being the first to get down to business;
- Directing efforts for the convenience of the other side;
- Set the appropriate atmosphere for successful negotiations;
- At the end of a meeting confirm when and where the following meeting will take place;
- Address items we believe will achieve agreement first.

Survey questions:

- We keep accurate notes of who said what, when and why. (Rating scale used: 1= Seldom to 10= Almost Always).
- As much as possible, we strive to meet at the same meeting place for meetings. (Rating scale used: 1= Seldom to 10= Almost Always).
- We try to make concessions, which are important to the other side, early in the negotiation process. (Rating scale used: 1= Seldom to 10= Almost Always).

Conducting Benchmarking Research in Southern California on Best Practices in Negotiations

Background
Benchmarking (Green 2008; Pinnamaneni, Xu, and Findley, 2003) is a process of comparing business processes and outcomes to an industry standard and best practice. Benchmarking information is essential for organizations and HR professionals wanting to improve their own processes and practices. The purpose of this paper was to gather information from Southern California Agencies and compare their practices with those recommended by CALPELRA.

Methodology:
Employee Relations representatives and Chief Labor Negotiators from twenty different Southern California agencies were contacted via email and asked to complete a Benchmarking survey to gather
information on their current negotiation practices. Email recipients were told that their responses would be used for research purposes only, would be kept anonymous and, if requested, recommendations for improvements and results in aggregate would be provided upon request.

**Assessment Tool**
The Benchmarking Survey was developed in surveymonkey (an online survey tool) and contained 62 items. The Benchmarking survey was comprised of three different sections as they relate to effective negotiations: Building a Foundation for Effective Negotiations (comprising 16 items); Planning and Preparation for Negotiations (comprising 24 items), and Managing the Negotiation Process (comprising 21 items). The survey asked respondents to rate the degree in which they agree with CALPELRA’s recommendations for effective negotiations and the extent in which they align their philosophies, attitudes, and behaviors to the recommendations. Lastly, the survey also asked respondents to provide their own recommendations and practices in effective negotiations.

**Respondents**
Twenty Public Sector agencies were surveyed and 12 agencies (60%) responded which is above a typical response rate of 33% for online surveys. Examples of agencies recruited were City of Anaheim, City of Santa Ana, City of Pasadena, City of Tustin, City of Irvine, City of Huntington Beach, Los Angeles Airport, etc.

**Findings/Results**
General trends from the Benchmarking survey showed that while most respondents “agreed” or “strongly agreed” with many of the guidelines set forth by CALPELRA for effective negotiations, they were less likely to support them in practice. For example, 54.6% of all respondents strongly agreed with the statement “To prepare, we thoroughly study past contracts, to discover any sections or language that may call for modification at the upcoming negotiations.” However, 54.5% of respondents reported that they only “Somewhat” supported the practice in their actions and behaviors. Similarly, while approximately 81.8% of all respondents strongly agreed that it was important to develop a full understanding of the other parties’ true needs and challenges, 45.5% of respondents reported that they don’t always take the time to conduct a needs identification.

Overall, respondents reported a greater tendency to follow best practices as it related to Building a Foundation (doing things that create relationships built on trust) more than they did for Planning and Preparation for Negotiations and Managing the Negotiation Process. While some of the lowest rated items for implementing best practices were in Managing the Negotiation Process; overall, respondents were least likely to implement best practices in Planning and Preparation for Negotiations. Lastly, when asked to provide additional recommendations/best practices for effective negotiations, most respondents provided the most feedback for building effective relationships and the least amount of suggestions in managing the negotiation process.

Examples of specific results from the Benchmarking survey are presented below and grouped in three sections: Building a Foundation for Effective Negotiations; Planning and Preparation for Negotiations, and Managing the Negotiation Process. Under each section, the author has included those recommendations receiving the highest and lowest ratings. Additionally, as previously mentioned in the Benchmarking survey, respondents were asked to provide recommendations and best practices they
believed facilitated effective negotiations within their own agencies. Respondent’s recommendations are included as bullet points under each of the three sections. Instances in which similar suggestions were made more than once are included as sub-bullet points.

**Survey Results- Section 1: Building a Foundation**

Recommendations that received the highest ratings as being important to negotiations:

- **Item number 7**: We treat others with professional respect. (81.8% strongly agreed; 9.1% agreed).
- **Item number 5**: We take the time to ensure we quote others accurately (54.5% strongly agreed; 36.4 agreed).
- **Item number 1**: We have developed a full understanding of the needs, directions and parameter’s of our Executive Leadership team. (63.6% strongly agreed; 27.3% agreed).
- **Item number 3**: When needs change, we revise accordingly. (45.5% strongly agreed; 45.5% agreed).

Recommendations that received the *lowest* ratings as being important to negotiations:

- **Item number 10**: When speaking to the other side we work to phrase our responses in a positive answer (e.g., “Here’s what we can do for you”). (27.3% somewhat agreed; 9.1% somewhat disagreed).
- **Item number 11**: As much as possible, we are flexible in our approach with others. (9.1% somewhat agreed; 18.2% somewhat disagreed; 9.1% disagreed).
- **Item number 14**: We seek to satisfy the needs of the other party as much as possible. (36.4% somewhat agreed; 18.2% somewhat disagreed).

Recommendations reported as being current best practices (what they do) within responding agencies are as follow:

- **Item number 7**: We treat others with professional respect. (72.7% strongly agreed; 9.1% agreed).
- **Item number 5**: We take the time to ensure we quote others accurately (27.3% strongly agreed; 54.5% agreed).
- **Item number 12**: When working with others, we are aware of other’s schedules and timetables and strive to accommodate them. (27.3% strongly agreed; 54.5% agreed).
- **Item number 9**: We make promises with caution. (18.2% strongly agreed; 54.5% agreed).

Recommendations that were *not* current best practices (what they don’t do) within responding agencies are as follow:

- **Item number 9**: We make promises with caution. (36.4% somewhat disagreed).
- **Item number 4**: I keep others informed and in the loop at all times. (36.4% somewhat disagreed; 9.1% disagreed).
- **Item number 4**: We are honest, open and timely when communicating bad news. (18.2% somewhat disagreed; 36.4% disagreed).
Key recommendations from respondents regarding **Planning and Preparing for Negotiations** are as follow:

Developing trust is key, but trust is developed beginning outside of the Bargaining Table, during daily interactions. Respect is equally important.

- Get to know each person you work with and development a respectful professional relations built on trust and respect while still understanding you will many times disagree or represent different goals and priorities and interests.
- Building a strong rapport and trust. Although there are times negotiations will be collaborative and friendly, there are equally times where the parties are angry and competitive - sometimes as a tactic and sometimes for legitimate reasons.
- Treat others with respect; maintain your credibility at all costs; agree to disagree at times as tactfully as possible; try to understand what the union board will need to ensure they can succeed in a ratification vote.
- Building a strong rapport and trust. Although there are times negotiations will be collaborative and friendly, there are equally times where the parties are angry and competitive - sometimes as a tactic and sometimes for legitimate reasons.
- Do what you say you are going to do- build trusting relationships.
- Be sure that the people representing both parties have a basic understanding of the many different preferences in communication styles used by different people.
  - I think the most important things are communication and a truly wanting to find some way, however small, to help the employees achieve something. Even though we put a lot of work in to negotiation prep, when we get to the table we never assume that we know what they want or why they want it. We question, examine, and reiterate back our understanding of issues to make sure we are all on the same page.
  - Don't use misleading wording; they'll figure it out and be resentful.
  - Don't be too black & white when representing the positions of elected officials because politicians change their minds and you end up looking un-credible.
- The foundation for negotiations is built everyday as we are enforcing and abiding by the contract (grievances, disciplines, arbitrations) and not simply when we are negotiating the contract.

**Survey Results- Section 2: Planning and Preparation for Negotiations**

Recommendations that received the highest ratings as being important to negotiations:

- Item number 31: In preparing for negotiations, we strive to ensure BOTH sides are knowledgeable and conversant about the agency's fiscal status. (58.3% strongly agreed).
- Item number 36: We take time to determine the power the other side has to negotiate and make plans accordingly (8.3% strongly agreed; 58.3% agreed).
Recommendations that received the *lowest* ratings as being important to negotiations:

- **Item number 34**: During a negotiation process both sides jointly establish criteria using an objective approach. (25.3% somewhat disagreed; 8.3% disagreed).
- **Item number 32**: We avoid incrementalism; we typically seek to objectify and direct our wage discussions to global questions such as “What is Fair” or “How should we determine what is fair?” (25% somewhat disagreed; 8.3% disagreed).
- **Item number 40**: We rely on our good relationships with the other side to see us through wage negotiations. (8.3% somewhat disagreed; 8.3% disagreed; 8.3% strongly disagreed).

Recommendations reported as being current best practices (what they do) within responding agencies are as follow:

- **Item number 29**: We collect and analyze economic data (wage comparability, agencies’ ability to pay, etc.) on matters of importance for an upcoming negotiation. (25% strongly agreed; 58% agreed).
- **Item number 18**: When preparing for Negotiations, we develop a document of written facts and preliminary proposals. (41.7% strongly agreed; 41.7% agreed).
- **Item number 19**: When preparing for Negotiations, we develop a document of written facts and preliminary proposals. (8.3% strongly agreed; 8.3% agreed; 58.3% somewhat agreed).
- **Item number 20**: To prepare, we thoroughly study past contracts, to discover any sections or language that may call for modification at the upcoming negotiations. (25% strongly agreed; 25% agreed; 25% somewhat agreed).

Recommendations that were *not* current best practices (what they don’t do) within responding agencies are as follow:

- **Item number 27**: We participate in information “talks” one year a ahead of time. (33.3% disagreed; 16.7% strongly disagreed).
- **Item number 26**: Before an upcoming negotiation, we send trial balloons regarding our ideas for change. (50% disagreed).
- **Item number 34**: During a negotiation process both sides jointly establish criteria using an objective approach. (33.3% somewhat disagreed; 16.7% disagreed).

Key recommendations from respondents regarding **Planning and Preparing for Negotiations** are as follow:

- Never assume you know the policy direction you may receive from your elected officials.
- The elected body is not controlled by labor and can objectively make tough but necessary economic decisions, which are in the best interest of the city and not always labor unions.
- Seek input and buy-in from the executives and managers of the organization before making proposals
  - Meet with other Department Heads and get an understanding of their needs.
- Find someone who is in-touch with the employee population and their feelings about economics and how the City is being run.
  - Look for insight from others. Sometimes you need an outsider’s perspective.
- Use the interests, options, standards approach to plan for negotiations even if you use the traditional negotiations approach at the table.

Survey Results: Section 3: Managing the Negotiation Process

Recommendations that received the highest ratings as being important to negotiations:

- Item number 43: During negotiation meetings, we keep accurate notes of who said what, when and why. (45.5% strongly agreed; 36.4% agreed; 18.2% somewhat agreed).
- Item number 46: When conducting negotiation meetings, we try to keep a minimal number in attendance. (63.6% strongly agreed; 18.2% agreed).
- Item number 49: Before we leave a meeting, we communicate when and where the following meeting will take place. (45.5% strongly agreed; 36.4% agreed; 18.2% somewhat agreed).
- Item number 44: During negotiations, we strive to meet at the same meeting place for subsequent sessions as much as possible. (54.5% strongly agreed; 18.2% agreed).
- Item number 49: Before we leave a meeting, we communicate when and where the following meeting will take place. (45.5% strongly agreed; 36.4% agreed; 18.2% somewhat agreed).

Recommendations that received the lowest ratings as being important to negotiations:

- Item number 55: When we are not satisfied with a deal, we will walk away. (9.1% somewhat disagreed; 36.4% disagreed; 18.2% strongly disagreed).
- Item number 50: We avoid offering counter proposals to our original/initial proposals. (27.3% somewhat disagreed; 27.3% disagreed; 18.2% strongly disagreed).

Recommendations reported as being current best practices (what they do) within responding agencies are as follow:

- Item number 49: Before we leave a meeting, we communicate when and where the following meeting will take place. (36.4% strongly agreed; 45.5% agreed; 18.2% somewhat agreed).
- Item number 43: During negotiation meetings, we keep accurate notes of who said what, when and why. (35.5% strongly agreed; 36.4% agreed; 18.2% somewhat agreed).
- Item number 46: When conducting negotiation meetings, we try to keep a minimal number in attendance. (9.1% strongly agreed; 63.6% agreed; 18.2% somewhat agreed).
- Item number 59: We maintain a positive but matter of fact tone during the negotiation process. (18.2% strongly agreed; 63.6% agreed).
- Item number 44: During negotiations, we strive to meet at the same meeting place for subsequent sessions as much as possible. (45.5% strongly agreed; 27.3% agreed; 9.1% somewhat agreed).

Recommendations that were **not** current best practices (what they don’t do) within responding agencies are as follow:

- Item number 55: When we are not satisfied with a deal, we will walk away. (9.1% somewhat disagreed; 36.4% disagreed; 27.3% strongly disagreed).
- Item number 52: During negotiations, we make our presentations before allowing the other side to ask questions. (36.4% somewhat disagreed; 9.1% disagreed; 9.1% strongly disagreed).
- Item number 56: We avoid settling during the heat of negotiations. (27.3% somewhat disagreed; 9.1% disagreed; 9.1% strongly disagreed).
o Item number 45: We try to make concessions, which are important to the other side, early in the negotiation process. (36.4% somewhat disagreed, 27.3% disagreed).

o Item number 47: We try to make concessions, which are important to the other side, early in the negotiation process. (18.2% somewhat disagreed, 18.2% disagreed; 9.1% strongly disagreed).

Key recommendations from respondents regarding Managing the Negotiation process are as follow:

- First and Foremost- Make sure you have clear directions and understanding and reasonable expectations from your Elected Officials and the City Manager from the start.
- Caring about the other side, try to put yourself in their shoes and express that you understand their feeling, experiences...but always bring them back to the other reality of the budget, public perception, politics.
- If you can trust the other side, sideline discussions with the negotiator or board president is always helpful.
- Listen more, talk less Admit it when you miss-speak; clarify what you meant.
- Be patient and willing to hear what the other side has to say- address their issues

Summary of Recommendations/areas of Improvement

Opportunities for improvements were identified by summarizing the lowest rated items. Additionally a gap analysis was conducted to identify those areas that were perceived as being important, yet were not being practiced as often as they should be throughout the negotiation process.

In general, respondents could improve by actively clarifying direction from executive leadership, communicating bad news in a timely manner, listening, asking more questions and identifying needs during all stages of the negotiation process. Ensuring accuracy when quoting others and being quoted maintaining calm during negotiations was an additional area for improvement as well as viewing negotiations as a selling process by promoting their objectives and themselves.

Specifically recommendations during the planning and preparing stages for negotiations are to spend more time in pre-negotiation meetings, form agreements on ground rules and sources of data and conference with local union leaders (stewards, shop committee members) to discuss operational effectiveness of the contract.

Specific areas for improvement as it relates to the negotiation process are to be more consistent in meeting locations, assume command of meetings by directing seating, suggesting lunch, being the first to get down to business and to resist making critical decisions during instances of conflict (allow time for thought and consultation without emotion).

In summary, while many of the agencies practiced several of the suggestions put forth by CALPELRA there were opportunities for improvement during every step of the process. A positive result of this paper is that participating agencies were invited to request summarized results of the Benchmarking survey and key recommendations for improving the way these agencies manage negotiations.

Kandice Taylor-Sherwood
Deputy Director of Human Resources, City of Anaheim
201 South Anaheim Blvd.
Anaheim California, 92805
KSherwood@anaheim.net;

NOTE: If you wish to receive Appendices to the survey, which are 65 pages of a complete list of references, example scripts of emails I used to recruit respondents, a copy of the Benchmarking survey in its entirety, and the raw data, please feel free to contact me at the address above.

REFERENCES


CALPELRA Labor Relations Academy II (2012); Foundations of Labor Relations (Training Academy and Participant Manual).


