The Negotiations Process

Tammy Jalique
Associate Superintendent of Human Resources
Tracy Unified School District
tjalique@tusd.net
Negotiations at an early age....

Half a tuna sandwich, three gummy bears and the Scooby Doo eraser for the PB&J, fruit roll-up and the filling from both your Oreos. Final offer.

School Lunch Time: a child’s first lesson in bartering and trade relations.
"My final offer: X-box till midnight, no cabbage, or dad's laptop password remains a boys secret"
Topics to be addressed

- Legal background for negotiations/collective bargaining
- Contract implications
- Types of negotiations
- Phases of the negotiations process
- Impasse and fact finding
- Negotiations in the era of LCFF
- Q & A
To negotiate or not negotiate?

• A change in bell schedules, which is prompted by new legislation regulating start times for various grade levels
• The reassignment of teachers due to the opening of a new school
• Removal of the word “antibacterial” in a sentence in the contract stating “Classrooms will be equipped with soap dispensers, antibacterial soap, and paper towels.”
• Modification of the form on which employees request use of personal leave
• Stipends for athletic coaches
• Membership of a District advisory committee
Negotiations: Legal Basis

• EERA – Educational Employment Relations Act 1976 (also known as Rodda Act)
  – Establishes collective bargaining in California's public schools (K-12) and community colleges
  – Defines those items which are within the “scope of bargaining” (Govt. Code 3543.2: (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment.

• Anaheim Union School District Test (1981)
  – Logically and reasonably related to wage, hours, or an enumerated term and condition of employment;
  – The subject is of such concern to management and employees that a conflict is likely to occur, and the mediatory influence of the collective negotiations is the appropriate means of resolving the conflict; and
  – The employer’s obligation to negotiate would not significantly abridge the freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the employer’s mission.
Contract Implications and Limitations

• Can a contract override state or federal law?
  – Example of Grade Span Adjustment, where legislation specifically references other negotiated limits
  – Yes, if the contract is of more benefit to the employee (longer lunch periods than required by law, etc.)
  – Once in the contract, modifications are negotiable, unless the modification is a mandate brought about by legislation
    • Even if the change itself is not negotiable, the impact of the change may be
To negotiate or not negotiate?

- A change in bell schedules, which is prompted by new legislation regulating start times for various grade levels
- The reassignment of teachers due to the opening of a new school
- Removal of the word “antibacterial” in a sentence in the contract stating “Classrooms will be equipped with soap dispensers, antibacterial soap, and paper towels.”
- Modification of the form on which employees request use of personal leave
- Stipends for athletic coaches
- Membership of a District advisory committee
Types of Negotiations

- **Successor Agreement** – the entire contract is open
- **Reopener** – changes to the contract during the time the contract is in effect
  - The number of reopeners (articles to be negotiated) for each side is agreed upon and contained within the contract language
  - Salary and benefits are automatic reopeners
  - Additional articles above the contract limit may be reopened by mutual agreement
- **Demand to bargain** – related to an impact brought about by change
  - More common with classified negotiations than certificated
Sunshine starts the process

- To protect transparency in government, every state in the United States has some variety of law mandating that all government business be conducted in open meetings to which the public has access. These are sometimes referred to as "sunshine laws," open government laws, or, in California, the Brown Act.
- The union identifies its desired reopeners
- The District responds with its desired reopeners
- Both proposals are taken to the board in open session
The Process: Interest Based or Positional?

Interest Based Bargaining (IBB)
- Values relationships
- Both sides separate the “people” from the “problem”
- Identification of the problem, from both sides of the table, with potential alternatives also offered by both
- Goal: Collaborative discussion leading to consensus/BATNA (Best Alternative to a Negotiated Agreement)

Positional/Traditional Bargaining
- Values one side’s perspective/wants
- Each side states its demands
- “My solution is....”
- Limited discussion
- Goal: Limited compromise with a “win” for one side (real estate sale)
The Key Players

Typical Core Teams:

- Number of members usually contained within bargaining agreement
- Bargaining unit representatives (local chapter)
- Regional representatives
- District
  - Human Resources
  - Business/Financial Services
  - Administrators

May also need to bring in members who have specific knowledge regarding an area to be negotiated (review contract language)
Reaching Agreement

- If agreement is reached, parties may either sign
  - A tentative agreement if the change is intended to be a permanent change to contract language.
    - The agreement is tentative as it must be ratified by the union membership and by the Board of Education
  - A Memorandum of Understanding (MOU), or side letter, which is most often signed if intended to be a temporary exception to current contract language
    - Usually has an “end date of a specific time, or until successor language is negotiated, whichever occurs first”
    - Ex: This MOU will remain in effect until June 30, 2018, or until successor language is negotiated, whichever occurs first.
    - May or may not need to be Board approved, depending on District board policy
Impasse and Factfinding

• What if no agreement is reached?
  – Teams can agree to disagree on the issue, but agree that the BATNA is to maintain status quo.
  – If no BATNA is reached, then impasse is declared
Impasse

- **Impasse**
  - Occurs at the point at which both parties have exhausted their prospects of reaching an agreement
  - The parties agree further discussion is futile
  - Process starts with one party declaring in writing to the other that negotiations are at impasse
  - [Impasse request](#) is filed with Public Employee Relations Board (PERB)
Impasse

• PERB receives the request
  – Usually begins with mediation
  – Selection of a mediator (some choice offered to both parties, with final appointment by PERB)
  – IBB process becomes more of a traditional process at this point
  – Mediator will typically
    • Meet with each side individually to hear concerns
    • Bring to the other team the other side’s proposal
    • Work toward finding a solution for both parties
    • The mediator’s recommendations are not binding unless agreed to by both parties and signed as a tentative agreement
    • If not successful, mediator may certify to factfinding
Factfinding

• Only the employee organization may request factfinding

• Request for factfinding must be filed with PERB:
  • If mediation was attempted - not sooner than 30 days, but not later than 45 days, following the appointment or selection of the mediator.
  • If mediation was not used as an intermediary step, no later than 30 days following the written notice of declaration of impasse

• PERB will notify parties within five working days if request is sufficient and moving to next step
  • If not sufficient, no further action taken by PERB – teams back to the table
Factfinding Process

• Panel consists of three members
  – A representative, selected by the Bargaining Unit
  – A representative, selected by the District
  – A third “neutral” representative who serves as chair
    • Possible neutrals are provided to both sides by PERB
    • Parties then have 5 days to agree, or PERB appoints the chair
  – Within 10 days of appointment, the panel will meet with parties, either together or separately
    • Inquiries and investigations
    • Hold hearings
    • Take other steps it deems appropriate
Factfinding Criteria

• Federal/state law
• Local rules/ordinances
• Stipulations of the parties
• Interest and welfare of the public
• Financial ability of the public agency

• Comparison of like districts
• Consumer Price Index
• Current wage/benefits package received by employees
• Any other relevant facts, including witnesses to tell story
Factfinding: Resolution

• Tentative agreement process
• If not settled within 30 days (or longer upon agreement of the parties), panel submits findings of fact and advisory (nonbinding) recommendations
• Within 10 days of receipt, the District must make report public
• After report has been made public, the District must hold a public hearing regarding impasse
• Following public hearing, the District may unilaterally implement it’s last, best, final offer (LBFO).
• If LBFO is implemented, there is still a duty with both parties to continue to negotiate
Recapping the process

At table negotiations → Mediation → Factfinding → Continue to Negotiate

- Tentative Agreement
  - Ratify
  - Done

- Strike
- LBFO
Negotiations under LCFF

• Comparison Districts
  – Geographic proximity is not as strong a factor now
  – Differing demographics = different supplemental and concentration allocations
  – Can very easily lead to an “apples to oranges” comparison

• Use of supplemental dollars
  – Intent is for a higher level of service to at risk student groups
  – Expansion of programs and services to students
  – Additional professional development for staff
  – Does not allow for across the board increases while providing the same level of service
  – Refer to EdSource “State Cautions When to Use Funding Formula for Teacher Raises”
“A district LCAP which projects use of supplemental and concentration funds for such an across-the-board salary increase will not adhere to the expenditure requirements for such funds....Accordingly, it would be appropriate for a County Superintendent of Schools to....withhold his or her approval on that basis....”
CDE Opinion to Fresno COE (4/14/2015)

• Limited Exception
  – “...low salaries result in difficulties in recruiting, hiring, and retaining qualified staff to such extent the quality of the District’s educational program is adversely affected, particularly for unduplicated pupils.”

• Caution
  – “...If the annual update review indicates the salary increase has not resulted in increased or improved services...within a reasonable period of time, the district should discontinue use of supplemental and concentration grant funds for the increase.”

If there is no improvement, and the dollars were added to the salary schedule as an on-going amount, where does the money come from?
Q & A/Master Agreement Activity

Tammy Jalique, Associate Superintendent of Human Resources
Tracy Unified School District
tjalique@tusd.net

Tamara Ferrario, Director of Human Resources & Employee Relations
Tracy Unified School District
tferrario@tusd.net