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The Anatomy of Negotiations

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Step 1. Determine who will be on the School Committee's Bargaining Team

Rule: Never have a majority of the School Committee on the bargaining team

Why? All agreements reached at the bargaining table are only tentative if only subcommittee is bargaining

- Subject to ratification and approval of the entire Committee at a later time
- If a majority is present on the bargaining team, tentative agreements can become binding contractual obligations

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Step 1. Determine who will be on the School Committee's Bargaining Team (cont.)

Size of Bargaining team?

- Keep it manageable (ideally 4-5 people from SC/District management)
- Pros and Cons of having Supt. at Bargaining table

Have resource people in the background/reserve the right to bring them to negotiations as needed

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Step 2. Draft Proposed Ground Rules Before First Face-To-Face Bargaining Session

Pointer 1: There are common ground rules that are very common and should be proposed and (presumably) agreed to.

Pointer 2: If the Union proposes ground rules beyond these, note

- Any such proposal is rare
- Any such ground rule proposal is even more rarely agreed to.

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Step 2 Develop Ground rules (continued)

Common/Effective Model Ground Rules: (and what is to be achieved by each of them)

- These ground rules work equally well with every group with whom you are bargaining

1. Negotiations will be held in closed session and will only occur at designated negotiations meetings.

- allowed under the Open Meeting Law exemptions.
- Prevents "ambush" bargaining, e.g grocery store parking lot

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Step 2 Develop Ground rules (continued)

2. Each side will have full authorization to make commitments and make tentative agreements subject to ratification by the School Committee and the Union.

Why important?

- Do not want to be bargaining with people who have no say in the decision
- Do not want the bargaining session to simply be a conveyance of the proposal, with no feedback

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Step 2 Develop Ground rules (continued)

3. There will be one official spokesperson designated by each negotiating team. Official positions will be conveyed by the spokesperson. Members of the respective negotiating teams may speak at the negotiation meetings if their negotiating team allows them to do so.

Why important?

- Prevents questions being posed directly to specific members of either side's bargaining team by the other
- Prevents individual members of the bargaining teams from speaking out of turn on an issue

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Step 2 Develop Ground rules (continued)

4. All agreements reached will only be tentative, subject to an entire package being reached. At the conclusion of negotiations, a Memorandum of Agreement will be drawn up and signed.

Why important?

- Allows the bargaining process to be fluid rather than fixed
- Only those proposals that survive the final negotiation settlement will be moved forward

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Step 2 Develop Ground rules (continued)

5. There will only be 5 people on each side's respective bargaining team and each participant is expected to attend each session.

Why important?

- prevents rotating in/out of different bargaining team members
 - who may have different views on proposals
 - who will need to be brought up to speed on where the parties are at

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Step 2 Develop Ground rules (continued)

6. At each meeting, the time and the date for the next two tentative meetings shall be determined.

Why important?

- Too many meeting scheduled in advance causes stagnation
- Never schedule standing meetings – e.g. every other Tuesday, etc.

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Step 2 Develop Ground rules (continued)

7. Each side shall have the right to caucus at any time for reasonable time periods. The length of the caucus will be kept to fifteen minutes where possible. If a caucus is anticipated to extend beyond thirty minutes, notice shall be given to the other party, who may choose to conclude the negotiation session at that time.

Why important?

- You do not want either party abusing the caucus protocol by using face to face bargaining time to meet among themselves preparing
- Meeting preparation should occur outside this process

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Step 2 Develop Ground rules (continued)

8. The parties will present initial proposals at the first session (not including this ground rules meeting). There will be no new proposals after the fourth negotiation session. New proposals/issues may be only brought to the table subsequent to the fourth session by mutual agreement.

Why important?

- If there is no limit to the timing of new proposals, the number of issues on the table may never be narrowed
- Dissuades parties from delaying the presentation of proposals
- Encourages parties to do their homework in advance of the start of negotiations.

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Step 2 Develop Ground rules (continued)

9. There will be no official minutes. Each side is free to keep its own notes.

Why important?

- Prevents wasting half of the meeting going over, in writing, what was tentatively agreed upon at the prior meeting
- Minutes, once agreed, make it harder to trade away things that were tentatively agreed

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Step 2 Develop Ground rules (continued)

10. Meetings will normally last two hours, but the parties may mutually agree to shorten or extend any meeting.

Why important?

- Meetings shorter than 2 hours tend to be less productive
- Prevents one side from trying to force the other side to stay longer
- Parties can always extend the meeting if both sides agree it is productive to do so

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Step 2 Develop Ground rules (continued)

11. Cancellation of meetings for unforeseen circumstances will be permitted by either side. A reasonable effort will be made to give forty eight (48) hour notice of cancellation whenever possible.

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Step 2 Develop Ground rules (continued)

12. There will be no public disclosure or discussion of proposals or conduct of the meetings and negotiations, nor any disclosures to print or television news media until either party seeks the assistance of a third party to resolve a negotiation dispute. The parties may, however, discuss negotiations with their respective principals, provided the principals also agree not to make any public statements. Public statements refer to any statement or information relating in any way to negotiations made or given to the press, the public, and employees not in the bargaining unit.

Why important?

- Negotiating in public is less effective
- Parties more prone to posturing when negotiations occur in the public

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Step 2 Develop Ground rules (continued)

13. The parties agree to no press releases except as they may mutually agree to a joint press release at any time they deem appropriate. Upon impasse, either party may choose to go public after giving the other party 48 hours' advance notice.

14. There will be no cameras or recording equipment.

15. These ground rules may be modified based upon the needs of the parties.

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Additional Ground Rule Pointers to keep in mind.

- There is no legal requirement that either party actually agree to ground rules
- If the other side insists on any ground rules that are uncommon and onerous you can simply refuse to agree to its inclusion
- If other side persists, you can simply indicate that there will not be ground rules
- Do not spend more than one meeting on ground rules.

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Step 3: Develop Bargaining Proposals

1. Analyze Areas Where Disputes Have Arisen and draft proposals to resolve them.

- A. E.g. Grievances
- B. Propose clarifying language for ambiguous contract items
 - i. E.g. uses for personal days

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Step 3: Develop Bargaining Proposals (cont.)

2. Consider cost saving proposals

- A. E.g. Normalizing percentage spread between steps
- B. E.g. Normalizing percentage spread between columns/lanes
- C. Freezing Steps and/or Lanes for one or more years of the contract
- D. Health insurance changes
 - i. Two types:
 - a. Premium splits
 - b. Plan design changes

Pointer: Never propose a salary increase – all salary increases should be proposed as counterproposals

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Step 3: Develop Bargaining Proposals (cont.)

3. Common Health Insurance Premium Split Proposals

- A. Stair-stepping part of the change each year
 - i. E.g. Employee pays 5% more each year of contract
- B. Have current employees pay one split while new hires pay a different split

Note: It is common that 50% of the staff will be replaced over a 10 year period.

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Step 3: Develop Bargaining Proposals (cont.)

4. Consider Benefit Reduction proposals

Pointer: Many employers propose reductions where employees are expected to ask for benefit increase as a way to counteract union increases to already generous benefits

--E.g. Personal Days, sick days, sick leave buy-back, longevity, etc.

Pointer: Often parties will simply agree withdraw their respective proposals and maintain the status quo

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Step 3: Develop Bargaining Proposals (cont.)

5. Consider Language changes

A. Possible items:

- i. Bolster/Create management rights clause
 - a. Importance of Management Rights language

B. Tighten up grievance timelines

C. Reduce number of grievance process steps

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Step 3: Develop Bargaining Proposals (cont.)

6. Only propose housekeeping items (e.g. year reference changes) if union is readily agreeable

Pointer: You do not want union thinking that they gave you something when they agreed to housekeeping changes.

Pointer: Put housekeeping proposals on a separate sheet

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Step 4: Engage in Face-To-Face Negotiations With Union

1. Union Will Walk Management Through Its Proposal

Pointer: Regarding each proposal by union ask them to explain what problem that particular proposal was intended to address

Pointer: If the proposal does not actually address a problem, the less the union likely thinks they will achieve it.

Pointer: Knowing what concern the proposal is intended to address will enable management to consider if the Union's objective can be met via an alternative means

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Step 4: Engage in Face-To-Face Negotiations With Union (cont.)

1. Walk the Union Through Management's Proposals.

2. Respond to the Union's Proposals

- A. Accept
- B. Reject
- C. Hold

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Step 4: Engage in Face-To-Face Negotiations With Union (cont.)

Two types of "Hold"

- Hold for further discussion
- Hold for further clarification

What's the difference?

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Step 4: Engage in Face-To-Face Negotiations With Union (cont.)

Negotiation Pointers to consider:

- Do not agree to cost items, especially wage increases, until all other provisions are settled or withdrawn
- Never Bargain Over Individuals Not in Bargaining Unit
 - E.g. people in other units
 - People who have quit or retired
 - People who have not yet been hired
 - E.g. hiring standards

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Negotiation Pointers to consider (continued):

- Never agree to a list of Comparable Communities with Union
- DO calculate your own comparables
 - Factors to compare
- What not to do:
 - Do not debate employees' worth
 - Do not debate ability to pay
 - Do not threaten layoffs

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Negotiation Pointers to consider (continued):

Tip: Do not allow the union to unilaterally set the agenda for future bargaining meetings.

Tip: Never make two back to back moves

Pros and Cons of Contract Wage Reopeners

What are Parity Provisions and how to get around them.

Tip: What employers should do if Mediation is likely

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Step 5 Mediation – (If negotiations do not result in a settlement)

- Primary difference is negotiations no longer face-to-face
- Mediator from the Commonwealth shuttles back and forth between the parties
- Mediator will likely limit outstanding proposals to wages and 3-4 per party
- Mediation is off-the-record
- Mediator cannot force parties to agree
- Mediator will keep scheduling mediation meetings so long as there is movement.

Tip: Have proposals ready to go even before Mediator enters the room.
Tip: Mediator will require employer to sweeten its financial offer

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Step 6 – Fact-finding (If mediation does not result in an agreed contract)

Has only occurred a handful of times across the state.

Why that is?

Anatomy of Fact Finding

1. Parties are limited to wages and 3-4 outstanding issues
2. They are usually the few that are left from the mediation
3. Fact finder hears arguments by each side in defense of their proposals and in objection to other side's proposals.
4. Post hearing briefs are often allowed
5. Fact Finder's Decision making authority?
6. What happens next?

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Step 7 – Contract Settled – Generation of the Memorandum of Agreement (MOA)

- What is the MOA?
- Who drafts it?
- Who signs the MOA?
- What is the significance of signing the MOA?

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Step 8 – Ratification of the MOA by the parties principals.

- Simple majority vote of those present at the ratification vote
- No ability to a la carte vote by item...
 - Must either vote to ratify or not ratify
 - Bargaining agreement may not be for a period of longer than three years into the future

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**Have Questions?
Ask!**

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