

The Art of Negotiating in Labor Relations

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Introduction

A human resources professional working in the public sector in a union environment must acquire excellent skills in the art of negotiation. A simple, broad definition of “negotiation” is: a give-and-take discussion or conference in an attempt to reach an agreement or settle a dispute. In public sector human resources, the term negotiation is most commonly used in the context of union contract negotiation and labor relations. It is the observation of this author that fundamental negotiation skills (for both everyday life and business) are not commonly taught in our American culture, nor our education system.

Personal note: The author of this paper has worked in the field of municipal government human resources since March 1991. Positions held, in order, are Human Resources Assistant, Human Resources Analyst, Human Resources Manager, Employment Services Manager, and Human Resources Director. Education obtained, in order, includes Bachelor of Art, Professional in Human Resources Certification, and Master of Science in Human Resources Development. The author finds it noteworthy that: 1) in 18 years of public sector human resources work experience, training in negotiation skills (either on the job or formal) in labor relations was not provided; and 2) college curriculum at the graduate level specific to human resources did not provide training in negotiation skills. Regardless, negotiation skills are an essential business skill and are absolutely necessary in human resource labor relations.

Developing Negotiation Skills: Perspective and Philosophy

Are negotiation skills a social value that is engendered in our American culture? Is it modeled in our family life or taught in our elementary or secondary schools? Considering the broad definition of negotiation “a give-and-take discussion in an attempt to reach an agreement or settle a dispute” – it is logical to conclude it is an important and useful life skill. However, it is the observation and perspective of this author that teaching young people to negotiate in everyday life events is not a traditional American social value or life skill that is commonly encouraged. Students are typically introduced to negotiation skills at a college level business class. By that time, most young adults have well developed their approach to a “give-and-take discussion in an attempt to reach an agreement” in their communication style, general level of assertiveness and approach to handling conflict situations.

When considering the social traditions and values in our American culture, one must take the growing diversity of our society and U.S. demographics into account. For example, this author’s personal perspective is affected by the following factors: middle-age, Caucasian, parents from Indiana, born and raised in Los Angeles, then add communication style, life and work experiences, and the level of emotional intelligence, as well as other factors. Philosophically, negotiating “back and forth” was not

encouraged; in fact, it was viewed as rude in social settings and marginally rude in business transactions. While it is beyond the scope of this paper to analyze whether teaching negotiation skills is engendered in our American culture and education systems, this review of negotiation is based on the premise that culturally a widespread void exists in learning skills and competencies in the art of negotiating.

Overview of the Collective Bargaining Process

In 1935 Congress enacted the National Labor Relations Act to regulate the collective bargaining process for most private-sector employers, and to establish the National Relations Labor Board to administer the Act. In the public sector, state or local government agencies typically oversee union collective bargaining. Both management and the union are legally required to bargain in “good faith” which, in part, means that both sides must review and analyze each others’ contract demands and be prepared to discuss and explain their position. “Collective bargaining is a complex and multilayered process, involving theatrics, bluster and posturing. It also involves ... the ability of both sides to maintain harmonious employee relations once the negotiations are concluded.”(1) The working relationship between the human resources professional and the union representative is by nature very political.

Business and the Art of Negotiating

Negotiating the terms of an agreement is a key business skill, and it is a process that takes practice. According to the Society of Human Resources (SHRM): Negotiation has traditionally been viewed as a confrontational win/lose affair that promotes high stress and low trust relationships. (2) In addition, a corporate human resources manager who has worked on both sides of the bargaining table pointed out: “When human resource folks talk about a seat at the table, there is nothing more ‘seat at the table’ than being intimately involved in these negotiations ... It’s a high-risk, high-stakes role. If you’re trying to get a seat at the big table without labor relations expertise, it’s not going to happen.” (4)

Whether we realize it or not, all of us practice the art of negotiation in everyday life. Haggling over the price of a new car or asking your boss for a raise is each an example of this. Below are some guidelines for any business negotiation:

1. Before starting, have a clear objective – what is the minimum you are willing to take?
2. Negotiation is mostly about listening. Understand where the other side is coming from, then listen some more. Uncover all the information possible so you know what is most important to the other side.
3. Realize smooth talking can actually be a turn off.
4. Zero in on the most important thing to the other party, then figure out a way to give that to them but make sure you get what is most vital to you.

5. Speak softly and pleasantly, do not try to be clever.
6. If at all possible have the other side make the offer first. Also, don't be afraid to display disappointment if the other is not reasonable. The other side may low ball you on occasion but will quickly retract if they see the tactic doesn't work.
7. Do not let time constrain you. Even if up against a deadline, do not display it.

At the union bargaining table, understand that there is what they tell you and then there is the truth. Savvy management staff will anticipate union demands by contacting its supervisors and gathering intelligence about employee gripes and complaints. (1) Once you have listened well, confine the issues: ask them if there is anything else they consider important (this to avoid a surprise issue at end). In labor relations the union is required to send a representative with authority; generally, in business communication it is recommended one confirm the authority to make the deal. This can be done by simply asking "in addition to you, who else will be involved in the decision making process?" Thoroughly evaluate the issues presented (which are minor and may be tossed aside, which are considered "meat and potatoes" and which issues are potential deal breakers. (2) As Albert Einstein once stated: "The formulation of a problem is far more essential than its solution."

The next key step in negotiating a business deal is to move on to solving the problem. There is some conflict built in to any negotiation. To move through that conflict and solve the problem, the human resource professional must make careful decisions. And, he/she should remember to avoid the number one problem in decision making – do not make it personal. A lesson from the author's Board of Directors' training provided in September 2008 is helpful here: "Any effective group decision making process requires a willingness to engage in risk-taking under conditions of uncertainty. Conflict is inherent in and a necessity of the decision making process. The avoidance of conflict is detrimental and yields poor quality decisions." Dr. Yeager went on to state: "This is where all the tactics and strategies, concessions, give and take, and agreements take place." (7)

The art of negotiating involves elements of social psychology. Harvard Business School researchers Bazerman and Valley studied how negotiators in business define themselves and create the game, both psychologically and structurally. They found that:

1. Preconceptions count: The interaction between negotiators springs from the negotiators' beliefs - almost everyone who walks into a negotiation already holds a fairly strong preconception (a mental model) of how they expect it to play out. These preconceptions can actually alter the game and its outcome.
2. Ethical behavior: People have varying interpretations of ethical standards. Research has shown that people tend to see themselves as more ethical than the next person. Negotiators typically have a hard time compromising on issues that are "ethically sacred" to them.
3. Cultural factors in communication style also affect the negotiation process.(8)

The Art of Negotiating at the Table

Similar to negotiating terms of a business agreement, the collective bargaining process can be largely summarized into three basic steps: 1) prepare very thoroughly; 2) exchange proposals and begin negotiating; 3) counter offer and compromise. Management negotiators new to labor relations may believe that the union expects the organization to concede on all of the demands and also may take the potential insults personally. Experienced negotiators, on the other hand, know the drill, and both union and management representatives play their respective roles. (1)

This again emphasizes the need for human resource professionals to build specific negotiation competencies so they can truly be a strategic business partner in the organization's senior executive team. According to employment law attorney and director of compliance for a Florida county school district, K. Haywood, the following skills are important: "leadership, negotiation, mediation, arbitration, planning and developing of the collective bargaining agreement, interpreting and executing the agreement, analyzing and researching, interpersonal communications, and verbal and written communications." In addition, personal traits and values such as emotional intelligence, strategic thinking and planning, situational leadership and ethics, problem-solving and cultural competency skills are needed. (4)

In negotiating at the bargaining table, the human resources professional must also possess excellent presentation skills. Lessons learned from an arbitrator teaching counsel how to improve advocacy skills at an arbitration hearing are helpful here: "Engender trust, convey a sense of candor and of not wishing to win at any cost. An advocate is to some extent an actor and must consider what is the best affect or 'face' to present. It is possible to be rough-minded without being hostile. It is far more effective to reserve for an appropriate time those instances when you may display higher emotion. Demonstrating a milder visage at all other times more often has the effect of disarming a difficult witness." (3)

At the union bargaining table, each side designates a lead negotiator as primary spokesperson who has the authority to "make the deal." The communication style of each of these two individuals has a sizeable impact on the negotiation process and outcome. Clearly, the human resource lead negotiator must have the skills and ability to negotiate with a variety of communication styles of union business agents. Human resources, by its nature, is an expansive field. Depending on the size of the organization and staffing levels, human resource professionals typically "wear a variety of hats." Since union contracts typically cover a three-year period, the human resources staff person designated as lead negotiator will typically act in that role once every three years (varies with number of union contracts in organization). In contrast, the union business manager's entire role is to frequently act as lead negotiator and daily handle political give-and-take business situations. Therefore, the union negotiator has much greater

ongoing learning opportunity to become expert in the “acting role” part of the art of negotiation.

Labor relation veterans say that nothing provides more learning value than on-the-job experience; however, not all human resource professionals are in a position to learn under the guidance of a mentor or to gain exposure to labor relations before real-life opportunities arise. This learning curve is similar to what legal counsel experience in the arbitration setting: “...the difficulty experienced by counsel who must learn largely by doing. For most counsel these skills are acquired usually after much pain, suffering and embarrassment.” (4)

The structure of the organization is a factor in the ability of a human resource professional to gain labor negotiation experience. In many local governments or companies, the labor relations department sits by itself and their employees interact relatively rarely with professionals in other human resource functions. This is illustrated by observations by a senior manager in *The Rebirth of Labor Relations* are: “There’s not a lot of overlap - many labor relations departments are ‘segregated’ either formally or informally. That’s how it’s been throughout my career, and it continues today. The expertise has traditionally been concentrated in the hands of very few people.” (4)

Negotiating with Assertive Union Bargaining Team

Personal note: After 17 years of working in progressively responsible human resources positions with union employees, the author began employment as Human Resources Director of an electric utility having an extremely assertive union business manager and bargaining team. However, during those 17 years in municipal government human resources no opportunity was afforded for formal or on-the-job training in negotiating union contracts at the bargaining table. The utility’s last union contract negotiation was extremely volatile, leading to the utility’s general manager forcibly removing the union business manager from company property and deep entrenchment of mistrust and anger by union employees towards management.

The human resources negotiator must be cognizant of numerous legal regulations when negotiating at the bargaining table, especially when the union team is highly assertive. The National Labor Relations Act and State Labor Relations Boards require both the human resources negotiator and the union representative to bargain in good faith. Some indications of not doing so include: lack of providing or countering proposals, not paying attention at the table or being disrespectful, sending a representative without authority to reach agreement, agreeing to give the union something with a condition they give up something management doesn’t have a legal right to require them to do, communicating with employees other than those at bargaining table about what is discussed there, backtracking on agreements already made, or a behavior pattern of sitting at table just going through the moves. (5)

When the union negotiator is very assertive and comes with a negative history of interaction with the organization, it is even more important for the human resources negotiator to present an attitude of openness, fairness and consistency. An experienced human resource professional stated in an SHRM article: "When the union [leaders] saw me exploring different options with supervisors and managers sitting at the table to try to get some of what they wanted, I became less of an adversary. At the same time, it is a tricky dance because you don't want management to think that you're not there for them."(4)

As mentioned above, elements of social psychology enter into negotiating. "A principled negotiation is a strategy that seeks to move both parties away from polarizing and usually entrenched positions, and into the realm of interests. It asks how both parties can get their interests satisfied while keeping their relationship strong. Negotiating well means neither party need feel cheated, manipulated or taken advantage of."(9) In order for two individuals, as in negotiation, to reach resolution on a disputed topic, psychologist Dan Shapiro, associate director of the Harvard Business School Negotiation Program, states the following core needs need to be met in both parties:

- Autonomy [freedom to make decisions for yourself]
- Having your actions acknowledged
- Affiliation [being treated as a colleague]
- Status [feeling that others respect your standing]

His research has demonstrated that if one of these needs is crossed off, then more conflict will arise.

Listening well is critical to building trust at the bargaining table, and even more so with a negative, assertive union negotiator. A seasoned negotiator for the University of California system states that really paying attention to what the other person has to say is difficult.(9) Therefore, when negotiating he recommends:

- Sit down
- Find common ground [approach other person by talking about a neutral topic of mutual interest then transition to the problem]
- Lean in to the conversation to indicate interest
- Keep your cool [no yelling or walking away]
- Be brief
- Try to find whatever positive emotions can be brought to the table
- Avoid empty threats, use intimidation sparingly
- Don't yield, instead look for compromises (9)

When negotiating at the bargaining table with an assertive union business manager, the human resource negotiator should also remember the following three points: Never give up something without getting something in return. Caucus whenever

room gets tense on certain topics. Do not be afraid to discuss the issues off the record with the union negotiator.

Conclusion

In negotiating a union contract, there is much that can go wrong and the stakes are high that impact management of the organization. In the words of Harvard researchers: "It's easy to come up with a recipe for disaster when the subject is negotiation. As in chess, once you sit down at the table every move counts."(8)

In today's business environment, strenuous U.S. economic conditions, increasing globalization and rising union activity make having expertise in labor relations even more important. Competency in labor relations requires solid skills in the art of negotiation. Culturally, skill in negotiating is not widely taught in our families and schools. It appears negotiation and strong labor relations skills are in short supply among human resource professionals. The opportunity to learn how to negotiate during union contract negotiations on the job is also limited. Of the current labor relations experts, many have been on the job for close to two decades and are nearing retirement. Additionally, although about 75 universities —most notably Cornell and the University of Michigan— still offer some form of labor relations program, most human resources university curricula now emphasize general human resources education and skills to a much greater degree.(4)

In conclusion, it is strongly recommended that universities to teach skills in the art of negotiation for business and human resource students. In organizations, human resource departments should provide opportunities for mentoring in labor relations and negotiation skills for employees. The art of negotiation, its simplest sense being a give-and-take discussion in an attempt to settle a dispute, should be valued and encouraged in our secondary education systems. It is vitally important that human resource professionals acquire skills in the art of negotiation, because without it we risk losing the strategic seat at the executive management table, weakening HR's ability to help direct and improve the organization.

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