

Successful Federal Bargaining – From an Agency Perspective

A number of factors influence a successful negotiation. These include negotiator skills, the strength of a position, merits of a proposal, and history before the Federal Service Impasses Panel. But by far, the most critical success factor is preparation. The better you prepare, the better you'll do at the table; no ifs, ands or buts.

Good preparation requires extensive research to identify the information a chief negotiator must have to represent the agency. My suggestion for organizing preparation efforts is the [Bargaining Preparation Worksheet](#). After you look at the worksheet, ask yourself the question: How comfortable would I be at a bargaining table with this information in hand?

As you can see, I made a number of assumptions in developing the worksheet. I believe bargaining mainly involves the shaping of expectations. In a successful negotiation that doesn't involve impasse, somehow the parties' expectations come together in agreement. I believe that information is the principal shaper of expectations. Facts convince.

Successful bargainers present a convincing case on an issue from its first discussion at the table. If your counterparts on the other side of the table recognize the hurdles that must be jumped to get agreement from you, they must either jump those hurdles or change their expectation about the outcome desired. If they ignore the hurdles, a gentle or not so gentle reminder that they'll face the same exact hurdles at impasse is a powerful incentive to become more flexible.

Another assumption I make is that questions are powerful tools to shape expectations. Good preparation allows the chief negotiator to use questions to identify gaps and weaknesses in the other side's case to create, change or eliminate a contract provision.

The purpose of gathering this information is to produce leverage in negotiation. The use of much of the data in the worksheet is obvious. For example, a negotiability analysis may, if favorable to the agency, lower the union's expectations concerning either the substance or at the very least language of its proposal.

The use of some of the information may be less obvious. Let's look at those sections.

Definitions Required (page 3)

Remember, language must be understandable not only to the employees and supervisors but also potentially to arbitrators. If you're bargaining overtime it's common to define terms such as call in, call back, or other such terms of art. Unless you want ambiguity, define terms or phrases that can have more than one meaning.

Specific Employees Covered or Eligible (page 3)

Individual employee qualifications, position title, grade or seniority often figure in some right or benefit spelled out in the contract. If a set of criteria must be met before a right can be triggered, the worksheet should address that fact. A common example would be the use of an overtime roster. I have also seen language that made eligibility for working at home contingent on maintaining a successful or better performance rating. Look at your contract. Eligibility language exists throughout most labor agreements.

Key Arguments

Historically, the Federal Service Impasses Panel and interest arbitrators have hung their decisions on certain arguments from the parties. All of the arguments below, if supported by facts, have power to convince the Panel to rule in your favor. Both Panel and Interest arbitrator decisions regularly cite these factors. I suggest that you are more likely to be successful convincing the union to buy into your concept or proposed language if you have prepared to bargain with the union as thoroughly as if you were presenting your case to the Panel.

Demonstrated Need is proving that certain language is necessary to preserve a right or benefit or, in management's case, to efficiently or effectively manage operations. This is the number one cited reason for the adoption of language.

Comparability is an argument that the language is common in other similar bargaining units, work environments, etc.

Administrative Problems are just what it appears to be, i.e., the proposal is cumbersome or difficult to operate, creates administrative burdens or is overly restrictive.

Direct Costs are those that result directly from the language. For example, language that requires an agency to provide the union with an office or equipment has a direct cost.

Indirect Costs are those that result from the language but are not clear on its face. For example, language that requires a quarterly report on new hires be provided the union creates the indirect cost of having someone assemble the data and put it into the specified report format.

Organizational Effect is the impact of language on the staffing or structure of the organization. For example, language that states that employees performing public contact work such as a social security service representative will not be required to staff an office alone has an organizational effect.

Mission/Work Effect is the impact the language would have on operations. For example, language requiring that overtime assignments be offered to any qualified employee may have an impact on such work issues as continuity on a project, delay in getting the job done, etc.

Productivity Effect is the projected impact on the quantity, quality or timeliness of the work produced. For example, a proposal that permits direct support staff to work an alternate schedule may impact the productivity of the people they support.

Customer Service Effect and Morale Effect are pretty much self explanatory.

Message Given is the impression left on the reader whether employees, managers or third parties. I always restated language that was negative or created a presumption of ill intent. For example, "Supervisors will not treat employees in an arbitrary or capricious manner" or "Management will not discriminate against an employee who requests leave..." implies they have done so in the past.

Benefits are just that. If this language is adopted, what benefits are created, changed or eliminated?

Locus of Responsibility goes to identifying who must do what. For example "Supervisors are responsible to advise employees when it is possible the employee will forfeit leave" versus "Employees will schedule their leave in such a way as to avoid forfeiture".

Creation of Rights and Duties is fairly obvious. It has been said the a good negotiator objectifies the other guy while subjectifying himself. Examples would be requiring an employee to follow certain steps to exercise a contract right or creating flexibility for a supervisor in responding to certain requests.

Effect on Flexibility addresses the degree to which language locks in a certain course of action by management.

Final Thoughts

Preparation is essential. It is axiomatic that a fool and his money are soon parted. If you are not willing to do the upfront work, don't be surprised if the other guy gets what he wants. My challenge to all of you management negotiators out there is to improve the worksheet. What lessons have you learned that would improve bargaining preparation?