

Labor Negotiation

2023 Best Practices

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Modules

1. A brief history
of US labor
relations

2. Alaska public
sector collective
bargaining

3. Preparing for
Negotiations

4. Selecting your
bargaining
strategy

5. Drafting &
Notetaking

6. At the table

7. The end

Questions

DISCLAIMER

Module 1

A Brief History of US Labor Relations

Module 1: A brief history of American Labor Law

- Organized labor and the development of labor law has a long history in the US. The first American Labor case was decided by a court in 1806!
- The first 100 + years of American labor relations was “rich in crises and governmental counter measures”.*



The National Labor Relations Act (NLRA) or The WAGNER Act

Actual photo of Sen. Wagner going to work



- In 1934, Senator Robert Wagner introduced a far-reaching bill to support employee organizing and collective bargaining
- Despite the political climate being more receptive to labor issues than before, Sen. Wagner's bill faced vigorous opposition including an initial lack of support by President Roosevelt.

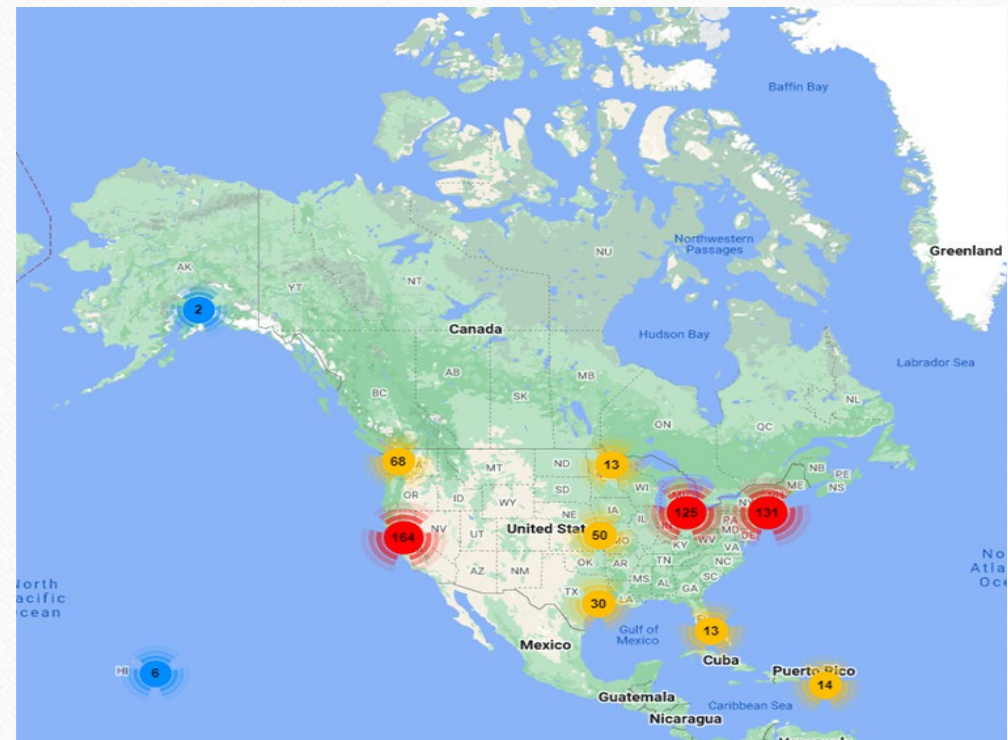
The NLRA in a Nutshell

- Gave workers the right:
 - ✓ To join or form unions
 - ✓ To engage in collective bargaining
 - ✓ To engage in protected “concerted activities” for mutual aid and protection
- Established the National Labor Relations Board to make these rights legally enforceable
- Prohibits employers:
 - ✓ from interfering with workers’ rights
 - ✓ from engaging in unfair labor practices
- Amendments:
 - ✓ Subsequent legislation added protection for Management against union unfair labor practices, required notice & mediation before a strike or “lock out”, and added regulation on internal union affairs
 - ✓ Gave state “right to work” laws precedence

Labor Today: 366 Labor Actions in 2023

Over 450,000 Employees on Strike

- Screen Actors Guild
- Writers Guild of America
- United Autoworkers
- Health Care Workers
- LA Hotel Workers
- Alabama Mining
- Starbucks



Module 2

Introduction to the Law of Alaska Public Sector
Collective Bargaining

What Does This All Have To Do With Alaska?

- The NLRA *does not* cover public sector work.
- Employees of state or local governments only have collective bargaining rights if their state legislature has granted them such rights in statute or the governor has done so by executive order.
- Where states have granted these rights, the law is typically modeled on the NLRA.
- The Alaska Public Employment Relations Act (PERA) was passed in 1972; PERA law mirrors the NLRA in many ways
- Alaska's enforcement body is the Alaska Labor Relations Agency (ALRA).
- PERA is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.



Why PERA ?

- The legislature found that joint decision-making was “the modern way of administering government.”
- That public employees **sharing in the decision-making process affecting wages and working conditions** are more responsive and better able to exchange ideas and information on operations with their administrators, making government more effective.
- Legislation for public employment relations is intended to:
 - provide a rational method for dealing with disputes and work stoppages
 - strengthen the merit principle where civil service is in effect
 - maintain a favorable political and social environment

The Collective Bargaining Agreement

A *bargained for agreement* between the employer and the union that applies to all members of the bargaining unit:

That the CBA is *bargained for* is an important concept – each party reached the agreement through good faith negotiations, which means:

- Each party compromised on important interests
- Therefore, honoring the terms as agreed to is important
- Tracking how the CBA is working for you is important!
 - Pressing issues may be addressed through a Memorandum of Understanding (MOU) with the Union between cycles if appropriate
 - Or be renegotiated at the table during the next bargaining cycle

Three Subjects of Bargaining

Mandatory

- *Must* be negotiated if either side raises them during the negotiations process.
- Examples: wages, hours, and other terms and conditions of employment.

Permissive

- *May* be negotiated by either party, but you cannot compel a party to bargain.
- Examples: Assignment of duties, ground rules for negotiations, pre-hire minimum qualifications

Illegal

- Excluded from bargaining. Neither party can insist on bargaining about such subjects.
- Examples: clauses which result in unlawful discrimination or in conflict with applicable law.

Duty to Bargain in “Good Faith”

- **Duty derived from statute and case law**
- **Good faith is a mutual obligation**
- **What does good faith bargaining require?**
 - Meeting at reasonable times and places
 - Bargaining with the intention of reaching an agreement
 - Making legitimate efforts to find compromise
 - Good faith *does not* require making any specific concession & actually coming to an agreement

What is “Bad Faith” Bargaining?

- Refusing to meet or delaying excessively: Nobody has time for this.
- Surface Bargaining: Keeping up appearances without really committing or investing in the process.
- Direct Dealing: Circumventing the official representatives to bargain with others.
- Regressive Bargaining: Offering something then taking a step backward to offer less.
- Negotiator has insufficient authority: “I have to go ask permission on this.”
- “Take it or leave it.”
- Can be a “per se” violation or determined by “totality” of the circumstances test.



A non-exhaustive list of

Unfair Labor Practices

- Threatening employees with adverse consequences if they engage in protected, concerted activity.
- Promising employees benefits if they reject the union.
- Prohibiting employees from talking about the union during working time, if you permit talk about other non-work-related subjects.
- Spying on union activities or creating an impression of spying on union activities.
- Denying off-duty employees access to outside nonworking areas of your property, unless business reasons justify it.
- Prohibiting employees from wearing union buttons, t-shirts, and other union insignia unless special circumstances warrant.
- Disciplining or discharging a union-represented employee for refusing to submit, without a representative, to an investigatory interview the employee reasonably believes may result in discipline.
- Lending support to or approval of a decertification or union-disaffection petition.
- Retaliating against employees because of their protected, concerted activities.

Module 3

Preparing for Negotiations

It's a Marathon Not a Sprint



Developing Priorities



Review

Last Bargaining – what was left on the table?

Review Grievances



Research

What are the Unions focusing on?



Meet

Meet with Each Department

Meet with City Manager



Rank

Rank Priorities Now

1. Must have
2. Would be nice
3. Can wait

Putting Together a Team

Chief Negotiator - Lead Role

- ✓ Sets ground rules for team
- ✓ Develops a working relationship with the other side's chief negotiator
- ✓ Makes all offers, responds to offers, and accepts offers
- ✓ Will invite team members to talk on specific items if needed
- ✓ Responsible for updating management after each session

Support Team - Observation Role

- ✓ Listening during bargaining sessions.
- ✓ Providing advice during “side-bar” sessions prior to or following the bargaining sessions.
- ✓ Take on research tasks as assigned

Costing Out – The Finance Director is Your New BFF



What Can You Pay?

Wages
COLAs
OT, Shift Diffs, or
Premium Pays
Health Care Costs
Pensions
Holiday/PTO
Education Benefits
Gear Allowances



Review Local CPI
Review Housing Costs

AK DOLWD

**[https://live.laborstats.
alaska.gov/](https://live.laborstats.alaska.gov/)**



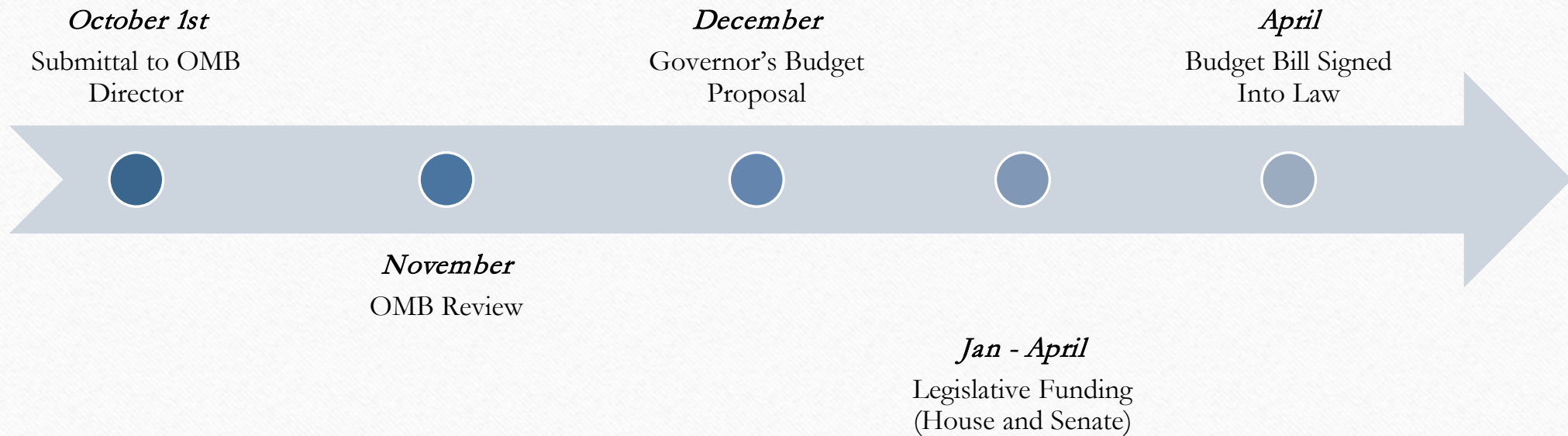
Look to Other
Municipalities for
Comparators



Don't forget
compounding!!

1-1-3 ≠ 3-1-1

Know Your CBA Funding Process



Negotiations Binder

Let's get organized!

1. Sign in sheets for each session
2. Create a tab for every contract provision
3. Date and initial each offer (make the other side do the same)
4. Have a note-taker for every session – make sure they identify the contract provision being negotiated, for ease of research later
5. Don't throw anything away!



Module 4

Picking Your Strategy



What are your organization's goals?

Traditional “Positional” Bargaining

- ✓ Positional approach
- ✓ One person on each side leads
- ✓ Less discussion at the table
- ✓ More adversarial
- ✓ Uses leverage and packaging



Traditional Bargaining

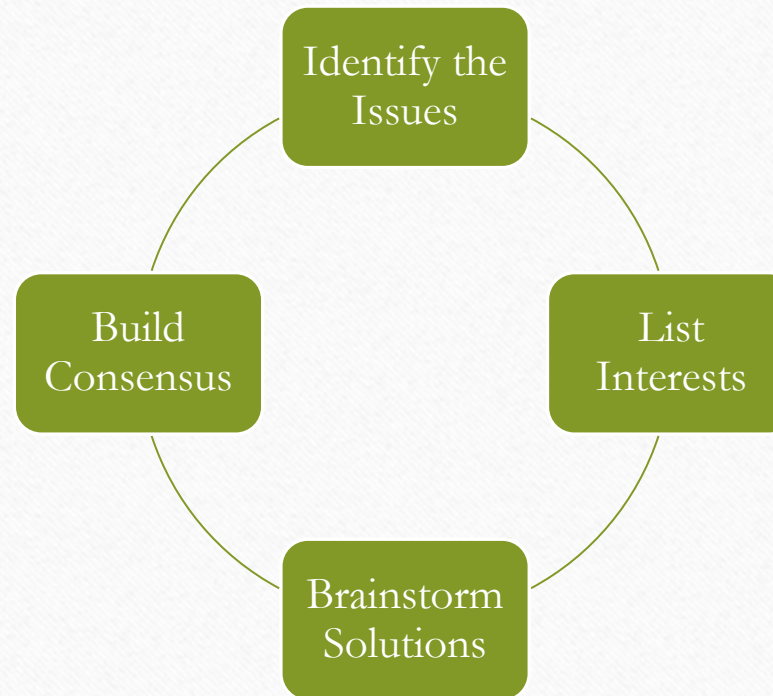


Interest Based Bargaining

- IBB is the collective bargaining strategy recommend by the Federal Mediation and Conciliation Service (FMCS).
- IBB is a collaborative approach to resolving labor and management disputes. Agreements are based on mutual and individual interests rather than positions.
- This approach emphasizes problem solving and enables mutual gain outcomes.



Interest Based Bargaining



Module 5

Drafting & Notetaking

Where to start?



Preparation is key – research other contracts and grab language that you like.

Language will be construed against the drafter.

Write it out and then play with the language.

Drafting Tips

- ✓ Write for the bargaining member (not your lawyers)
- ✓ Be consistent with word choice
- ✓ Define terms of art
- ✓ Avoid ambiguous language
- ✓ Contract placement is important
- ✓ Use common English
- ✓ Short, complete sentences
- ✓ Watch punctuation ... it matters
- ✓ Proof-read and proofread again

Handling Proposals at the Table

- Version control

- Make enough copies for everyone.
- Clear Label = is it the employer's initial proposal? Unions? Employer counter proposal?
- Date & time given to other side.
- Any changes made at the table need to be added (red pen), date, time, and who made the change.
- Make sure it is clear what language has changed between versions!

How to TA an article?

Identifying Proposals and Counters

Employer Initial Proposal (EIP)
Article 10

Union Name/2023-2026 Contract
Negotiations

May 15, 2023

9:00 AM

Page 1 of 6

Union Counter Proposal 1 (UCP1)

Article 10

Union Name/2023-2026 Contract
Negotiations

May 16, 2022

10:00 AM

Page 1 of 6

More Examples

ECP1 to UCP1
Article 10

Union Name/2023-2026 Contract
Negotiations

June 29, 2023

10:15 PM

Page 1 of 6

Tentative Agreement

Article 10

Union Name/2023-2025 Negotiations

June 29, 2023

10:30 PM

Page 1 of 6

Show all changes

added language is underlined
deleted language is crossed out

10.7 Removal of Documents

A. ~~Records of disciplinary actions will~~ Letters of reprimand may be removed from an employee's personnel file after three (3) years if:

1. Circumstances do not warrant a longer retention period, including the severity and nature of the misconduct; and
2. There has been no subsequent discipline or similar documented concern; and
3. The employee submits a written request for its removal.

3.2 Union Representation

Upon request, an employee shall have the right to Union representation during an investigatory interview that an employee reasonably believes may result in disciplinary action. An employee may also have a union representative at a pre-disciplinary meeting. The employee will have the opportunity to consult with a Union representative before the interview, but such consultation shall not cause an undue delay.

Taking Notes Tips

- Record everyone who attends & their role
- Capture who is speaking, time, and article
- Very important to include reasoning and concerns
- Pay close attention to money amounts!
- It is ok to ask for speakers to pause, slow down, or repeat themselves
- Don't stop to correct typos! You will fall behind
- SAVE OFTEN!
- No notes during caucus (or sidebars)

Speaker/Time	Article #	Discussion
Meeting convened at 9:20 a.m.		
Emily 9:20 am	10	The first thing to talk about today is the Employer counter proposal. In 10.2 we changed the word "shall" to "may" because discretion is important. However, we can accept your changes in subsection 2.
Allison		We appreciate that movement, but our members are worried about arbitrary application

Module 6

At the Table and Away from the Table

Bargaining Tips

- Listen
- Be respectful and flexible
- Honesty – always
- Use of “side bars” – off the record discussions
- And don't be afraid to take breaks



Design Your Process

Best Practice

- Meet with your counter to set up your draft negotiation schedule
 - Every other week?
 - Alternative locations?
 - Zoom or in person?
- Discuss how you will handle information requests
- Provide a copy of draft ground rules

Proposal #1 Ground Rules



The purpose is to expedite and facilitate

- Dates, Time, and Place
- Teams (Ex. How Many, Switching Out, and Who Talks)
- Calling a Caucus
- Agendas for Negotiating
- Written and Signed TAs
- Non-Economic First and Packaging
- Utilizing Supposals
- All Proposals Due By XYZ Date

Away From the Table

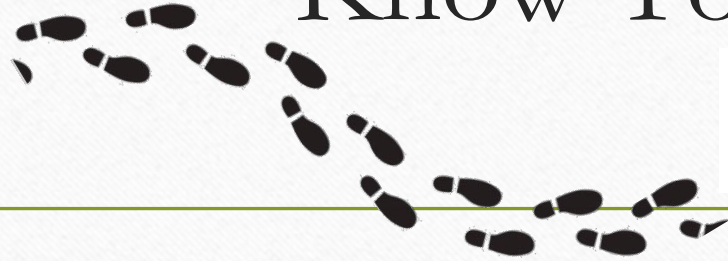


Module 7

What happens if an agreement is not reached?



Know Your Path



FMCS

FEDERAL MEDIATION &
CONCILIATION SERVICE

CBJ Code Language

44.10.110 Strike prohibited.

Employees may not engage in strikes. Upon a finding by the City and Borough manager that employees are engaging or about to engage in a strike, the assembly may petition or order a petition to the superior court for an injunction, restraining order or such other order as may be appropriate.

44.10.090 Mediation and factfinding.

44.10.100 - Assembly decision conclusive.

PERA

Alaska Statute 23.40.200

(1) those services which may not be given up for even the shortest period of time = ARBITRATION

(2) those services which may be interrupted for a limited period but not for an indefinite period of time = STRIKE after MEDIATION

(3) those services in which work stoppages may be sustained for extended periods without serious effects on the public = STRIKE

*Schools = advisory arbitration before employees can strike

Questions?
