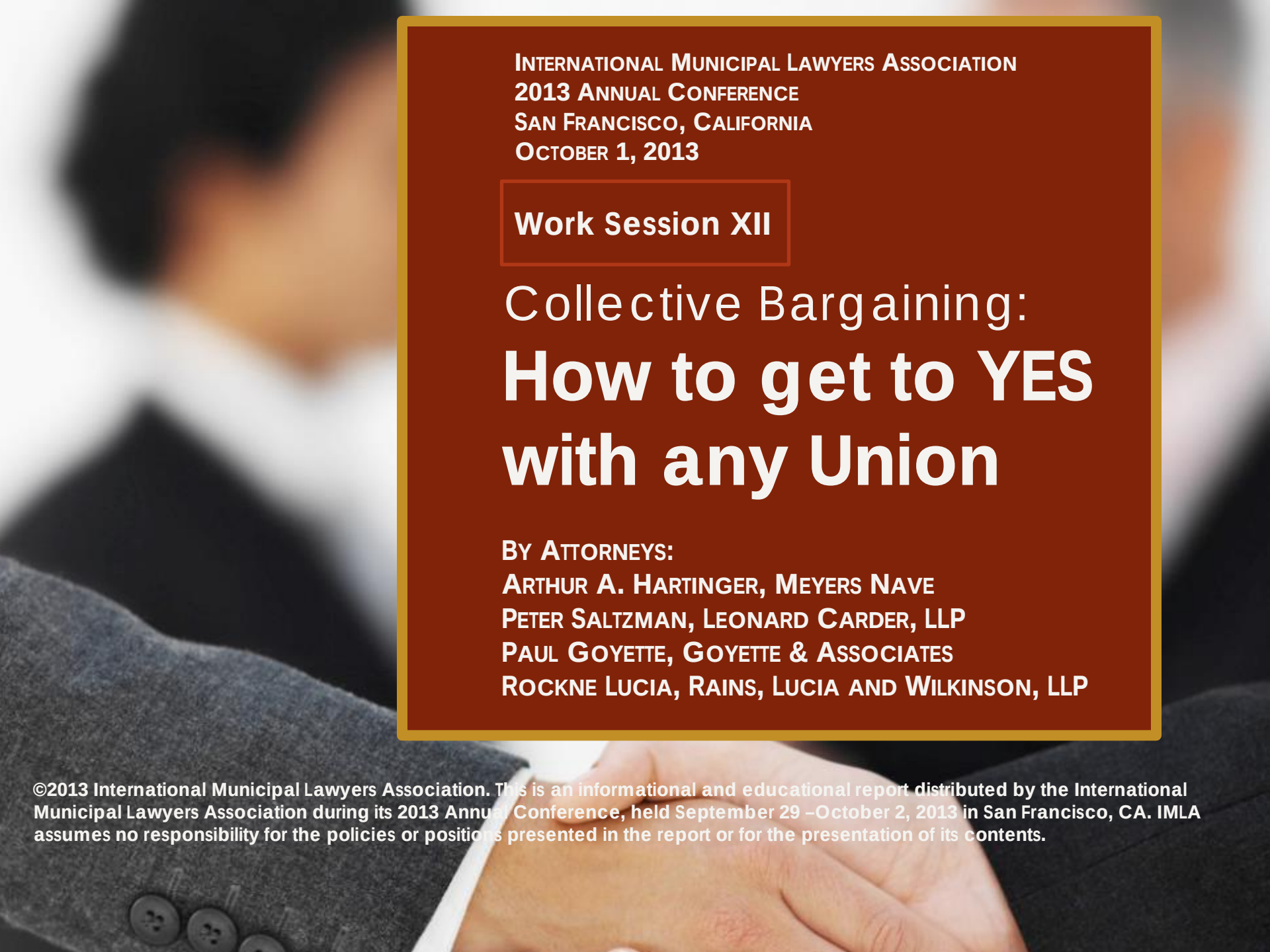

INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION
2013 ANNUAL CONFERENCE
SAN FRANCISCO, CALIFORNIA
OCTOBER 1, 2013

Work Session XII

Collective Bargaining: How to get to YES with any Union

BY ATTORNEYS:
ARTHUR A. HARTINGER, MEYERS NAVE
PETER SALTZMAN, LEONARD CARDER, LLP
PAUL GOYETTE, GOYETTE & ASSOCIATES
ROCKNE LUCIA, RAINS, LUCIA AND WILKINSON, LLP

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OVERVIEW

- Duty to bargain
- Scope of bargaining
- Legal structure
  - knowing the law
  - strategic considerations
  - substantive knowledge



Court and Board Decisions

- NLRB (National Labor Relations Board)
- State Labor Relations Boards


What is the definition of good faith bargaining?

Duty to Bargain In Good Faith

- Meeting at reasonable times and places with the intention of reaching an agreement
- Does not require making any specific concession



Bad Faith Bargaining



Determining bad faith bargaining

- Per Se Violation
- Totality Test



Per Se Violations

- Failure to provide information
- Absolute refusal to meet
- Failure to execute agreement
- Impasse as a result of non-mandatory subjects
- Conditioning proposals on waiver of rights
- Unilateral changes without notice and opportunity to bargain





Totality Test

- Indicia of bad faith…
  - Lack of proposals
  - Stalling tactics
  - Lack of authority to agree
  - End running the negotiators
  - Regressive bargaining
  - Surface negotiations
- …in any combination

Lack of Proposals

- Does not require making concessions
- Can engage in firm or hard bargaining if sincerely held
- Start with the last, best and final offer? (problematic)

Stalling Tactics

- Cancel scheduled meetings
- Delay in responding
- Unprepared
- Excessive caucuses



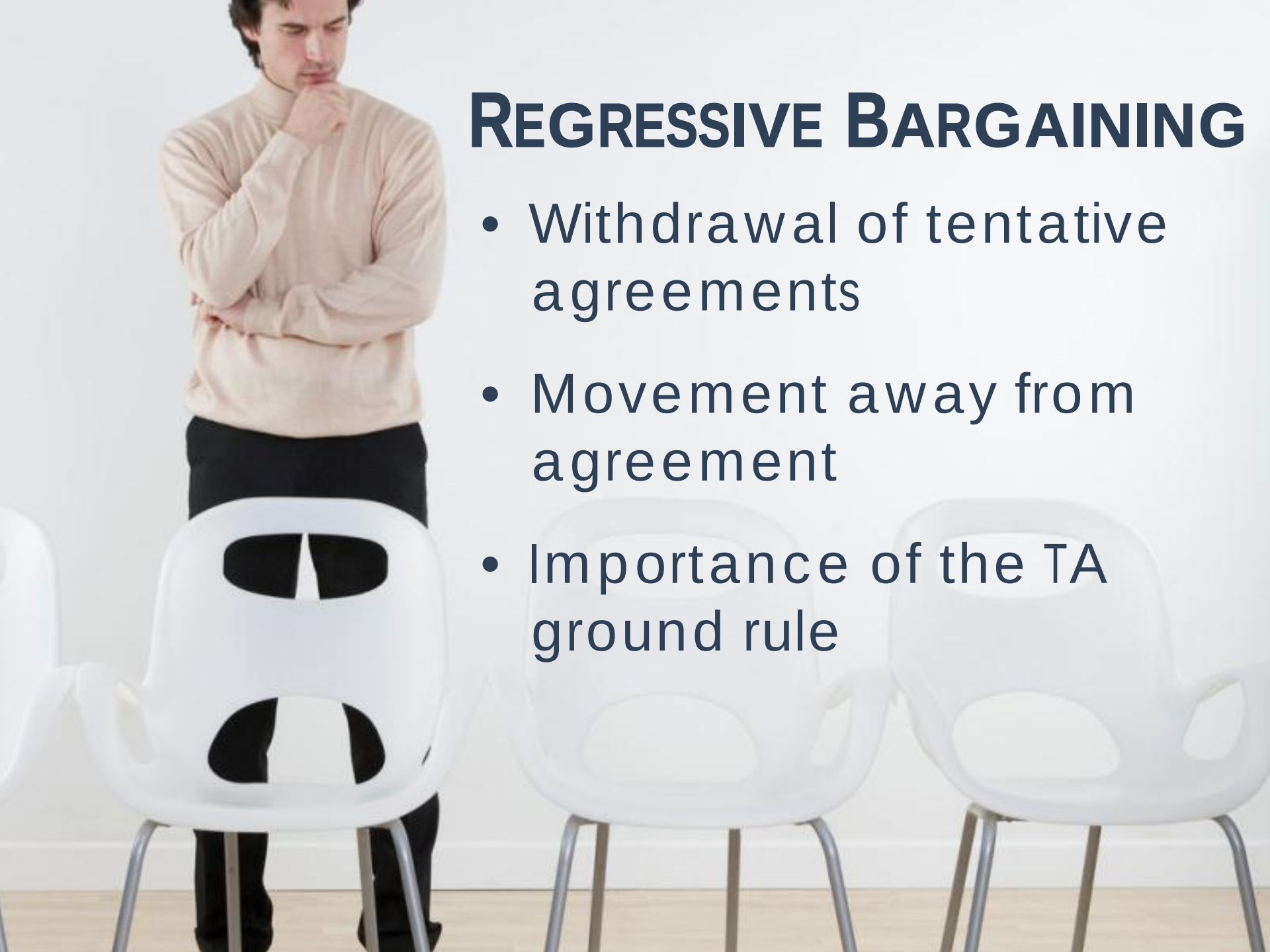


Negotiators Without Authority

- Authority to reach agreement
- Requires a good faith recommendation to principals
- But does not require adoption

Bypassing Representatives

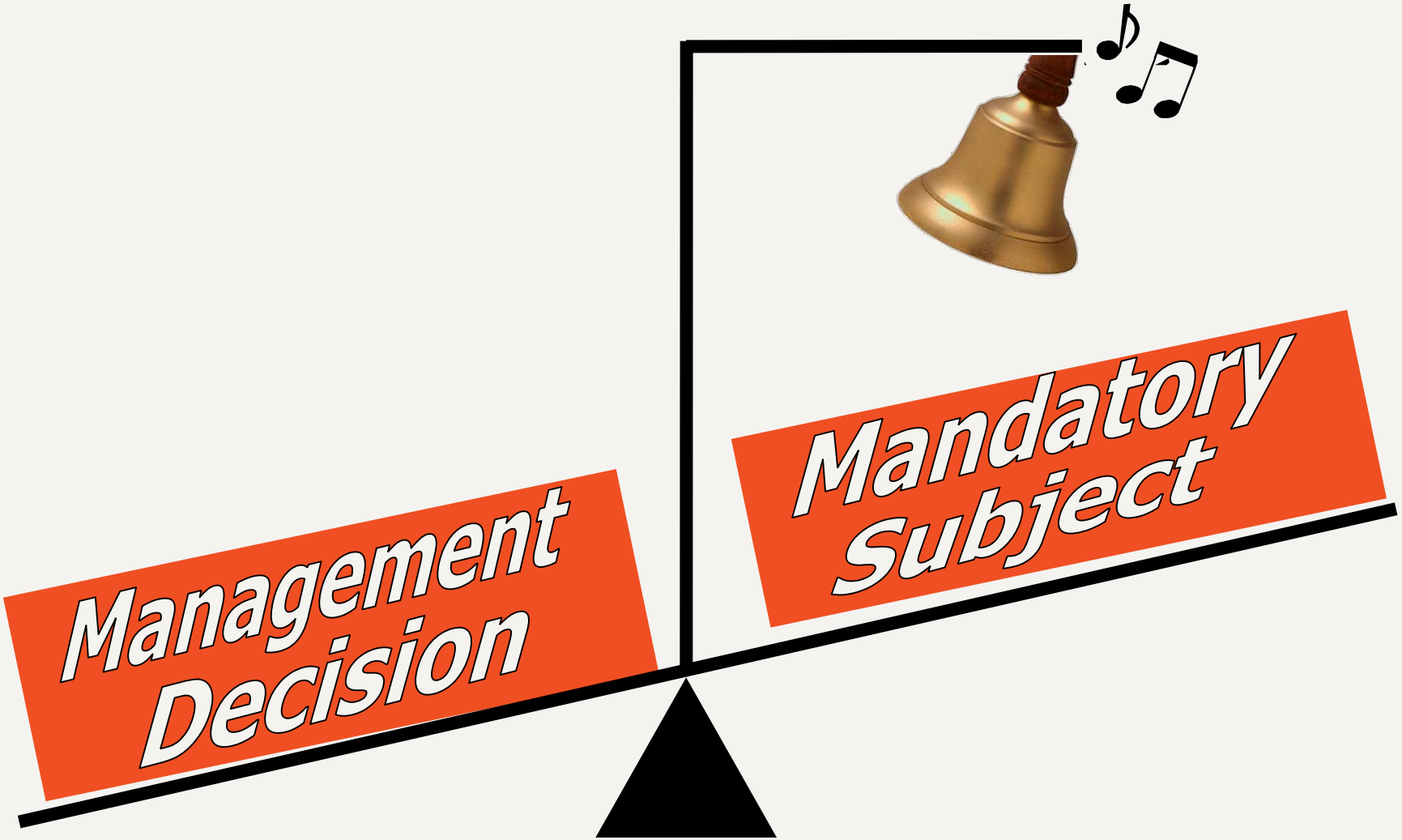
- Direct dealing with employees on mandatory subjects
- Communications must be factual, not denigrate union, and must not attempt to persuade or threaten
- Limited free speech for employer



Regressive Bargaining

- Withdrawal of tentative agreements
- Movement away from agreement
- Importance of the TA ground rule

Duty To Bargain



Duty To Negotiate

- Is a continuing obligation unless it is suspended or waived
- Triggered by proposed change in mandatory subject



OBJECTIVE TO REACH A MEMORANDUM OF UNDERSTANDING



QUESTIONS FOR THE PANELISTS



Contact Information

Arthur A. Hartinger
Meyers Nave
800.464.3559
ahartinger@meyersnave.com

Paul Goyette
Goyette & Associates
916.851.1900
goyettep@goyette-assoc.com

Peter Saltzman
Leonard Carder, LLP
415.771.6400
pwsaltzman@leonardcarder.com

Rockne Lucia
Rains, Lucia and Wilkinson, LLP
925.609.1699
rlucia@rlslawyers.com

About the Presenters

- Arthur Hartinger chairs Meyers Nave's Labor and Employment Practice Group. Art represents public and private clients in complex state and federal litigation pertaining to all types of labor and employment issues. As a lead negotiator in collective bargaining, he has represented numerous employers in negotiations with professional and service employees – including those in police and fire departments.

- Peter Saltzman is a partner at Leonard Carder LLP, where he has worked with union clients for the past 15 years, including unions representing municipal and county employees, public transit workers, longshore workers, merchant mariners, electricians and others. Currently, Mr. Saltzman is representing transit unions in collective bargaining with the Bay Area Rapid Transit and Alameda County Transit Districts.

- Paul Goyette is an entrepreneur, trial lawyer, business builder and visionary. Paul founded and is the Chief Executive Officer of the full service law firm of Goyette & Associates, Inc. Paul is also the founder of RN Guardian and EMS Guardian which offers prepaid legal programs to Paramedics, EMT's and California Registered Nurses and Paul is the CEO of G Ventures, LLC and a Board Member and owner of Primal Quest LLC.

- Rockne ("Rocky") A. Lucia, Jr. manages the Collective Bargaining Practice Group for Rains, Lucia and Wilkinson. He represents and advises labor associations on all matters, including contract negotiations, grievances, unfair labor practices, bargaining unit certifications and modifications, meet and confer rights, pension rights, retirement benefits, mediation and arbitration. He represents association clients in impasse proceedings, binding interest arbitration, state court actions, federal and state grand jury investigations and federal consent decrees.