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"SHOW ME YOUR HANDS!" Analyzing a Critical Element in Qualified Immunity

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CONTENTS

JANUARY / FEBRUARY 2025

THIS IS THE WAY: EQUAL ACCESS TO BROADBAND THROUGH MUNICIPAL FRANCHISING

By: Michael R. Bradley, Partner, Bradley Werner, LLC, Minneapolis, Minnesota

As the FCC meets resistance in its efforts towards ensuring that all consumers have equal access to broadband, local governments have a major role to play. Through franchising, localities can leverage use of valuable rights-of-way, extracting concessions from providers and protecting constituents.

PAGE 6

"SHOW ME YOUR HANDS!" -ANALYZING A CRITICAL ELEMENT IN QUALIFIED IMMUNITY

By: Robert W. Higgason, Senior Assistant City Attorney, Houston, Texas

In analyzing the justification for use of deadly force by law enforcement, few factors are more important than the ability of an officer to see the hands of a suspect. A quarry's decision about whether to reveal both hands, clearly and free of weapons, can be the decisive factor in assessing qualified immunity.

PAGE 14



DEPARTMENTS

18 INSIDE CANADA

Pride Month, Reasonable Accommodation, Site Plan Denial, and More

By: Monica Ciriello, Director of Municipal Law and Licensing Compliance, City of Hamilton, Ontario

Recent Canadian cases of interest.

20 DAY IN THE LIFE

Municipal Lawyering on the Kenai River

By: Avery Morris, IMLA Editorial Staff

22 AMICUS

Appellate Challenges Ahead for Local Government

By: Erich Eiselt, IMLA Director of Legal Advocacy

Cases headed to the Supreme Court portend increased litigation and expense.

26 PRACTICE TIPS

Reaching the Finish Line: Pointers on Negotiating Labor Agreements

By: Nastasha Anderson, Senior Attorney, Arlington, Texas

Preparation, education, and communication add up to success.

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PRACTICE TIPS

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Reaching the Finish Line: Some Practical Tips on Negotiating Labor Agreements

INTRODUCTION

Most governmental entities encounter labor negotiations in some form or fashion each year. When some people think of labor negotiations, they may think of strikes, walk-outs, and demands from the workforce for greater pay and benefits. They may even think of picket lines or see a news story discussing the latest lawsuit between an employer and a labor group.[1] For example, in 2018, the relationship between the labor group representing the City of Arlington firefighters and City management had deteriorated and a lawsuit was ultimately filed.[2] The lawsuit briefly made the news and the labor association even released a statement discussing the relationship between the firefighters and management.[3]

Labor agreement negotiations do not always result in the worst-case scenarios as the examples above. Five years after the filing of the lawsuit in Arlington, the resulting litigation was resolved, and the relationship had improved drastically – so much so that a Memorandum of Understanding was agreed to by labor and management as a result of the Meet and Confer process and ultimately approved by City Council.

Negotiations with a labor organization can take a lot of effort, and this article provides some tips and advice on reaching the finish line – walking away with an agreement.

Background

Collective bargaining[4], which generally governs labor agreement negotiations, has existed in the private sector for 90 years[5], but was not required in the public sector until 1962, when Wisconsin enacted legislation authorizing public sector collective bargaining.[6] Since then, numerous states have enacted legislation allowing state and municipal employers to participate in some form of collective bargaining.[7] In Texas, for example, collective bargaining is authorized for police and firefighters[8], while Minnesota has authorized collective bargaining for all public employees.[9] Most state laws fall into three different models: 1) collective bargaining; 2) "pure meet and confer," and 3) "modified meet and confer."[10] Knowing the laws that govern labor negotiations in your state is imperative before starting the process. Collective bargaining and modified meet and confer include a duty to bargain, which means the parties must bargain in good faith or risk committing an unfair labor practice.[11] In contrast, under pure meet and confer (the process required of the City of Arlington with its firefighters, there is not a specific duty to bargain and there does not have to be an agreement. Regardless of the model used, the following tips can be utilized to help the parties reach an agreement both sides can be happy with.

Tip No. 1 -Prepare. Prepare. Prepare. It may seem like a cliché, but preparation is a major key to achieving a labor agreement. In order to prepare effectively, you have to understand the goals of each side, meet with top management and important personnel who are the decision-makers in your organization to ensure you lay out what to expect throughout the process, determine a strategy, and conduct any necessary research.

A. Begin with the "Finish" in Mind- To get to the finish line, you must know what that finish line is. In other words, before you begin negotiating, you need to know what you want –your ultimate objective.[12] One of the first items that should be on the list is meeting with management to determine management's goals for the negotiations. Do they want labor's buy-in for a particular new policy or procedure? Have there been any issues or concerns with current practices or policies that management would like to address? Knowing what goals management has helps

you see what the desired finish line is.

In addition, it is important to gather information on the priorities and goals of the labor organization. Is there a particular process labor would like to see occur? Are there additional benefits labor will ask for? Take note of the issues and concerns both sides could potentially bring to the negotiating table. Understanding the goals of your organization, but also how those goals complement and/or conflict with the labor organization is crucial to effective preparation. When you have done this, it makes it easier to define any alternatives that exist.

In the book *Negotiating to Yes* by Fisher and Ury of the Harvard Negotiation Project, developing alternatives was characterized as finding your "BATNA."[13] What does that stand for? It is an acronym for: "Best Alternative to Negotiated Agreement".[14] According to the book, defining specific alternatives helps in preparation so that there are plans for what will occur if management does not get exactly what they want. In some instances, the BATNA could be agreeing to something the labor organization wants in order to garner support for management proposals, but it could also mean management deciding that it will be fine with no agreement at all. Whatever the alternatives are, having a handle on how the organization will proceed should the best case scenario not happen is crucial.

B. Conduct Research

As discussed above, labor negotiations are governed by various federal, state, and local laws. Understanding what laws govern your jurisdiction is imperative. The worst thing that you do not want to happen is to think you are ready for negotiations and realize at the last moment there is some provision of the law that you have failed to follow. For example, in Texas, Meet and Confer meetings are considered open meetings and subject to the Texas Open Meetings Act.[15] As such as such, a meeting notice has to be drafted and published before the meeting takes place.

If you know that one of the issues for labor will be benefits, you may want to conduct market research to gauge what the relevant market is paying in terms of salary and benefits. You can have this information on hand in order to be prepared for any proposals that may come from labor.

C. Meet with Important Management Stakeholders

If your organization participates in collective bargaining, meeting with management stakeholders is extremely important since the actual negotiation team will be limited to no more than five individuals. In a process such as Meet and Confer, there will be additional opportunities to speak with stakeholders since they will likely be in the negotiating room. This is especially important if you are in a larger organization As the person who is helping to facilitate the agreement, you may not know the specific needs of each of the departments, and you could possibly be dealing with someone new to a role who will now be at the table during negotiations. Understanding the skillset of the team participating in the negotiations is vital. According to Michael H Boldt, everyone negotiates consciously and subconsciously.[16] Meeting with your negotiation team early on will only help to determine if there is any necessary training that must occur, or are there questions that members of the team may have that can be answered prior to the start of negotiations.

Tip No. 2-Learn the art of Negotiation.

If you are participating in collective bargaining, you may very well have only a handful of people in the room. However, if you are participating in a process such as Meet and Confer, you could have as many as fifteen people in the room. In order to be an effective negotiator, you must have an understanding that everyone involved will have different personalities, different values, and even different strengths.

A. Establish Ground Rules

The first negotiation meeting should include introductions of the negotiating teams for both management and labor, as well as establishing some ground rules. This may also be at time where knowing the laws that govern your state will be helpful because there may be questions from both sides regarding how negotiations are to take place, the number of representatives allowed per team, and the particular location and length of time for the meeting.. Usually the union presents its proposals at the first meeting. You want the labor group to proceed first with proposals because they can set the tone for the meetings and it can be determined whether you have a labor team that is willing to be reasonable and moderate – or not.

When it is management's turn to talk, only your chief spokesperson (which may be you) should speak, except when it has been pre-arranged that another member of the team will speak to a particular topic. Reveal-

Continued on page 28



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ing information out of sequence or when the other side is not ready to receive the input can confuse them or send the wrong message, causing their expectations to get distorted. The chief spokesperson should explain management's position regarding each issue as clearly and completely as possible, then explain why management takes that position, and which of management's basic interests is involved.

Questions should be encouraged and answered thoroughly as soon as possible (sometimes more research is necessary to get the answer to a question). When firmness is in order, be firm. It is unproductive to waffle or say "maybe" when the only answer you'll ever be able to give is "no." Remember that it is virtually always necessary that a union be told "no" sometime during the negotiations. If you cannot do that, don't be involved.[17]

B. Remain Neutral

You are not the enemy, and neither is the other side.. While you may represent management, understand that you are in a position to also help facilitate the parties reaching an agreement. Remaining neutral helps you to maintain your trust and integrity, and you must keep that while negotiations are taking place. It will also help you to foster an environment of trust, honesty, and transparency. It may be difficult especially if the relationship between management and the labor union is contentious, but maintaining neutrality as best you can will help with furthering discission, especially if there is a stalemate.

Tip No. 3-Reassess and Follow Up

So, you've gotten the agreement. While you can pat yourself and your team on the back, the work is not done. Once you have the fully executed agreement in place, you must ensure that any new benefit terms, policies, or procedures are implemented and properly documented.

A. Implementation

Oftentimes, a new negotiated labor agreement will include a new benefit or could potentially require personnel policy revisions or changes to standard operating procedures for the department. For example, if you negotiate an agreement that has altered benefits granted by a governmental body, you may need to ensure ordinances are revised. While the legal team may not be the sole individuals responsible for drafting all the required policy changes, you do want to make sure to assist in facilitating the necessary amendments. Organization is key, and calling a meeting with the necessary stakeholders such as department managers or Human Resources representatives is important to cover all bases.

B. Maintaining Records

In the public sector, most meetings like labor negotiations are public. Although you may maintain records pursuant to specific state laws on retention, it is also important to have good notes and records yourself. You want to make sure you keep detailed records of all negotiations, agreements, and even communications. This will help not only in documenting what occurred for this round of labor negotiations, but it will also be important for future rounds.

Conclusion

Negotiating with labor organizations can be very challenging. However, properly preparing, understanding the legal and political landscape, and maintaining a commitment to being transparent and keeping communication open can help you achieve a fair and sustainable labor agreement that can meet the needs of the workforce, the organization, and the community.

1. ABC13 Home page https://abc13.com/post/houston-city-council-1-billion-firefighter-backpay-deal-hfd-raises/14970281/ (last visited Jun 20, 2024).
2. Edward Montague v. City of Arlington, Cause No. 096-297772-18, 2021 WL 4205012 (Tex.App—Forth Worth), no pet.; *see also* Dallas News https://www.dallasnews.com/news/2018/02/07/arlington-firefighters-sue-city-over-civil-service- conflicts/; https://www.nbcdfw.com/news/local/arlington-firefighters-sue-city-chief-alleging- retaliation/259604/ (last visited Jun 19, 2024).
3. CBS News https://www.cbsnews.com/texas/news/arlington-firefighters-union-morale/ (last visited Jun19, 2024).
4. For the purposes of this article, unless specifically stated, collective bargaining also includes the Meet and Confer process.
5. Congress initially passed the National Labor Relations Act in 1935. The Act excluded public sector employees.
6. NPELRA – The Foundation of Labor Relations - 2011
7. *Id.*
8. Texas 174.00
9. NPELRA – The Foundation of Labor Relations - 2011
10. *Id.*
11. *Id.*
12 Fisher and Ury, The Harvard Negotiation Project (2007).
13. *Id.*
14. *Id.*
15. *see* Texas Local Government Code 142.063.
16. Collective Bargaining and Guide and Legal analysis, Michael H. Boldt, 2016 Ice Miller LLP and The Mechanical Contractors Association of America.
17. *Id.*