

Recommended Protocols for City Councils During Labor Negotiations

Presenters

Dania Torres-Wong – Moderator

Kathy Miller – Elected Official

Rockne Lucia – Labor

Arthur Hartinger – Management



Agenda

- Introduction
- Legal Framework
- Fundamental Bargaining Principles
- Panel Discussion Regarding Best Practices
- Q & A



Meyers-Milias-Brown Act

- Obligates public agencies to meet and confer with labor organizations in an effort to reach a comprehensive memorandum of understanding (“MOU”)
- All issues within the “scope of representation” are subject to negotiation
- The scope of representation includes all matters relating to employment conditions, including “wages, hours, and other terms and conditions of employment
- Administered by the Public Employment Relations Board (PERB)



Meyers-Milias-Brown Act

- The scope of representation does not include consideration of the “merits, necessity or organization of any service or activity provided by law or executive order.”
- Fundamental managerial or policy decisions are outside the scope of representation



Test for Fundamental Managerial Decisions

- Does the management action have a significant and adverse effect on the wages, hours, or working conditions of the bargaining unit employees?
 - If not, there is no duty to meet and confer.
- Does the significant and adverse effect arise from the implementation of a fundamental managerial or policy decision?
 - If not, there is a duty to meet and confer

Test for Fundamental Managerial Decisions

- If both factors are present, then a balancing test is applied:

The action is within the scope of representation only if the employer's need for unencumbered decision-making in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question.

The court may consider if the "transactional cost of the bargaining process outweighs its value."

Fundamental Bargaining Principles

- Duty to bargain in good faith in an effort to achieve an agreement. Issues to consider:
 - Direct dealing
 - Discrimination
 - Surface Bargaining
 - Exchange of Information
 - Exhaustion of Impasse Procedures
- Key objective: reach an agreement
- Absent interest arbitration, the agency retains final authority



Roles and Responsibilities

- Elected bodies set policy and parameters, in closed session
- Elected bodies have final authority to approve labor agreements
- Administration implements the policy within the established parameters



Elements of Successful Bargaining

- Advance planning
 - The legislative body sets broad policy and bargaining objectives and economic parameters
 - The objectives and parameters are supported by relevant data
 - A majority of the legislative body authorizes its bargaining team to achieve articulated objectives
 - A unified legislative body is not always possible, but results in the best outcomes

Elements of Successful Bargaining

- Commitment to effective communications during negotiations
 - The legislative body communicates through its bargaining team
 - The bargaining team communicates regularly with the legislative body
 - All parties respect the objectives of the majority / individual elected officials have no individual right to set policy objectives
 - Individual elected officials refrain from communicating agency positions on matters subject to negotiation

Elements of Successful Bargaining

- The Board's labor negotiations team regularly communicates with the Board about progress, and seeks guidance when necessary for authority beyond what is authorized
- The chief executive (City Manager) presents either: (1) tentative agreement; or (2) recommendation to declare impasse

Panel Discussion About Best Practices

Unsuccessful Bargaining

- Examples
- Panel Discussion

Q and A With Participants