COLLECTIVE BARGAINING UNDER THE IPLRA

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Presented by:
Federal Mediation and Conciliation Service
Program is designed to provide:

- An understanding of IPLRA provisions regarding collective bargaining and impasse resolution
- An understanding of the traditional collective bargaining process
- An understanding of the differences between Public sector and Private sector bargaining

CAUTION & DISCLAIMER!

- This reflects my view of applicable labor law, interest arbitration and the Union-Management relationship from a Mediator's perspective. In other words, it is possible that I may be wrong.
- Moreover, Illinois public sector labor law is far too complex to be covered adequately in the time allotted.
CAUTION & DISCLAIMER!

- Before acting on anything that you see or hear us say in this program, you should consult a competent, experienced attorney who specializes in Illinois public sector labor law.

Overview of the Illinois Public Labor Relations Act (IPLRA)

Illinois Public Labor Relations Act
(IPLRA)

- Effective July 1, 1984 (1/1/86 – Fire, Police and "Security")
- First statutory recognition of Illinois public employees' rights to organize and bargain collectively
- Basic principles similar to federal labor law
- Created Illinois Labor Relations Board – Section 5
- Defines/regulates the Union – Employer relationship
### IPLRA

- Defines Employer, Union and Employee rights
- Defines Employer and Union unfair labor practices (ULP) – Sections 10 & 11
- Regulates unit certification & decertification procedures – Section 9
- Regulates collective bargaining, impasse and strike procedures – Sections 4, 7, 14, 17 & 18
- Mandatory grievance/arbitration procedure
- Prohibits strikes during term of CBA

### IPLRA

Section 6

- Granted employees the right to
  - self-organize
  - form, join, assist labor organizations or to refrain from joining, etc. ("fair share")
  - bargain collectively
  - present grievances directly to Employer
  - engage in concerted activities
    - for collective bargaining
    - mutual aid or protection

### DUTY TO BARGAIN

Section 7

- mutual obligation
- meet at reasonable times, including meetings in advance of the budget-making process
- negotiate in good faith - wages, hours, and other conditions of employment not excluded by Section 4
- negotiate over wages, hours and other conditions of employment not specifically provided for in any other law or not specifically in violation of any law
DUTY TO BARGAIN
Section 7

• If any other law pertains, does not limit duty to bargain over proposals which either supplement, implement, or relate to the effect of such provisions in other laws
• negotiation of an agreement or any question arising thereunder
• execution of a written contract incorporating any agreement reached if requested by either party
• does not compel either party to agree to a proposal or require the making of a concession

MANAGEMENT RIGHTS
Section 4

Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as:
- functions of the employer
- standards of services
- overall budget
- organizational structure
- selection of new employees
- examination techniques and
- direction of employees

MANAGEMENT RIGHTS
Section 4

“Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.”
DUTY TO BARGAIN
Section 7

- Also contains provisions dealing with:
  - Voluntary use of interest arbitration
  - Notice requirements
  - Termination provisions

GRIEVANCE PROCEDURE
Section 8

- CBA shall contain:
  - grievance resolution procedure applicable to all employees in the bargaining unit
  - final and binding arbitration unless mutually agreed otherwise
  - costs of arbitration shall be borne equally by the employer and the employee organization
- Any CBA containing a final and binding arbitration provision shall also contain a provision prohibiting strikes during term of the CBA

UNFAIR LABOR PRACTICES
Section 10
UNFAIR LABOR PRACTICES

EMPLOYER is prohibited from:

- 10(a)1 - Interfering, restraining or coercing employees in the exercise of their rights guaranteed under the IPELA
  * self-organization;
  * engage in collective bargaining through freely elected representatives
  * engage in concerted activities.

UNFAIR LABOR PRACTICES

EMPLOYER is prohibited from:

(a)1 (continued) - Dominating or interfering with the formation, existence, or administration of any employee organization or contributing financial or other support to it

(a)2 - Discriminating in regard to hire, tenure, or any term or condition of employment to discourage or encourage membership in any employee organization

UNFAIR LABOR PRACTICES

EMPLOYER is prohibited from:

(a)3 - Discharging/discriminating against an employee because of signing/filing affidavit, petition or providing information or testimony

(a)4 - Refusing to bargain in "good faith" with designated employee representative (collective bargaining, grievances, etc.)
UNFAIR LABOR PRACTICES

**EMPLOYER** is prohibited from:

(a)5 – Violating any ILRB rules/regulations concerning the conduct of representation elections

(a)6 – Expending public funds to influence representation elections (with limited exceptions)

(a)7 – Refusing to reduce collective bargaining agreement to writing & sign it

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UNFAIR LABOR PRACTICES

**UNION** is prohibited from:

10(b)1 - Restraining or coercing employees in the exercise of the rights guaranteed under the ILRA; “intentional misconduct” required for breach of duty of fair representation

(b)2 – Restraining or coercing an employer in the selection of collective bargaining or grievance representatives

(b)3 – Causing/attempting to cause employer to discriminate against employee in violation of 10(a)2

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UNFAIR LABOR PRACTICES

**UNION** is prohibited from:

(b)4 – Refusing to bargain in “good faith” with Employer

(b)5 – Violating any ILRB rules/regulations concerning the conduct of representation elections

(b)6 – Discharging/discriminating against an employee because of signing/filing affidavit, petition or providing information or testimony
UNFAIR LABOR PRACTICES

**UNION** is prohibited from:

(b)7 – Unlawfully picketing (including threatening to or causing to picket) a public employer (complex rules apply)

(b)8 – Refusing to reduce collective bargaining agreement to writing & sign it

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Illinois Labor Relations Board

- Comprised of two “panels”
  - **Local Panel** – Jurisdiction limited to units of local government with a population greater than 2 million (City of Chicago, Cook County CTA, CHA), excluding the Regional Transportation Authority
  - **State Panel** – All other units of state and local government

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**IPLRA**

**RECENT DEVELOPMENTS**

- Provides interest arbitration as impasse resolution procedure for initial agreements following original certification for units < 35 employees not covered by Section 14 effective 1/1/2010
COLLECTIVE BARGAINING
UNDER THE IPLRA

COLLECTIVE BARGAINING

Is affected by:
• Labor/Employment Law, Municipal Code, etc.
• Economic Conditions
• Politics
• Other Collective Bargaining Agreements (CBAs) with same or comparable Employer
• Employer and Union Philosophy
• Attitudes of each of the Players

TERMINOLOGY

• Tentative agreement — agreement reached between negotiating committees of employer and union on terms of new collective bargaining agreement, subject to ratification by bargaining unit members and employer’s governing body

• Quid pro quo — literally, what for what. Exchange of something of value for something of perceived equivalent value.

• Package Proposal — 2 or more proposals packaged together that must be accepted, without change, as a group (usually involve trading items)
TERMINOLOGY

- **Status quo** — Existing state of things at a given time (e.g., current contract language)

- **Breakthrough** — A new provision, or elimination or substantial modification to an existing provision

TERMINOLOGY

- **Regressive Bargaining** — Offering a proposal that is less favorable to the other party than your previous proposal, often found to be an unfair labor practice commonly referred to as "bad faith bargaining"

- **COL** — cost of living, generally as determined by the appropriate consumer price index published by the federal government.

- **LBFO** — Last Best and Final Offer

TERMINOLOGY

- **Housekeeping items** — Changes that reflect necessary changes to dates, names, etc. Not substantive changes.

- **Roll up** — Additional costs resulting from a general wage increase, including the cost of % based payroll taxes, % based premiums such as overtime, and other % based costs
TERMINOLOGY

• **Front load** - Larger wage increase in the first year then in subsequent years of the CBA (e.g., 3%, 2%, 1% or 2.75%, 2%, 2%)

• **Back load** - Larger wage increase in the last year(s) than in the earlier years of the CBA (e.g., 1%, 2%, 3% or 2%, 2%, 2.75%)

TYPES OF NEGOTIATIONS

• Initial Contract
• Renegotiation
• Re-opener
• "Midterm"
  - Decision and impact
  - Impact only

TYPES OF ISSUES

• **Mandatory subject of bargaining** - duty to bargain, must bargain in good faith

• **Permissive subject of bargaining** - permitted to bargain over the issue, but not required to

• **Prohibited/illegal subject of bargaining** - cannot bargain over the issue
DUTY TO BARGAIN
Section 7

- Refusal to bargain in "good faith" over a mandatory subject of bargaining is an unfair labor practice
  - Employer: 10 (a) (4)
  - Union: 10 (b) (4)

“GOOD FAITH” BARGAINING

- Not clearly defined in IPLRA, defined by case law
- Generally means that the parties are making a sincere effort to reach agreement, acting reasonably concerning their positions, tactics and actions
- Involves making proposals and counter-proposals, discussion of proposals, and justifying positions.
- Not engaging in actions designed to avoid agreement such as regressive bargaining, refusal to bargain over mandatory subject, refusal to meet...
- Board & courts look at “totality of conduct”

ENTRY INTO NEGOTIATIONS

- Serve written notice on other party of desire to meet and confer to:
  - terminate/modify current contract, at least 60 days prior to expiration date (renegotiation)
  - negotiate initial contract, after Board certification of unit
  - negotiate issues specified in re-opener provision, notice provided by date specified
  - negotiate over decision and/or impact of proposed action/change during term of contract (midterm)
- CBA may provide for longer notice requirement
MAINTENANCE OF "STATUS QUO"
Renegotiation

- During the collective bargaining process, current CBA remains in effect:
  - Until 60 days after written notice served on other party or expiration date, whichever is later (if no interest arbitration right)
  - During pendency of interest arbitration proceedings
  - Parties may mutually agree to changes during above periods

MAINTENANCE OF "STATUS QUO"
Initial Contract

- Generally, during bargaining process for an initial contract, current wages, hours and conditions of employment should remain in effect:
  - Until parties reach impasse and have used mediation (if no interest arbitration right)
  - During pendency of interest arbitration proceedings
  - Parties may mutually agree to changes during above periods

- BUT -- complicated -- Seek legal advice before making any significant changes during the bargaining process

MAINTENANCE OF "STATUS QUO"
Re-opener & Midterm Bargaining

- During the collective bargaining process, current CBA and current conditions regarding the issue(s) being negotiated remain in effect:
  - Until parties reach impasse and have used mediation (if no interest arbitration right)
  - During pendency of interest arbitration proceedings
  - CBA "Entire Agreement" provision may specify
  - Parties may mutually agree to changes during above periods
**ROLE OF MEDIATION**
- Mandatory step before a strike or interest arbitration (unless waived by agreement of both parties)
- FMCS is primary provider in Illinoi's
- If one party requests mediation via FMCS, other party must join in request or pay for cost of mediation from another source
- Mediator tries to facilitate settlement via suggestion, creative alternatives, etc.; but cannot decide any issues or compel parties to agree

**IMPASSE RESOLUTION PROCEDURES**

- "Security", Police, Fire & Voluntary
  - Negotiations
  - Mediation
  - Interest Arbitration
  (Not able to strike)

**IMPASSE RESOLUTION PROCEDURES**

- All Other Units
  - Negotiations
  - Mediation
  - 5 Day Notice
  - Strike
  (unless strike presents "clear and present danger" to public)
**PREREQUISITES TO STRIKE**

- Must be represented by Union
- CBA has expired or does not prohibit strike
- Employer & Union have not agreed to interest arb.
- Union has requested mediation and mediation has been used (at least 1 mediation meeting)
- At least 5 days have elapsed since Union served Employer with notice of intent to strike
- Process in place to deal with strikes that present a “clear and present danger to the health and safety of the public” (Section 18)

**Section 18**

- If strike (in process or about to occur) presents clear and present danger to health and safety of public, Employer may seek injunctive relief thru ILRB & circuit court to:
  - Stop the strike; or
  - Allow strike to occur but set conditions & requirements that Union must follow to remove or avoid such “clear and present danger”

**Section 18**

- Court may designate “essential employees” within unit whose services are necessary to avoid or remove such “clear and present danger”
- Court may order such “essential employees” to return to work under court imposed conditions and require Employer and Union to resolve via interest arbitration
Interest Arbitration

INTEREST ARBITRATION
Purpose
• Process for settling disputes over unresolved collective bargaining issues in bargaining relationships where strikes and lockouts are prohibited (security, police, fire)
• Not intended to replace bargaining as the means to settle disputes
• Outcome (decision) intended to simulate a deal the parties (may have/should have?) arrived at in good faith collective bargaining in a strike driven process

INTEREST ARBITRATION
• Limited to mandatory subjects of bargaining
• Procedures set forth in Section 14 of IFLRA
• 3 person panel or single arbitrator hears case, parties generally waive panel approach
• 8 factors guide the Arbitrator’s decision
• Decision should simulate a deal obtainable via good faith collective bargaining in a strike driven environment
**INTEREST ARBITRATION**

**How Do You Get There?**

- Joint request for mediation is first step (if initiated before start of FY, arbitrator can award retroactive wages), or parties can waive mediation and go to interest arbitration
- 15 days after first mediation session, either party can request interest arbitration
- Parties pick arbitrator by alternately striking names from a list, last remaining name is arbitrator
- Arbitration date selected
- Parties may continue bargaining up to hearing or award

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**INTEREST ARBITRATION**

**Authority of Arbitrator/Panel**

- Require attendance of witnesses
- Administer oaths
- Order the production of records/documents
- Determine whether unresolved issues are economic or non-economic
- Determine time for submission of final offers
- May try to mediate dispute or can remand dispute back to parties for further bargaining
- Render decision issue by issue in a written award

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**INTEREST ARBITRATION**

**Authority of Arbitrator/Panel**

- Unresolved issues classified by arbitrator as either **economic** or **non-economic**. Unless otherwise stipulated by the parties:
  - **Economic issues** – Arbitrator chooses between final offers of the parties
  - **Non-economic issues** – Arbitrator can choose between final offers or fashion own award
- Decides each issue individually based on 8 factors in Section 14(h), as applicable
TYPICAL ECONOMIC ISSUES

- Wages
- Stipends, Certification, Specialty Pay
- Steps/Longevity Pay
- Medical, Dental, Vision & Life Insurance
- Retirement Incentives
- Vacations
- Holidays/Holiday Pay/“Kelly Days”
- Other Paid Leave (Sick, Personal, Bereavement, Jury)
- Overtime Calculation
- Uniform Allowance
- Tuition Reimbursement

TYPICAL NON-ECONOMIC ISSUES

- Dues Check Off/Fair Share
- Grievance Procedure/Arbitration of Discipline
- Scheduling/Hours of Work
- “Zipper” Clause/“Complete Agreement”
- Shift Bidding, Shift Trades
- Work In/Routine Duties Rules
- Drug & Alcohol, Physical Fitness Testing
- Seniority, Layoff, Recall, Probation Period, Promotion Criteria (FDPA)
- Residency

Issues Not Subject to Interest Arb.
(for “Peace Officers” and Firefighters)

- Residency if 1,000,000 or more pop.
- Residency outside of Illinois
- Type of equipment (other than uniforms & turnout gear)*
- Manning (excluded for police, not fire)*
- Total # of ees employed by dept.
- Mutual aid/assistance agreements
- Criterion for use of force/deadly force

* Serious safety risk exception - specific work assignments
**INTEREST ARBITRATION**  
**8 Factors That Influence Decision**

Interest Arbitrator bases decision on the following factors (as applicable):

1. Lawful authority of the employer  
2. Stipulations of the parties  
3. Interests and welfare of public & financial ability of employer (*ability to pay*)  
4. Comparison with employees performing similar services in comparable communities (aka *comparables*)

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5. Cost of living  
6. Overall compensation presently received by the employees, including direct wages, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

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7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.  
8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.
FACTOR 1
Lawful Authority of Employer
- Legal authority of employer to enter into an agreement regarding the proposed provision
- Example: non home rule - arbitration of police/fire discipline (prior to PA 95-0356)
- Generally applies to non-economic issues, theoretically could apply to economic

FACTOR 2
Stipulations of the Parties
- Parties can stipulate to things such as:
  - Single arbitrator instead of panel
  - Classifying non-economic item as economic
  - Giving arbitrator authority to fashion own remedy for economic item
  - Conduct of the hearing ("narrative" vs. witnesses)
- Generally applies to procedural matters

FACTOR 3
Public Interest/Welfare & Ability To Pay
- Whether a proposed item has an impact on the interests and welfare of the residents of the community; AND
- The employer's ability to pay for/fund the proposed item
- Generally applies only to economic issues, but... has been applied to non-economic issues (e.g., residency)
FACTOR 4
Comparables ("Comps")

- No criteria for determining "comparable communities" in the IPLRA
- No legislative or judicial history for guidance
- If parties cannot agree on "comps," Arbitrator determines
- Internal "comps" may or may not be more powerful than external "comps"
- Applies to both economic and non-economic

FACTOR 4
Comparables – How Determined

- If prior interest arb. with same unit – likely stuck with same comps unless substantial changes in circumstances
- Comps established with other units may or may not apply
- If no prior arbitration – each party submits comps and criteria used
- If parties cannot agree on "comps," Arbitrator determines, arbitrators differ on approach

FACTOR 4
Factors Commonly Considered - External

- Size of department, department budget
- EAV, financial condition, revenue/sources
- Geographical proximity, unless...
- Population and/or size
- Workload (crime stats, fire calls, etc.)
- Median family income and/or home value
- Comparison with the "comps" agreed to by the parties
External Comparables – Why?

"...because agreements reached in comparable communities can frequently shed considerable light on what agreement the parties would have reached had their bargaining process not broken down..."

FACTOR 4
Factors Commonly Considered - Internal

- To all or most other units in municipality, depending on issue (e.g., village wide health insurance program)
- Comparison only to a similar unit (e.g., patrol to police sergeants, fire to police)
- Bargaining history/patterns (wage pattern, parity, differential)

FACTOR 5
Cost of Living

- Not just changes in the applicable cost of living (floor)
- Many arbitrators consider changes in compensation for comparables
- Applicable to economic issues only
FACTOR 6
Overall Compensation

- Can't just "cherry pick" item by item with comparables
- Overall compensation also considered
- No science, arbitrator discretion
- Considered in economic issues only

FACTOR 7
Changes in Circumstances

- Refers to changes in any circumstances affecting one of the 8 Factors during pendency of interest arbitration.
- Could be change in financial condition, change in law, change in economy, etc.
- Impact, if any, depends on the impact of the change
- Could be applied to economic or non-economic issues, but...not a commonly used factor...except...

FACTOR 8
The "Catch All" Factor

- Gives arbitrator the ability to apply standards traditionally considered in bargaining that are not specified in IPLRA:
  - Bargaining history -- prior CBAs
  - Prior agreements, concessions and trade-offs made
  - Bargaining flow of this negotiation
  - Effect of proposal on other parts of CBA
  - Unique features of the parties' relationship
  - Maybe ... general economic conditions
INTEREST ARBITRATION

- IPLRA does not rank these factors in terms of significance
- Up to the Interest Arbitrator to determine which factors bear most heavily in any particular dispute
- However...

INTEREST ARBITRATION
Key Factors Considered - Wages/Economics

- Comparison with external & internal "comparables"
- Inflation/Cost of Living
- Employer's "ability to pay" (given some weight, but not as much as above 2 factors -- labor market approach for wages -- moderating effect?)
- Less frequently - Factors 6 (overall compensation) and 8 (catch all)
- Factor 7 (changes) -- relatively rare (Gelesburg, State Police, Boone County Sheriff)

INTEREST ARBITRATION
Key Factors Considered - Non-Economic

- Comparison with external & internal "comparables"
- Factor 8 (catch all) -- bargaining history, etc.
- Relatively rare - Factors 1 (legal authority), 3 (public interest/welfare), & 7 (changes)
INTEREST ARBITRATION
Burden Of Proof

- Proposing party must show greater reasonableness and appropriateness based on application of relevant statutory factors (for non breakthrough proposals)
- Breakthrough proposals places higher burden of proof on proposing party

INTEREST ARBITRATION
"Breakthroughs" vs. "Status Quo"

- Interest arbitrators are reluctant to depart from "status quo", party seeking "breakthrough" has "special burden", must first prove:
  - Compelling need
  - Offer of a quid pro quo to the other party
  - Unable, despite repeated attempts, to obtain relief at the bargaining table
- Then, arbitrator will consider via the 8 Factors

or, as alternately stated
INTEREST ARBITRATION
"Breakthroughs" vs. "Status Quo"

- Party seeking "breakthrough" has "special burden", must first prove:
  - need for change
  - that proposal meets that need w/o imposing undue hardship on other party
  - that quid pro quo offered of sufficient value to buy change or that comps have been able to get it

or, as alternately stated

INTEREST ARBITRATION
"Breakthroughs" vs. "Status Quo"

- Party seeking "breakthrough" has "special burden", must first prove:
  - status quo system/procedure has not worked as anticipated when originally agreed to, OR
  - status quo system/procedure created operational hardship for employer or equitable/due process problems for the employees, AND
  - party seeking to maintain status quo has repeatedly resisted attempts at bargaining table to address the problem
INTEREST ARBITRATION
Status Quo Established By:

- negotiations
- interest arbitration, grievance arbitration
- passage of time (negotiation of one or more CBAs) since change in law that changes a prohibited subject of bargaining to a mandatory subject of bargaining (e.g., residency)

INTEREST ARBITRATION

"Status quo" and "breakthroughs" not key factors in:

- first contracts (changing recent decisions now recognizing/respecting status quo in first contracts)
- issues negotiated for the first time due to change in law

INTEREST ARBITRATION
Effect of "Insufficient" Bargaining

- If parties have not "adequately negotiated" concerning an issue prior to its submission to interest arbitration, interest arbitrators have ruled that such an issue is not a proper matter to be decided in interest arbitration

- Usually occurs when little or no bargaining has taken place with respect to that issue prior to interest arbitration
INTEREST ARBITRATION
Effect of a Rejected Tentative Agreement

- Interest arbitration is intended to mimic a deal the parties may have arrived at in good faith collective bargaining in a strike driven process.
- What greater evidence is there of a deal the parties may have obtained ... than a tentative agreement?
- Effect of a rejected tentative agreement has been subject of interest arbitration in two significant cases (Ogle County Sheriff & IFOP, S-MA-03-05; 053,204, Goldstein, 2005; and V. of Bensenville & NAP 165, S-MA-05-104, Goldstein, 2005)

INTEREST ARBITRATION
Effect of a Rejected Tentative Agreement

If reach tentative agreement and one party rejects it (not ratified by members or not approved by governing body) and:
- It was negotiated in good faith by informed responsible representatives, and
- It is not based upon miscalculation, misrepresentation or other error, and
- The reason for rejection was political or want “more” or gave “too much”

tentative agreement will be given “great weight” in determining interest arbitrator’s decision

INTEREST ARBITRATION
Effect of a Rejected Tentative Agreement

- Rejecting party may end up (in interest arbitration) with same deal they rejected as a tentative agreement
- Affects both employers and unions
REJECTION OF INTEREST ARBITRATOR'S AWARD

• Interest Arbitrator's award submitted to "governing body" of employer for ratification and adoption (Union does not have similar right)
• Governing body has 20 days to reject any or all terms of decision (3/5 majority required) and provide reason for each term rejected
• Rejected terms returned to Arbitrator/Panel for supplemental proceeding & decision
• Reasonable costs, including U attorney fees, paid by employer

REJECTION OF INTEREST ARBITRATOR'S AWARD

• BUT... Such rejections are rare and rarely (if ever) successful
• Arbitration decisions are reviewable by circuit court BUT... party seeking review must establish
  – Arbitrator was without or exceeded statutory authority
  – award arbitrary or capricious; or
  – secured by fraud, collusion or other unlawful means.
If court affirms award of retroactive $ term, appellant must pay 12%/yr. interest. If appeal ruled frivolous, appellant may have to pay attorney fees/costs of other side.

INTEREST ARBITRATION
Should Be A Last Resort

• Gives arbitrator power to issue a decision/award which may result in a win-lose or lose-lose situation
• Parties lose control of dispute resolution
• Costly ($20,000/party is on the low end)
• Generally, the best deal is the one reached by the parties
EFFECT OF REJECTED T/A
Interest Arb. vs. No Interest Arb. Rights

• Units with interest arbitration rights – back to table or if go to arbitration, Arbitrator may impose same deal that was rejected

• No interest arbitration rights – Leverage (back to table, strike, waiting game, etc.)

COLLECTIVE BARGAINING

Major Styles of Collective Bargaining

• Traditional Bargaining
• Interest Based Bargaining
• Modified Traditional Bargaining

At Least 2 Dimensions Of Bargaining

EMPLOYER-UNION BARGAINING

BARGAINING WITHIN EACH COMMITTEE
Another Dimension Of Bargaining

EXTERNAL PRESSURES

Effective Behaviors

- Good communications
- Credible justification/explanation of proposals
- Cool, professional demeanor
- Creative proposals & counter-proposals addressing other party's interests
- Be conscious of body language
- Express appreciation for positive movement

Value of Good Communications

- Explain the needs/interests/concerns that prompted your proposal
  - It may prompt a counter proposal that meets some of your needs/interests/concerns

- Explain why you are saying "no" to their proposal
  - A well reasoned explanation may cause the other party to withdraw or modify their proposal
Behaviors to Avoid

- Name calling, demeaning, condescending, arrogant or insulting behavior
- Losing your temper
- Accepting/rejecting proposals without an explanation
- Appearing to be unprepared/unorganized
- Not understanding your own proposals
- Not understanding the cost of a proposal

Reason and/or Leverage

- If reason fails, leverage prevails
- Leverage = bargaining power
- Leverage may include:
  - Legal
  - Political, Public support/pressure
  - Economic
  - Interest Arbitration
  - Importance of service provided
  - Difficulty replacing employees/services

TYPICAL IMPEDEMENTS TO SETTLEMENT

- Communications, listening skills
- Lack of trust and/or respect
- Interest arbitration
- Power vs. problem solving approach
- Lack of creativity
- Unrealistic expectations
- Lack of understanding of/caring about other party’s problems and interests
- Failure to seek out and act on common interests
- Attitudes & philosophies of the parties
TRADITIONAL BARGAINING

TRADITIONAL BARGAINING FLOW
(not eligible for interest arbitration)

- Meet with constituents and develop proposals
- Exchange proposals with other party
- Proposals are generally classified as economic or non-economic (usually do non-economic items first)
- Negotiate item by item, package or "mini-package"
- Start high/low - incremental movement
- On the record vs. off the record proposals
- Mediation
- Tentative agreement (T/A) or LBFO
- Membership ratification vote / Employer governing body approval - or - rejection (impasse – STRIKE?)

Traditional Bargaining
"Getting into the Zone"

- Start ridiculously low/high, no or minimal disclosure of interests
- If TA on issue is possible, slowly approach "credible zone" (ballpark of a TA) via series of progressively smaller incremental moves
- If TA – generally a compromise solution that may not satisfy underlying needs/concerns
BARGAINING PHASES

- Pre-bargaining (preparation)
- Bargaining
- The “aftermath”

Pre-bargaining (preparation)
- Send required notices/Chief spokesperson assigned
- Bargaining team formed
- Overall objectives and strategy determined
- Proposals developed
- Ground rules jointly developed (sometimes)

Role of Chief Spokesperson
- Professional negotiator - speaks for the team at the table
- Understands proposals sufficiently to explain them or to delegate that task to someone who can do so
- Solicits input from the team away from table
- Calls caucuses
- Participates in sidebars
**Employer Bargaining Team**

- Chief Spokesperson – Labor Relations, in-house or outside labor attorney
- Key operational department heads
- Number cruncher/financial resource (may or may not be at table)
- Governing body & political leader (generally not at table)

**Union Bargaining Team**

- Chief Spokesperson – Professional negotiator on union staff
- In-house or outside labor attorney (if not at table, on call)
- Stewards/representatives from key areas of unit

**Role of the Bargaining Team**

- Help formulate proposals/strategy
- Listening/taking notes
- Observing reactions/clues of other side
- Information and strategy resource regarding proposals for which s/he is the expert
- Taking the pulse of constituents
- Show unity
- Supporting the agreement reached or action taken by bargaining team
Elements of Preparation

- **Union** - determine issues/interests of members via meetings, surveys, questionnaires
- **Employer** - generally advised of major objectives by political leaders; dept. heads & managers suggest operational changes needed
- Determine sources of conflict, inefficiency, cost, etc. in current relationship and CBA
- Gather relevant supporting information
- Comparisons with similar employers

Elements of Preparation

- Develop priorities
- Reduce number of issues, if too great
- Do not promote unrealistic expectations
- Make sure you really understand your issues or involve someone who does
- Cost out your proposals
- Anticipate the other party's issues/positions
- Develop strategies to address needs - translate into bargaining proposals

Ground Rules (sometimes)

- Meeting schedule (locations, dates, times)
- Release time/pay for bargaining team?
- Confidentiality/communications with constituents & media during bargaining (what happens in Vegas stays in Vegas)
- Keeping minutes
- Procedural ground rules
Bargaining

- First Meeting
- Early Meetings
- Middle Meetings
- Getting close to the end
- Getting it done

First Meeting(s)

- Parties may make opening statements.
- Parties exchange list of proposals and explain the rationale for each proposal. Union usually presents proposals first. Employer usually responds at next meeting and presents their proposals.
- Information requests.

Early Meetings

- Start with non-economic items
- Further explanation/justification of proposals
- Movement (agreement, modification or withdrawal) begins on non-economic items
- Usually, the least important items are resolved first
Use of Caucuses

- Resolve differences within team
- Consider modification of a position
- Obtain necessary information
- Private discussion
- Plan strategies/tactics
- Relief from tension
- Speed up or slow down momentum

Use of "Sidebars"

- Usually involve Chief Spokespersons (and Mediator, if in mediation)
- Value depends on relationship and trust
- Use to deal with
  - procedural issues
  - get back on track
  - float ideas and get a feel for what is possible on an "off the record" basis

Middle Meetings

- Wrestling with the most difficult non-economic issues
- Attempt to "clear out" as many non-economic items as possible – time to start "getting real"
- "Packaging" of items
Getting Close to the End

- Non-economic proposals done or only a few key non econ items still on table
- Working on economic items
- Any remaining non-economic items may be packaged with economic items
- Eventually get down to a few remaining unresolved items
- One or both parties still have room to move
- Mediation?

ROLE OF MEDIATION

- Mandatory step before a strike or interest arb.
- FMCS is primary provider in Illinois
- If one party requests mediation via FMCS, other party must join in request or pay for cost of mediation from another source
- Mediator tries to facilitate settlement via suggestion, creative alternatives, etc.; but cannot decide any issues or compel parties to agree

Getting It Done

- Reach full tentative agreement ("TA")?
  - committee recommendation
  - finalize all agreed to items
  - ratification vote
  - governing body approval
- Last, Best & Final Offer ("LBFO")?
  - take it to the members? how present it?
  - what happens if members reject it?
“IMPASSE”

• What is “impasse”?

• Why is it an important concept?

“IMPASSE” – What is it?

• "The Board (NLRB) had defined impasse as that point in time of negotiations when the parties are warranted in assuming that further bargaining would be futile"

• "no realistic possibility that continuation of the discussions... would have been fruitful"

• "after good faith negotiations have exhausted the prospects of concluding an agreement"

“IMPASSE” – What is it?

• Judgment call based on factors such as:
  – Bargaining history
  – Length of negotiations
  – Number of meetings
  – Importance of issues on which there is disagreement
  – Conduct of parties
  – What the parties believe regarding the status of negotiations
"IMPASSE" – What is it?

- Cannot bargain to impasse on non-mandatory (permissive) subjects of bargaining
- Being deadlocked on one or more issues does not suspend obligation to bargain on remaining unsettled issues.

"IMPASSE" – Why important?

Moving Party (generally the Employer) cannot make a unilateral change regarding a mandatory subject of bargaining (that the party does not already have the unilateral right to implement under the CBA) without notification to the other party and, if bargaining is requested and required, without first bargaining to impasse.

IMPLEMENTATION AFTER IMPASSE

- After reaching "impasse," a unilateral change cannot be made (imposed) unless it is reasonably encompassed within the imposing party’s pre impasse proposal
- Imposed unilateral change cannot be greater or more favorable than offers previously extended to the other party at the bargaining table
The "Aftermath"
- Proofreading and signing of the agreement
- Handling of issues deferred for future resolution, referred to committees, etc.
- Discussion of any implementation issues/problems
- Printing/distribution of copies of agreement
- Post ratification education – new or changed
  - Employees
  - Management

Some Realities of Negotiations
- Many, if not most, proposals will not survive
- If you jack up expectations to an unrealistic level, you have created a big problem for yourself
- When you change your wage proposal from asking for a 10% raise to asking for a 5% raise, you did not give up 5%. You can’t "give up" what you did not have
- "Want to have" and "nice to have" is not the same as "need to have"
- You may have to sacrifice your "pet" proposal for the greater good
- Asking for mediation is not a sign of weakness, it is a statutory requirement

Wrap Up