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How to Negotiate Using Core Values

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I negotiate for a living. I travel to a different district everyday, sometimes even two or three. Each district is a different country, with distinct personalities, politics, protocols, and cultures.

Often, I am asked by the board or administration to review the negotiated agreement and recommend changes for upcoming negotiations. In many districts, I have served 20 or more years as chief labor counsel, and so I am familiar with the language of the agreement, and probably negotiated and wrote most of it. More importantly, however, I am familiar with the relationship between management and labor, and I know the past practices of the parties — the reality of the collective bargaining agreement in which words on paper are converted into real working conditions. And the two are rarely the same.

In these circumstances, I often work with my teams to suggest changes and improvements in the contract. These suggestions are based on knowledge and experiences unique to each district.

When I am asked this question in new or unfamiliar districts, however, my answer to the employer usually is, “If you ask me to suggest changes to your agreement, you will be wasting your time, my time, and your money.” Why? Simply because I do not know the district, the relationships, or the workplace and therefore cannot suggest how to change or improve them. Even more surprising is how often the district board and bargaining team do not know how to go about analyzing the need for change.

The school employer’s confusion over what to propose in negotiations is exacerbated by the labor law under which we negotiate — the Educational Employment Relations Act. In California, about a half-dozen comprehensive bills were proposed and defeated before EERA finally passed in the early fall of 1975.

EERA was the result of a compromise between school unions and employers. In exchange for the unions' demand for a comprehensive law mandating collective bargaining and binding agreements, school employers demanded and received restrictions on the scope of subjects falling within the mandatory duty to bargain, due to the unique characteristics of the public education sector.

This compromise was codified in two major sections of the law.

First, the "scope of negotiations" — the range of subjects over which we are required to bargain — was defined as "limited to matters relating to wages, hours of employment, and other terms and conditions of employment." And thus were the seeds of confusion planted: Did the legislature intend the scope of negotiations to be limited, as most employers asserted? Or was the original intent to create a broad scope of negotiability over *other* terms and conditions of employment, as most labor organizations argued?

Second, the law provides that "all matters not specifically enumerated [as negotiable] are reserved to the public school employer and may not be a subject of meeting and negotiating." This sounds good — an express reservation of management rights to those areas of public education not specifically listed as negotiable. However, what about all the other terms and conditions of employment that are not so specified? A conundrum was created at the inception of our bargaining law.

Our model, therefore, was intended to be a hybrid of sorts. We must meet and negotiate and reach binding agreements, just like the factory union and employer, but we are not required to bargain over subjects that go to the heart of educating children. Instead, we were supposed to have retained management discretion in those core areas. I say "supposed to," because this is not what has come to be.

Instead, the intended reservation of employer discretion to manage and direct the public educational system has been eroded, if not negated, through administrative and judicial

decisions, and a never-ending supply of legislative enactments. The system of labor relations in the public educational sector has been pervaded by private sector precedent resulting in elimination of many limitations that were intended to be placed on bargaining. The advocates of "other terms and conditions of employment" prevailed over the defenders of a "limited" scope of bargaining.

Thus, the original "compromise" of EERA has been lost.

Given this state of legal affairs, how can we as public school negotiators, plan for and conduct negotiations on behalf of the students and educational community we serve? How do we determine what to propose? How do we assess and decide whether to accept, modify, or reject what is proposed to us across the table? How do we establish and maintain a focus for our negotiations in the midst of all the political and economic turmoil constantly surrounding us?

For me, searching for answers to these questions sparked an evolutionary process. When I first began negotiating, I often felt that the unions were grounded with a sense of being on the "right" side and fighting the "good battle." They were, as the Blues Brothers said in the movie, "on a

mission from God."

By contrast, my teams — my governing boards and administrators — often seemed to concede this "higher ground" to the unions and, by default, were left with a more defensive and reactionary approach to the process. I questioned this dynamic for years, asking myself: "What do we have to be defensive or embarrassed about? We are on a righteous mission too, serving the children of this nation and preparing them to be responsible citizens. We have every right to be extremely *proud* of what we do!"

The conventional negotiations process, however, did not seem to lend itself to articulation of our mission; in fact, talking about it appeared to be "against the rules." But then, I began to ignore those perceived rules. I challenged boards

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and administrations to refrain from adopting initial negotiation proposals until they could answer a few basic questions, like:

- What do we believe is the central mission of our organization?
- If we intend to seek change in the negotiated agreement, what are the underlying reasons for this effort?
- How do we define a successful outcome of these negotiations?
- And most importantly: What are our *core values*?

Only after they answered these questions did I proceed to work with my teams to formulate specific proposals.

I believe, and have experienced first hand, that this simple and forthright approach I created can break through the complexities that bedevil our world of bargaining in the public schools. I have concluded it is incumbent upon us — each local school district — to adopt our own core values as the philosophical benchmarks and anchors for all negotiations in the public school arena. To fully meet our obligation to our core constituency — the students — we must draw on the power of saying “what we believe,” rather than merely “what we propose.”

How do we do this? How do we negotiate with core values? Through the following steps:

- By understanding the “capacity” of the negotiations forum.
- By building the negotiations team.
- By establishing negotiations criteria: core values.
- By anchoring negotiations in core values from the very first proposal.

Understanding the ‘Capacity’ of the Negotiations Forum

We must return to the literal meaning and intent of our bargaining law by distinguishing between negotiable *working* conditions and teaching and learning conditions. Although we will continue to negotiate in good faith over working conditions as required by law, we must resist agreeing to any

contract terms that have an adverse impact on our ability to deliver quality education. We must redefine the very capacity of the negotiations forum to resemble what it was originally intended to be — negotiating over working conditions for employees without compromising the discretion originally reserved to the public school employer to make basic educational policy decisions.

Before we write our proposals, our board members, administration, and bargaining teams must answer the following questions:

- *What is the tolerable pace of change in our district?* If we seek changes in health benefits, or hours of work, or teaching time, or teaching duties, how quickly should we expect people and organizations to be able to change? The more fundamental the change and the more it touches employees on a personal level, the slower the tolerable pace of change is likely to be. This analysis should help inform our proposals, our dialogue, and our strategy.
- *Does the union lead or follow? What are the key relationships?* Before we articulate our core values and write our proposals, we need to know our key audience. Do we need to convince and persuade union leadership because they do in fact lead? Or is leadership merely following the direction of the rank and file? If the latter is true, then we must be sure our core values and proposals speak to that audience. And our communication plan must be shaped accordingly.
- *Is this an opportunity for improvement or are we opening Pandora’s Box?* After nearly three decades of negotiations, most agreements represent delicate compromises that have been refined again and again. When we ponder major change, we must ask: Is there a real opportunity for improvement here, or are we opening Pandora’s Box and creating an environment where decades of compromise may unravel into something worse than the status quo? When we challenge the unions to engage in “reality-based bargaining,” we must uphold our end by being realistic and seeking change that is attainable.
- *Is this the appropriate forum in which to seek change?* We are so used to thinking that every proposed change must

be brought to the bargaining table that we often do not stop to analyze whether it is indeed the appropriate forum. If we seek to change educational policy and direction, the table may not be the right place to do so. And, even if such change invokes a negotiable subject, we must clearly define the parameters of that negotiability so that we bargain working conditions and not teaching and learning conditions.

Building the Team

Bargaining with core values means that we must rethink how we select the teams that will best represent and communicate those values. Boards and superintendents must answer critical questions, such as:

- Why should an individual be on the team?
- What experience does he or she bring to the table?
- What perspective does he or she bring to the table?

We need to value different perspectives to be able to analyze whether proposals are consistent with our core values. The team makeup should signify to the district community that we are committed to the negotiations process and understand its potential for significant impact on the services we offer. The team must have manifest authority to bargain; it will be apparent immediately to the union team if it does not, and the process will be broken at its inception.

Establishing Negotiations Criteria Around Core Values

This is the key step, and probably the hardest to do. How do we agree on a list of core values that apply to our entire district? How do we start? Who do we ask? What do we ask? How many should there be? How do we gain

consensus on and ownership of the core values by all district constituents?

If we do not have core values to guide us, how can we have consensus on our missions? How do we determine how to prioritize our needs and goals and to best allocate our ever-shrinking resources for the benefit of students?

Most importantly, how do we inject the axiom that children are at the core of everything we do, now and in the future, into a process intended to address the needs of adults who serve those children?

Based on experiences I have had since creating this bargaining approach and refining it over the years, I offer these answers:

How do we inject the axiom that children are the core of everything we do...into a process intended to address the needs of adults who serve those children?

- *Start with the board and administration.* Gather as many board members and administrators together as possible, as well as your bargaining teams—all of them if you can. Set aside at least three hours. Have a skilled facilitator run the meeting. Divide into mixed groups—do not put all the board members together, for example. Each group should have chart paper and pens.
- *Ask the key questions.* Ask each group to answer one or more of the following key questions and to chart their answers. Ask them to answer as few questions as possible—even only one sometimes will do. Examples:
 - How would you define “success” in the upcoming negotiations?

- What are our most important values?
- What are the most serious issues facing the district?
- If you could change one area of the negotiated agreement, what would it be and why?
- If you could change one thing about how the district negotiates, what would it be?
- If you could change one thing about how the union negotiates, what would it be?
- If you could change one thing about how we deliver instruction on a daily basis, what would it be?

- Key questions are intended to be open-ended in order to allow for generation of the greatest variety of responses and to prevent “directing” the thought process to yield certain results.
- Key questions are intended to evoke *substantive* responses (our values, most serious issues, changes to the agreement), *procedural* responses (how we/they negotiate), and responses based on thinking about *educational* services for children, rather than the agreement (how we deliver instruction).
- Have each small group chart as many answers as possible to the key questions.
- Have each small group report out to the whole group; post the charts on the wall.
- Have the whole group work together to begin organizing the answers into recognizable categories, e.g., economic, substantive, procedural, the relationship, etc. This will occur surprisingly easily.
- Delegate to the bargaining team the task of reducing the grouped answers to a statement of core values. The resulting draft should be shared with the whole group for comment, input, and suggestions.
- The bargaining team should finalize the core values. The final version should be approved by the superintendent and governing board.
- The core values should be communicated to the district community even before negotiations begin.
- Include a statement of commitment by the district that not only its initial proposal, but all subsequent proposals, will be guided, informed, and assessed by these core values.
- Perhaps more importantly, include a statement that the core values will be used to assess the “merits” of all union proposals, and will guide and inform the district’s responses to such proposals.

Proposals and counterproposals. When writing proposals and counterproposals, refer continually to one or more of your core values, using as many or as few as are relevant to the subject matter at hand. For example:

- “The union has proposed that unit members be allowed to use 10 days of personal necessity leave without providing any reason. The district believes that a key component to student success is the presence of the regular teacher in the classroom as much as possible. Therefore, since the district cannot reconcile the union’s proposal with the district core value regarding student success, it must decline to accept the proposal.”
- “The union has proposed to spend down the reserve, which is one-time money, to grant an ongoing salary increase. The district’s core value regarding fiscal responsibility includes preserving its fiscal health now and in the future. Therefore, the district cannot accept the union’s proposal to use one-time revenues to support long term, ongoing fiscal obligations.”
- “The union has proposed a reduction in the workday and work year, with no reduction in salary. This would reduce the time spent in direct student contact as well as opportunities for professional development. The district must decline to accept this proposal since it would be inconsistent with its core value to enhance rather than impede the ability of the district to deliver quality education programs to students.”

Anchoring Negotiations in Core Values From the Initial Proposal

The initial proposal. Once your core values have been adopted, they should be incorporated in total into your initial proposal, where they will thereafter serve as a foundation for the district team throughout negotiations. How can we best use the core values in this manner? Here are a few things I have done over the years:

- Lead off the initial proposal with a statement of the core values and how they were developed.
- This statement should appear prior to any formal proposals.

Accepting union proposals. Application of core values to union proposals must be objective and even-handed. Therefore the district must be prepared to accept union proposals that are consistent with the district’s core values; failure to do so will undermine the integrity of the core values,

as well as the credibility of the district team. Utilization of core values means acceptance of good ideas either because of or despite their source. Even-handed application of the core values also will demonstrate the kind of behavior you want the union to emulate as the negotiation process evolves.

For example, a district had an established practice of adding three hours of aide time to classrooms that exceeded a certain number of students. The union proposed to codify this practice in the contract. The district agreed, but added language to its proposal that precluded a teacher from receiving the aide time if the teacher intentionally exceeded the maximum class size to secure an instructional aide. In response, the union team referred to the district's core values regarding student success and optimum learning environments. The union asserted it shared these core values and that teachers would not, therefore, deliberately seek to create larger class sizes just to obtain an instructional aide. The district caucused very briefly, returned to the table, withdrew its proposal on the additional language, and promptly accepted the union's proposal based on its consistency with the district's core values.

This example illustrates the effective and even-handed use of core values and reflects how consistent application often results in the union's eventual reference to the district's core values in its proposals. It also gave the district the opportunity to model good negotiating behavior by listening to the union and accepting its proposal very quickly, following an assessment of the proposal through the core values.

Writing proposals and counterproposals. Districts should continue to repeat and refer to their core values in each written proposal and counterproposal. No longer should we simply say "we accept" or "we reject" or "we respond with the following counterproposal." Instead, there should be a written rationale accompanying each written proposal that refers back to the core values. This is important not only for the purpose of reinforcement, but also for communicating the district's position in negotiations to a larger audience. This allows the district to remain constantly proactive regarding its own mission, beliefs, and values, rather than merely reacting to union proposals. This is an essential element of negotiating with core values.

Preclude conflict and seek change: reality-based negotiations. All too often, the traditional negotiations forum

involves two sides girding to wage battle with each other, as each seeks change for the benefit of its constituents. In order to preclude conflict that is likely to result from an effort to seek change, the school employer sometimes decides to not seek change at all. This is understandable, for the preservation of labor peace is a laudable goal.

However, my core values include the following:

- To preserve if not improve the existing cooperative relationships with the union, not as an end in itself, but because it furthers the accomplishment of the core value of promoting student success.
- To not place the preservation of labor peace at the pinnacle of the educational pyramid such that we must sacrifice the quality of educational programs to maintain the peace.

By using these or similar core values, we are able to enter and participate in the negotiations forum not from a battle-minded perspective (to which the union is compelled to respond), but rather from one of "this is what we believe." We seek change based on these beliefs, and not a desire to beat or defeat a union agenda. This is our agenda, and it is student-centered.

As such, we seek to engage in "reality-based negotiations." This means that:

- We will not make unrealistic or overreaching proposals that threaten core values of the union or its members.
- We will not engage in "wish-list" negotiations.
- We will make proposals that are based only on real substance and need.
- We will provide complete and absolute disclosure of all available financial information.
- We will respond to all proposals objectively and with supporting rationale.
- We will accept union proposals that are consistent with our core values.

Once the district team establishes and practices these norms at the bargaining table, it is likely that the union eventually will begin to respond in kind.

Common Mistakes Using Core Values

The adoption of core values represents a districtwide commitment to and “ownership” of philosophical benchmarks that are to be used fairly and consistently throughout the negotiations process. This creates a responsibility that the district must fulfill to preserve the integrity of those values. Core values cannot and should not serve as an excuse or rationale to avoid bargaining in good faith, or confronting issues posed by the union. In other words, core values are not an end unto themselves; rather, they are tools to help us organize our priorities in negotiations.

Here are some common mistakes to avoid.

Using core values as a pretext for rigidity and inflexibility. Once a district “owns” its core values, it is easy to fall into the trap of using them to justify a rigid and inflexible stance on all issues and proposals that appear at first glance not to align exactly with those values.

For example, after listening to the district repeatedly reject most of its economic proposals calling for the scaling back of programs to fund a salary increase, a union commented at the table, “We’re tired of hearing about your core values because all they are is an excuse to say ‘no’ to everything we propose.”

The district took this comment to heart and, after caucusing and consulting with the superintendent, realized that the union’s claim had merit. The district was citing its core value of “preserving quality education programs for students” as a rationale for rejecting all union efforts to reallocate funds from some programs to salaries. Upon reflection, we realized that our core value stressed “quality” educational programs, not every program currently in existence. The district team came to realize that not all programs were necessarily of the highest quality or of benefit to students. The district shared this perspective with the union, and negotiations moved forward.

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In order to maintain our credibility at the bargaining table, we must be prepared to be self-critical of our positions as they relate to our core values.

Adopting positions contrary to our core values. Many districts facing financial crises continue to search for ways to reduce expenditures. Options sometimes include raising class sizes, increasing workload, seeking greater employee contributions for health benefits, and the like. If such proposals are on the horizon in your district, be sure to consider:

- How will the district reconcile a proposal to increase class sizes with a core value of enhancing learning conditions to promote student success?
- How will the district explain a proposal to increase workload with a core value that recognizes the contributions of all employees and seeks to preserve quality working conditions?
- How will the district reconcile a proposal to increase employee benefit contributions with a core value that promises not to threaten the core values of the union or the employees it represents?

These apparent contradictions can be reconciled depending on the unique facts and circumstances of each district. The point, however, is to anticipate that the district’s core values likely will be used as weapons to attack the district’s own proposals.

The ‘people vs. programs’ paradox. Almost all core values statements will include at least one that promotes the preservation of educational programs for the benefit of students. This is not surprising, since the purpose of using core values is to put the needs of students at the forefront. Many districts use this core value, in good faith, as a reason to assert that all new revenues received by the district have been swallowed up by the expense of maintaining programs. Therefore, the argument usually goes, there is no money left over for any salary increase or cost items proposed by the union.

In short, the core value of preserving programs prevails over the possibility of providing people with a salary increase. This would appear to be an appropriate use of core values. However, consider the following example from a real district.

The district is experiencing rapid and continuing declining enrollment. There is no cap on active or retired employee benefits, and millions of increased dollars are being allocated annually due to the rising cost of benefits. Employees have not received a raise in three years. Although district teachers used to be among the highest paid in the county, they now are at the bottom in comparison to others. The district's chief human resources officer readily admits they no longer are able to attract the most qualified candidates, who can start at other districts for as much as \$20,000 more annually. The district is renowned statewide for offering excellent professional development and training to new teachers and for spending millions of dollars annually on such efforts. But, once teachers are trained, they are leaving the district in droves, and other districts are snatching them up because they know these teachers are among the best trained in the state. For the fourth year in a row, the district is asserting it cannot afford to provide a salary increase because it would mean sacrificing programs for students. The district has articulated a core value of preserving quality educational programs for students.

Do you see any contradictions in this picture? Is this district being true to its core value? This district is caught in the paradox of the illusory distinction between people and programs. At bottom, core values speak to the most effective and wise allocation of precious resources. Here, the district is spending about \$20,000 a year per teacher on professional development, and about \$60,000 a year per teacher on salary and benefits. Thus, if a teacher leaves after four years, the district has lost an investment of \$320,000. If 100 teachers leave each year, the district is losing an investment of \$32 million! As more teachers leave, the district is finding it increasingly difficult to attract the most-qualified

replacement teachers. The district has not critically examined the vast array of programs it currently supports.

Is this district being true to its core value of maintaining quality educational programs for children? The answer is no. The "people versus programs" paradox ignores the reality that the quality of programs depends entirely on the quality of the people who inhabit and deliver those programs. If those very people become disgruntled due to non-competitive salaries, and if they begin to leave the district, and if we cannot attract quality replacements, the programs suffer and so, ultimately, will the students.

In order to be true to its core value, this district and many others like it must acknowledge the vicious cycle of decline in educational and instructional quality that already has begun. In order to be true to its core value, this district must:

- Stop and reverse the cycle by critically examining every program and curtailing or eliminating those not truly benefiting children, based on the level of expenditure.
- Set as a priority improved compensation for the people who inhabit quality programs.
- Establish a budget priority for equitable compensation increases with forethought to multiyear planning, rather than approaching compensation as an afterthought when all the money has been spent.
- Take these actions openly, transparently, and in a truly collaborative partnership with all stakeholders, including labor.

If this district is true to its core value of providing quality educational programs for children, it will show a commitment to the future of these programs by valuing the people who inhabit the programs. And, based on my experience, those people will be much more reasonable in their bargaining positions as long as they see the district has a true vision for the future.

People will be much more reasonable in their bargaining if they see the district has a true vision for the future.

In short, core values must be thoughtful, reasoned, and universal, no matter what actions they may appear to mandate. They derive their strength from their purity of purpose but are extremely vulnerable to challenge if actions do not measure up to the words.

Adopting boilerplate or overused core values. The worst mistake we, as school employers, could make would be to adopt boilerplate core values and start to use them statewide. This would be as wasteful and meaningless as union boilerplate proposals that we encounter. When we see such proposals, we exclaim, "What does this proposal have to do with the unique needs of our district?" And we question why our local union is seeking to inject a statewide agenda into our local community.

The same objections will occur if we as employers adopt a statewide agenda of identical core values. Instead, the core values of every district should be unique and consistent with local needs and priorities. All educational agencies will have a similar, student-centered theme, but the specifics of that theme should vary from district to district.

Another common mistake is to overuse a core value to the point where it loses substantive meaning. For example, we have all heard the core value of "attracting and retaining the most qualified employees." I think this phrase has lost all meaning because the unions have used it as rationale to support any and all economic demands. I believe "attract and retain" has morphed into "attain and retract" — attain the highest salaries and benefits possible at the price of retracting the programs and working conditions that attracted employees to the district in the first place.

Core value statements do not rest on their own merits; rather, they must be explained, supported, and justified. Therefore, avoid the pitfall of latching onto core values that have become meaningless through overuse.

Conclusion

One would expect the core values that guide us to be self-evident. Since I have begun using them, however, reactions have ranged from surprise, to anger, to indignation. That these self-evident values become controversial when actually declared out loud proves, in my view, the critical need for districts to articulate them everywhere and at every opportunity, for they have been lost, forgotten, or overshadowed by the collective bargaining process. And we cannot allow them to become extinct, or we lose sight of the very purposes for which we exist.

Our role, our duty, and obligation as negotiators for public schools is to not allow our core values to be overshadowed in the shuffle of the negotiations process and lost altogether in the negotiated agreement.

This is not an easy task, for negotiation is a wondrous chaos; a swirling maelstrom of emotions, politics, substance, and symbolism. As the demands on public education increase, and the resources flowing to the system shrink, the chaos merely intensifies.

How can we bring order to this chaos? How can we cope with the dichotomy between expectations and resources? How do we stay focused on the achievement of our educational mission even as we are legally required to negotiate seemingly independent working conditions that, in reality, sometimes hamper the achievement of that mission?

The answer lies in the adoption and articulation of, and adherence to, a set of core values to guide everything we do in the negotiations process. If we do this, we as negotiators will be able to fulfill our obligation to represent and advocate on behalf of the educational interests of millions of children.

We have core values that reflect this advocacy and it is time to place these values at the center of the negotiations forum. If we do this objectively, forthrightly, and consistently, each of us can stand up at the end of the day and say with pride, "We negotiated today based on what we believe is in the best interest of the students we serve." ❀