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## Bargaining Failure: Lessons From the Major Leagues

Ruben L. Ingram

# Bargaining Failure: Lessons From the Major Leagues

*Ruben L. Ingram*

*Ruben L. Ingram is the executive director of School Employers Association of California, a joint-powers agency, serving school/community college districts and county offices of education in collective bargaining and human resources management. He is the former executive director of the California Commission on Teacher Credentialing, and former superintendent, Fountain Valley School District.*

THERE IS MUCH to be learned in the public sector labor relations field from other areas of collective bargaining and negotiations. The grocery strike in Southern California in the spring of 2004, for example, brought many people into the labor-management arena on a personal basis. The situation broadened opinions when patrons were confronted with picket lines and came face-to-face with grocery store clerks with whom they had a familiar and friendly relationship.

Even more pervasive in our culture is the phenomenon of sports, where labor relations can be particularly instructive. In this 2004-05 sports year, the National Hockey League season was cancelled because the owners locked out the players and negotiations never got off the ground. In recent years, other labor problems have interrupted sports seasons including major league baseball and, in 1994, the nation's hallowed institution, the World Series, was cancelled.

Interested citizens follow not only the negotiations of the various professional players' associations regarding terms and conditions of employment, but also specific issues such as controlling the use of drugs. Finally, sports fans — and almost all working people in the nation — are aware of the enormous salaries and long-term contracts negotiated between individual players, their agents, and the teams' owners.

Because of the prominent national role of sports and those who make it run, public sector practitioners can gain a better understanding of the collective bargaining process, how negotiations occur, and how the outcomes are decided. This article focuses specifically on how such knowledge can benefit those in the field of education.

### *Major League Baseball Study*

For those involved in collective bargaining in California public schools, the sports analogy points to the need for a better understanding of the collective bargaining process by the public and all stakeholders. For too long, the negotiating process in the state's school districts has been a de facto closed and overly confidential process. Both management and unions tend to hide their hands from each other until forced to reveal their bottom line. The public is left out of the process to the detriment of the students and their interests. By shedding light on the collective bargaining process and forcing the parties to fully disclose their positions, the clients whom the schools serve can become partners in the process.

Toward this end, a recent study from the University of Alabama, *The Causes of Bargaining Failure: Evidence From Major League Baseball*,<sup>1</sup> draws conclusions that can be informative to our public schools and others who are involved in the public sector negotiation processes. The study looked at two possible causes of bargaining failure: optimism and asymmetric information.

**Optimism.** For the purposes of the baseball study, the authors used the term "optimism" to express the attitude held by each party when, without a factual foundation, it made demands and offers that served its self-interests.

Researchers reported that when both parties — the players and their agents, and the owners — bargained with excessive optimism, they were unable to reach an agreement without going to arbitration. When players and their agents came to the table with demands that exceeded what the facts supported, they ended up worse off than if they had completed the negotiations process. In turn, when the owners entered the negotiations process with offers that fell short of what the facts supported, they too ended up worse off in arbitration than if they had completed the negotiations process. In school district negotiations, too, unions often present initial proposals that are overly optimistic, and that in effect "high

ball" the district. In turn, districts "low ball" the initial offers, which can be considered overly optimistic.

In California, the parties can declare impasse and, after mediation fails, can engage in a "factfinding" procedure. Factfinding is somewhat like arbitration, but is not binding on the school district or the union. In many cases, however, factfinding reports "split the baby," and if the report is adopted by the parties, the outcome is the same as reported in the

University of Alabama study: The bargaining process fails, and neither party achieves what it might have if both sides had made the process work.

Health benefits is a subject about which a number of districts and unions have learned to curb their tendency to be overly optimistic when trying to reach agreement. In this area, where costs have skyrocketed, joint union and management health benefit committees have studied the health care industry. After comparing programs and services, and working cooperatively to become "buyers" of health services rather than "payers," compromises and trade-offs begin to make more sense.

This underscores the validity of the baseball study. Unrealistic optimism can lead to frustration and failure, while collaborative study and joint understanding of the facts can bring about successful negotiations.

Moving in the right direction, the Federal Mediation and Conciliation Service recently awarded a grant to fund the California Joint Labor-Management Committee on Health Benefits. This 18-month stipend will enable the committee to search for a collaborative statewide solution to the health benefit problem. Committee members include representatives of the California Teachers Association, California Federation of Teachers, California School Employees Association, Service Employees International Union, Association of California School Administrators, California Association of School Business Officials, California School Boards Association, and School Employers Association of California.

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**Asymmetric information.** The *Glossary of International Economics*<sup>2</sup> defines “asymmetric information” as “the failure of two parties to a transaction to have the same relevant information.”

Results of the University of Alabama study — that overly optimistic proposals produced less than optimal results for both sides — are inconsistent with models of asymmetric information where one would expect the more aggressive party to outperform the more conservative side.

However, evidence suggests that learning occurred over time, with the owners catching on much more quickly than the players and their agents. Of great importance is the finding that the party who continued to make mistakes in both optimism and asymmetric information came out of negotiations with less than the party who eliminated those mistakes. Researchers posit that asymmetric information may play a greater role as the parties better understand the facts and gain more experience with negotiations.

Findings concerning asymmetric information are pertinent to school district negotiations. The Educational Employment Relations Act<sup>3</sup> specifies that good-faith bargaining requires districts to give unions the information they need to engage in the bargaining process. If districts do not provide what is required by statute, there is then a serious asymmetrical information gap where relationships between unions and management are strained. Unions often accuse management of “hiding” money, and under these circumstances, unions can make allegations to both their members and the public that are not supported by evidence. Similarly, if unions do not provide the district with complete and reliable information supporting their demands, an equally unbalanced and problematic information gap is created. A full-disclosure approach is needed if both parties are serious about making the negotiations process work.

## **Heavy Hitters**

The University of Alabama study demonstrates that optimism must be tempered with facts and reality; asymmetric information must be replaced with common terms and a mutual understanding of the facts on the part of both parties and the public.

**Attention to detail.** Both parties need to be conscientious when dealing with information. They need to spend time collecting and reporting relevant information, and equally important, they need to spend time working to understand those reports.

A recent example demonstrates the critical importance of information. During a negotiating session, the union and the school district requested a facilitator to help them reach agreement. The district’s chief business official presented budget figures. Observing the union representatives’ lack of interest and attention to the discussion, the facilitator surmised that the budget presentation was far too complex for people who did not work with numbers, charts, and numerical concepts on a regular basis.

The facilitator asked the two parties to retire to separate rooms for private discussions with him. The facilitator asked the management negotiating team to restructure the budget presentation to be more understandable. The facilitator then met with the union negotiating team and asked them to openly discuss what they did not understand about the budgeting language and fiscal concepts. The facilitator was able to provide a crash course on the intricacies of the budget language, and to secure the union’s commitment to come to the next session ready to ask questions about what they did not understand. When the negotiating session resumed, these efforts paid off. Within a relatively short time, a mutually acceptable solution was found and agreement on that topic was reached.

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This example of unintentional asymmetric information demonstrates how a brief, but effective, educational lesson produced positive results. The outcome supports the findings in the University of Alabama study. Better and more-balanced information, as well as experience and learning on the part of both parties, helps achieve a mutually beneficial agreement.

**Interest-based bargaining.** In the public school arena, positive results also can be achieved through a form of principled negotiations, such as interest-based bargaining. The hallmark of this approach features full disclosure of information in a format that is understandable to everyone. Where an honest and sound rationale is articulated on every topic, a sincere effort is made by everyone to “understand before trying to be understood,” and a trust level is built on open communication and willingness to accept mistakes when they are unintentional.

During negotiations, management has an obligation to reach agreements that are supportive of student achievement and their educational programs; that maintain the financial health of the district; that protect management rights; and that, to the extent possible, provide fair and equitable salaries, benefits, and working conditions for all employees.

Unions have the obligation to garner the best possible wages, benefits, and terms and conditions of employment permitted by law for its members.

When these interests are pursued independently and without shared understanding by both parties, the public, and other stakeholders to the educational system, too often the result is traditional, adversarial negotiations. Only when both parties give serious consideration to each other’s obligations — and factor in the interests of the public and other stakeholders — can a more collaborative and mutually satisfactory outcome be achieved.

**Core values.** One of the newer concepts used to achieve bargaining goals is the development and sharing of both parties’ core values. Core values are defined as the beliefs and commitments that one lives by and uses to make decisions. If parties to negotiations would articulate their core values to one another, and indeed to the communities they serve, negotiating proposals or interests being pursued might lead to better understanding, less rancor, and more long-term stability in labor-management relations.

‘**Sunshining.**’ Finally, one of the major differences between private sector bargaining, such as in major league baseball, and public sector bargaining is the public’s right to know what each side is proposing, and what elected representatives’ positions are on the district’s and the unions’ proposals.

The Government Code specifically states, “Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to express itself regarding the proposal at a meeting of the public school employer.”<sup>4</sup>

This provision is a statutory effort to overcome the “asymmetric information problem” between the community, their elected representatives, and the represented employees. But, this provision, more commonly referred to as “sunshining,” has not been used as intended. Often the proposals are presented to a public hearing where few, if any, citizens are informed or prepared to comment on them.

The California legislature in its last session passed a bill requiring school district officials to sign off that any negotiated agreement can be paid for during the life of that agreement.<sup>5</sup> Obviously, the people of California want more transparency and more information on which to hold their elected officials accountable.

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### *In Conclusion*

School districts, communities, and unions would be well served to openly share their core values, their goals and objectives, and indeed their specific proposals, including the rationales used to back them up. It is time to take public school collective bargaining out of the back room and allow it to see the light of day. Much like sports fans and the players, citizens of any community want a balance between investment in students' educational programs and opportunities, and motivated, rewarded, and appreciated employees. \*

- 1 Farmer, A. and P. Pecorino, V. Stango (2000), "The Causes of Bargaining Failure: Evidence From Major League Baseball," *The University of Alabama*, Working Paper No. 00-08-04.
- 2 Deardorff, A. (2004) *Deardorff's Glossary of International Economics*, University of Michigan.
- 3 Bogue, B., C. Ventrillo, D. Bowen, and E. Borgerson. (April 2001) *Pocket Guide to the Educational Employment Relations Act*, California Public Employee Relations, Institute of Industrial Relations, University of California, Berkeley.
- 4 California Gov. Code Sec. 3547(b).
- 5 A.B. 2756, now in California Gov. Code Sec.3547.5(b)(c).