LABOR NEGOTIATION STRATEGIES AND PRINCIPLES

I. Introduction

The Association of California Cities – Orange County (ACC-OC) serves as the regional advocate for local control, both regionally and in Sacramento. The ACC-OC accomplishes this by adhering to a member-driven model for creating good public policy from the ground up. As such, the ACC-OC has responded to member requests to provide model guidelines to cities when negotiating with bargaining units, with commitment to transparency and accountability.

II. Background

Existing California law, known as the Meyers-Milias-Brown Act (MMBA),\(^1\) seeks to provide a uniform and orderly process for communication between public agencies and employees regarding the changes in wages, hours, or any other terms or conditions of employment of county or city employees. All policies and ordinances must comply with the MMBA.

The ACC-OC seeks to provide a guideline for bringing transparency and accountability to the collective bargaining process, while wishing to respect the autonomy and inherent practices of each city.

III. General Approach

It is important for all parties involved that the rules of engagement be set forth in advance.

Including staff subject matter experts in closed session meetings can provide council members with greater confidence and understanding of issues. In addition, ongoing discussion and disclosure of budget and financial information can assist in facilitating the negotiation process.

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\(^1\) To access the Meyers-Milias-Brown Act, Government Code Section 3500-3511, please click the following link: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=03001-04000&file=3500-3511
The following strategies are offered as a menu of suggestions that can be adopted by cities in whole or in part and should be customized by cities for each specific application.

1. **Use of Outside Negotiators**

Utilization of an outside negotiator as the principal negotiator for the city is an example of good governance and a general good practice to avoid actual or perceived conflicts of interest.

**FACTORS TO CONSIDER:**

A. **Expertise**

An outside negotiator may provide greater expertise in subject matter, negotiation strategies, contract language, and a valuable independent, third-party perspective.

B. **Complexity**

While requiring an outside negotiator is a good practice, the necessity may be considered on a case-by-case basis, based on the complexity and value of the issues at hand.

C. **Costs**

Costs of the negotiation should be evaluated based on the value of the contracts negotiated. Cities should balance the costs of the contract over the costs of an outside negotiator, with the understanding that the labor contract may go to arbitration.

D. **Evaluate Existing Code**

Make sure that proposed policy and language does not violate current municipal code.

**SAMPLE LANGUAGE:**

*The use of an outside negotiator shall apply to all formal meet and confer processes undertaken pursuant to the Meyers-Millas-Brown Act, where either a recognized employee organization or the city, through their respective representatives propose 1) significant changes to contract terms, 2) extensions, or 3) when the employee association negotiates with third party negotiators or legal counsel. In an effort to avoid inherent conflicts of interest, if an outside negotiator is deemed necessary, the principal representative negotiating on behalf of the city shall 1) not be an employee of the city, 2) not be a member of any public pension plan under the city, and 3) have a demonstrated expertise in negotiating labor and employment agreements on behalf of municipalities. The city*
council shall designate one or more management level employees to be present during negotiations and to assist the principal negotiator as the city council and/or principal negotiator deem appropriate.

2. Fiscal Impact of Public Disclosure

Clear and factual information is the starting point for an effective economic analysis of the fiscal impacts of the contract, and can be utilized to justify the action taken. There are various methods for acquiring this information and for communicating it with the public.

FACTORS TO CONSIDER:

A. Actuarial Analysis

Preparing and providing an actual and specific economic analysis of the short and long term costs of every term and condition of employment in the contract is the first way to ensure that 1) City council members have the best data available in front of them to negotiate and make a decision, and 2) the public has the appropriate data to vet the contract and the Council’s proceedings.

The economic analysis may include both the funded and unfunded actuarial liability that would or may ensue from adoption of the contract.

B. Confidence from Analysis

The use of an independent auditor will allow city council members, staff, and the public to benefit from the general level of confidence provided by a thorough and reliable economic analysis by an external professional.

Information from outside auditors should be used in conjunction with information from staff whenever practical.

C. Tangible Comparisons

The economic analysis of each term and condition of the contract can be viewed in the framework of how it will affect the citizens.

Utilize tangible examples of comparisons with other programs. For instance, if a contract will cost the city X amount of dollars, contextualize it to show that X amount of dollars is equal to a specific city service or program.

D. Staff Training
In addition to the use of an independent auditor, city human resources professionals need the proper resources and training to provide and analyze an economic analysis.

E. Public Review

The City may consider making the fiscal impacts of the contract available to the public and the City Council at least two (2) City Council meetings prior to consideration by the City Council of an initial meet and confer proposal.

F. Council Acknowledgement

Consider requiring City Council members to acknowledge receipt and review of the economic analysis in writing.

SAMPLE LANGUAGE:

An independent auditor, a certified public accountant, or an actuarial accountant, shall prepare a study and supplemental data upon which the study is based, that identifies the fiscal impacts attributed to each term and condition of employment made available to the members of all recognized employee organizations.

The first analysis shall be of existing contract costs and of each thereafter.

The above report and findings of the independent auditor shall be completed and made available for review by the city council and the public at least two (2) City Council meetings before consideration by the city council of an initial meet and confer process.

The above report shall be regularly updated by the independent auditor to itemize the cost and the funded and unfunded actuarial liability which would or may result from adoption or acceptance of each meet and confer proposal. These measurements shall display the fiscal impacts of the employee association and or/city proposals. The report shall be prepared to include all benefit and pay aspects of each MOU, and shall include written council member acknowledgement that the report has been read and considered by the signing councilmember.

3. Discussion of Offers and Counteroffers

California’s current open meeting laws provide that a City Council can meet in closed session to provide its bargaining unit representatives with instructions and parameters for negotiation in the meet and confer process. Closed sessions allow City Councils to speak privately regarding their bargaining parameters without disclosing these parameters to labor representatives.²

Additionally, the meet and confer process provides the opportunity for city representatives and labor representatives to bargain in good faith in order to reach an agreement on the proposed labor contract.

**FACTORS TO CONSIDER:**

A. **Report the Facts**

Transparency may result in more realistic counters or counteroffers.

Broad dissemination of offers and counteroffers provides a progress report and clearer understanding for both the public and bargaining unit members.

B. **Discretion**

Disclosure of offers and counteroffers may result in additional public posturing and increased politicization, which can affect negotiations.

All parties involved in negotiations should use caution and clear communication when reporting out of closed session.

**SAMPLE LANGUAGE:**

*The city council shall report out the details of all formal offers that have been rejected at the time of the counteroffer rejecting each proposed term.*

*City council labor negotiators shall have the duty to advise the city council during any closed session of all offers, counteroffers, information, and/or statements of position discussed by the labor negotiators taking place in the meet and confer process since the last such closed session.*

4. **Disclosures of Private Communications**

Having city council members disclose communication contacts that were had with any labor representative is another way to bring transparency to the negotiation process and to build faith with the public. A careful value judgment can be made to what type of conversation is appropriate to report to the public.

**FACTORS TO CONSIDER:**

A. **Disclose Communications**
While this principle may be contentious for some city council members, it can be viewed as a disclosure requirement, not a “no-deal” requirement.

The communication that is disclosed may simply be that the conversation occurred.

B. Impact on the Process

There is some historical context that private meetings, without the disclosure of names, have been the environment needed to reach an agreement. However, a balance can be found to reconcile transparency with private communications.

If a council member is going to meet with the employee group they should remember their closed session obligations and just listen.

Council members that talk to employee groups outside of formal negotiations may undermine the negotiation process.

C. Ongoing Relationship

All parties should approach the process in a respectful and sensitive way that will assist in building long-term working relationships that survive the sometimes difficult negotiation process.

SAMPLE LANGUAGE:

Each city council member shall disclose both publicly and during closed sessions, the identity of any and all employee association representatives with whom the city council member has had any verbal, written, electronic or other communication(s) regarding a subject matter of a pending meet and confer process.

5. Ordinance Model Process

Disclosing the MOU and making it subject to more than one (1) city council meeting provides the opportunity for the public to effectively weigh in on the matter.

FACTORS TO CONSIDER:

A. Consistency

1st and 2nd readings at City Council meetings is standard practice for normal ordinances, and this seeks to put labor negotiations under that standard.
B. Timing

Cities must remain in compliance with AB 537 (Chapter 785, Statutes of 2013)\(^3\) which requires that if a tentative agreement is reached by the authorized representative of a City and a recognized bargaining unit, the city council must vote to accept or reject that agreement within thirty (30) days of 1\(^{st}\) consideration at a noticed public meeting.

**SAMPLE LANGUAGE:**

*Any agreed upon memorandum of understanding shall be introduced for first reading at a regular city council meeting and presented for approval at the next regular city council meeting in the same manner as a the first and second reading of an ordinance.*

\(^3\) To read Assembly Bill No. 537 (Chapter 785, Statutes of 2013) please click the following link: [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0501-0550/ab_537_bill_20131013_chaptered.htm](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0501-0550/ab_537_bill_20131013_chaptered.htm)