

# The-Spaces-We-Bargain---Part-1

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## SPEAKERS

Chris Casillas, Emily Martin, Matt Greer

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Chris Casillas 00:09

As practitioners, the forum in which we conduct various negotiations, has for some time now, presented us with a few options. Historically, many folks automatically defaulted into setting up in person meetings anytime there was a need to negotiate, whether it be a collective bargaining agreement, or a grievance settlement. But other mediums have been around for a number of years as well, such as a standard phone call, email or text message that many parties have regularly relied on for negotiations. But over two years ago, the world of negotiations was upended, like everything else, due to the pandemic, and the multitude of ways in which we can conduct our negotiations radically changed as well. Suddenly, most parties had to quickly learn how to negotiate online via platforms like Zoom or Teams. Now, two plus years into the pandemic. While many parties have decided to return to some in person activities again, online negotiations look like they are here to stay. And we've now introduced yet another new medium of a hybrid option where some parties are online and some in person. Given these developments, it seems like a good time to ask ourselves the basic question of what is the best forum to conduct our upcoming negotiations, and then also reflect on some reasons why someone might choose one forum or the other. In today's episode of the PERColator, join Matt, Emily and Chris, as we take stock of the world of negotiations in mid 2022. And consider the range of options parties now have available to them, in considering how you might conduct your next round of negotiations. With this range of forums, thinking about where you negotiate, can in some respects, be just as important as the substance of what you are negotiating over.



Chris Casillas 02:15

Hello, and welcome to the percolator podcast, good to be with you again, Matt and Emily. So today, we thought we'd start what we hope to be a series of a few podcasts, looking at the topic of kind of where, where to bargain, what forum to bargain in? And this seemed particularly relevant here in April of 2022. You know, we're two plus years into the pandemic, which caused or forced many of us to kind of shift into this world of video conferencing and Zoom and Teams and other platforms like that. But now, you know, things are opening up a bit, at least for the time being, as I say that here right in the moment, seems things change all the

time. But that's, that's the case as of this moment. And, you know, folks are starting to kind of go back to some of our more traditional formats for conducting contract negotiations. And so with that, it seemed like an appropriate time to start to think about what is the best forum to engage in negotiations and collective bargaining with respect to different types of environments and types of negotiations that were involved in? So we wanted to start with this first episode and thinking about what are what are the options available to us now? And and what are some, you know, factors or considerations we might want to think about, in deciding kind of what the best forum is for our next upcoming negotiation? So, Emily, what do you want to kind of weigh in on maybe what some of those options might look like? And then we'll kind of dive into that.

E

Emily Martin 04:11

Yeah, I think obviously, the first the first option is in person. And and that's when people get together and then they get to talk to each other. And I think I think in this series, we're going to be talking a little more about how these different ways that people talk might impact different things. But I do think that when we think about it in person is still important to realize that some of the reasons why in person might be good or might be bad also still include the fact that ventilation is important. And, and the virus is still out there and there are going to be people who are there going to be times perhaps that people are going to be required to wear masks, but there's also going to be times where people choose to wear masks. So in person now might not be the same as in person three years ago, but I think classic in person. The second is on the phone. I think I think before the pandemic, the three most common ways people negotiated were in person, on the phone, or email, and texting, sending each other messages, those three ways. So I think those are the three most common classic type of ways that people negotiated. Matt, what are you thinking?

M

Matt Greer 05:23

Yeah, no, I think those are the classic versions. And, you know, it still feels to me a bit like that's like two years ago, I can't believe that I did in person mediations just two years ago, because at PERC, we're still doing everything, virtually. That kind of takes us to the next kind of options that there have been developed. And as we've kind of moved into the pandemic world, but some of them were started before that, right? So there's the kind of the old school video conference, I don't know if either of you remember, or ever used Skype or some or one of those programs, back in the day where it was kind of very much a video conference, but only video, right, there wasn't a whole lot of other options along with that. But it allowed for that visual connection when you weren't there, in person. So that's still an option that's out there. But I don't know most, it seems like most of the work that I do certainly is through the current video conference options, which I can think of as Zoom and, and Teams as being the primary ones. And those have the advantage of the video feature where you can be there and see each other even though you aren't there in person. But you also have those chat functions and sharing screen where you can share documents on a screen and kind of work on things together. And that can be supplemented through screen sharing, and emails and other ways of sharing documents through that, those those forums as well. So those seem to be the primary ones that a lot of folks are using right now, as we kind of are still in the pandemic, but maybe we're moving towards a hybrid type model, I kind of think of hybrid is where the future is, where there's going to be some in person and some online, right, there's gonna be some video

conference and they might have within one negotiation, some folks who are there in person, some folks who are there virtually, and how is that going to work? And to be honest, that's where my mind space is right now, in terms of figuring out how that's going to work. How are you going to have effective negotiations, when there are some people who are there in person, together seeing each other and the full complement of body language and everything else that goes along with the in person meeting, but some people are there, virtually all you can see them is, there's a square on a, on a monitor or video screen somewhere? So how's that going to work? So I don't know, those are some interesting options. And I guess as I'm thinking about these right now, I'm kind of thinking about a buffet, right? I mean, I don't know if it's going to be one or the other, it's going to make sense. And we'll talk a little more about, you know, whether there's some of these make more sense for various types of negotiations or others. But I'm thinking that it's gonna be more of a buffet, there's going to be a, maybe it's because we're, we're kind of closing on the lunch hour here as we're recording this, but I'm thinking about going through a buffet line. And you know, what, there's going to be a whole lot of options. And so those options are going to make sense for how you're feeling and how hungry you are at that moment. And whether you want more of a, you know, if you're in a desert mode, or if you're in more of a savory mode or whatever, and kind of finding things that are going to complement your negotiation, you're your meal for that, for that moment, and kind of choosing amongst all these options to kind of see what makes sense at that moment. So I don't know, in that hybrid kind of world, I think that's where it's an interesting place. And I'm interested to see how it's gonna play out over the next months and years, probably, as we kind of figure out what we've learned from the last couple years.

C

Chris Casillas 08:36

You've, you've successfully made me hungry, Matt. Both thinking about lunch, but also, I think, hungry in terms of thinking about, you know, how, how folks are going to go about thinking through all of these different options. Because as you both point out, it's it's not that, it's not just that we have these various mediums to kind of now consider, but we also, but the the mediums themselves are constantly transforming, right, like so as Emily, as you point out in person is not the same now, necessarily as it was a couple of years ago, because now it might involve masking or more physical distancing for various reasons. And so that's going to feel very different than what it was kind of pre, pre-pandemic. And so, I think that those are all really good points and kind of move us along to kind of thinking about, and part of the purpose of this of this particular podcast is for folks to give some more deliberate consideration to what environment might be the best for their particular situation. And I wonder if either of you have any kind of thoughts there and both in terms of thinking about what are the different types of negotiations we are involved in? And are some of these mediums like, you know, hybrid approach or video conferencing, or in person, are they more suitable for different types of negotiations that we might find ourselves in?

E

Emily Martin 10:13

Yeah. So like when it comes to contract negotiation, I think a lot of people like to be in person, it's hard to do contract negotiation, I mean I think there's moments where there's a good phone call can can do a lot. But usually, you have multiple people on both sides. So it's important to be able to have a way to have all those voices be part of the process. So I think in some sense, people feel like in person is, is the best way to go. But it's been interesting over the, over the

last few years, I've had some negotiations where, you know, like, I am a mediator, it has to be online, I work at PERC, we have to do remote. And people have said, "Oh, that's gonna be awful." And then there's been unexpected advantages, you know, some some contract negotiations ended up happening to happen in the evening. And that might be a whole lot easier than having people stay till midnight, at a place. But there's disadvantages as well. So I guess, I guess there's pluses and minuses of both approaches. And we could we could spend a whole episode on each one of those. What about ULP Settlements? What do you guys think? What are some ideas? What forum is that good for?

M

Matt Greer 11:25

Yeah, I think that, you know, those types of you know, where you're trying to resolve litigation, ULP's Unfair Labor Practices or even grievances, grievances, maybe certain, some grievances are conducive to that kind of a conversation where, you know, I think, you know, in the old school version of that, you might have the two lawyers get on the phone and calling each other and say, "Hey, can we resolve this?" So I can see that being more conducive to the over the phone, and maybe, you know, if it gets to the next level, where you need more people involved, those do seem some, in some cases, more conducive, I think, to a video conference, or a zoom type format. Although, you know, I will put the caveat out there that sometimes those are very linked to individuals and personal situations, and people's livelihoods and, and how they, how they run their operations or their their career. And, you know, I think that's the the downside, sometimes of doing the video conferences, you lose a little bit of that personal touch. And so I do wonder, you know, in some of those cases, even though we might kind of default to thinking that those are more conducive to a virtual or email or phone type conversations, maybe not always, there could be some some situations and maybe frequently, where that does, it might make sense to do those more in person if you have that opportunity? So what do you think, Chris?

C

Chris Casillas 12:40

Yeah, that's a, that's a really good, good point. And I think the broader kind of message here is, you know, give, give some thought to these different approaches, and don't just assume kind of, you know, you have to go down one particular path, you know, and that just has to be repeated, regardless of, you know, what kind of matter you may be engaged in, and also thinking about some of the more traditional approaches, you know, a phone call seems kind of archaic at this point, right, because we've, we've, in so many ways, we've evolved from just a, an old fashioned phone call, but at the same time, it has certain advantages, right, in terms of, you know, just the speed of connection, you know, we don't have to worry about kind of our physical appearance, because we're just, we're just, it's just a voice. And in situations, like, with litigation, or something, or if you're trying to work out the final details of a settlement agreement, you know, sometimes a quick, quick call is the best way to do it, to capture some of the momentum of the moment rather than trying to, you know, reconvene, an in person meeting with with multiple people. And so I just, I think the point here is to give some consideration to all the, you know, advantages and disadvantages, and we'll talk about that further in some, some future episodes, but I think for the time being, that's an important, important message. The other thing, you know, I wanted to raise too here, with with both of you, is also giving some consideration to the fact that, you know, when we're in a negotiation around something, you know, like a contract negotiation, or we're trying to settle a grievance.

Just because we've kind of started in one particular way. Say, for example, in person, that doesn't mean that, you know, throughout the course of that negotiation, whether it be kind of within a particular day or across multiple days that we have to stay with that same approach. There may be times at which you know, there's an advantage of kind of switching, switching things up. And I'm curious way you two think about, you know what kind of situations, might urge us to kind of reconsider how we're approaching it. And what are some of the pros and cons there?

E

Emily Martin 15:12

Yeah, like if it's urgent, it's hard to sometimes get people across the state into the same room if time is of the essence. So clearly, like old school, we should use the phone for that. Shoot an email. But what are we going to be using? Are we going to be using Zoom for those things more? I think those are our great ideas. I think sidebar, I don't know Matt, I don't know Chris, like, there was always that classic of let's step into the hall. And there was like, a very formal sidebar, but sometimes there was less formal sidebars, that would would happen, just because people were in the same space. And those might be more difficult. But but a sidebar could also be a phone call in between sessions. So so that that's an interesting way to think about different ways to use the technology and different formats.

M

Matt Greer 16:00


Yeah, I think sidebars are a classic way of using, you know, whatever works for the people who are giving that sidebar, right? And that could be a phone, if people know each other pretty well, and you have a phone call. And maybe if you don't, maybe having a little bit of visual video connection, or in person piece might be might be better, who knows? But I also think like brainstorming sessions, like I think of subcommittee work as being really conducive to some flexibility here, too, if you're, you're getting a couple of people from each team together to kind of tackle a certain issue, or brainstorm options, that you know, having a good enough flexibility of being able to do that. And whatever format works for them can be really flexible, and can help move things along quicker and more and more efficiently. So I think it's another other area where having more options and looking at all the buffet options is helpful. So in what works for your your, your meetings and negotiations at various points. So I don't know, I think that our, I think the buffet is much larger now than it used to be even just a couple of years ago, at the beginning of the pandemic, where I didn't even realize half of the options that I use most often now even existed, or I would never have thought that they could even work and now we have them on the table, and we can choose from them, and it makes sense. I think it's great.

E

Emily Martin 17:07

And I think our tastes might change over time, I think some of the ways that we thought about different technology or, or what we would want to use, how we'd want to brainstorm or how we want to do different things are going to evolve as we get more proficient and we develop new skills, and we try more experiments. And we try new ways of of mixing and matching these systems with opportunities. And we figure out what's working and what's not. What I thought was a good idea two years ago is not necessarily at all what I think now and I can't help but

think and two years from now I'm gonna have a really different opinion. So paying attention to the fact that it's a buffet and that things are changing, and I'm changing and we're all changing is going to be part of the excitement as we explore this topic and learn about it.

 Chris Casillas 17:51

Yeah, I can't amplify the importance of that point enough here. Because I think as you as you both know, you know, just even a year ago, kind of we were in full video conference mode, and thinking kind of, you know, maybe this is more of the future. And now, you know, we're, we're evolving from that, to that still being an option, but also in person. And now kind of this hybrid approach that we've talked about where maybe some people are online, some people are in person, either between teams or within teams or the mediator is online and the both parties are in person and and I think you know that like a brainstorming session and negotiations, that's a perfect example of where you might see more of a hybrid approach, where parties maybe start using video conferencing and then and then for a particular session or something, they decide, hey, it's best we all get together in the same room to kind of brainstorm or whatnot. So it'll be really fascinating to see how that develops. But I again, I think the point here is be more conscious and deliberate about considering the different options available to you and thinking about what might be best for your particular situation. So well, great discussion, all this talk of the buffet has made me hungry so I think I'm gonna get a bite to eat. Great to talk to you both.