

# Managing-Complex-Negotiations

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Complex negotiations, labor contracts, multiple bargaining units, large bargaining teams, numerous proposals, public sector, Washington state, collective bargaining, union representation, employer strategy, proposal development, ratification process, communication tools, decision-making, training.

## SPEAKERS

Jared Van Kirk, Chris Casillas, Amy Spiegel

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Chris Casillas 00:11

Negotiating labor contracts is an inherently complex process. Even in its most streamlined form, there are multiple relationships to manage, an array of proposals to track, strong feelings on both sides of the table, and many meetings to attend. But some negotiations involve orders of complexity beyond what most negotiators encounter in a typical bargain. Such negotiations may involve multiple bargaining units and contracts being negotiated at the same time; the bargaining teams may include dozens of individuals across multiple departments, divisions, or units; there may be dozens and dozens of proposals to confront; or the number of impacted employees could number in the thousands, if not tens of thousands. While not every negotiator will regularly, if ever, confront such complex bargains, all negotiators stand to benefit from the lessons, approaches, and tools developed by negotiators in these complex settings. In this episode, your host, Chris Casillas, is joined by two seasoned negotiators familiar with bargaining in complex negotiation environments to learn from their experience. Both Jared Van Kirk, a principal with the firm Foster Garvey, and Amy Spiegel, chief negotiator with the Washington Federation of State Employees, will share their insights, tips, and best practices drawn from years of experience at the bargaining table managing, as you will hear, some of the most complex bargains in public sector labor relations in Washington state.

C

Chris Casillas 01:52

Hello, and welcome to the PERColater Podcast. My name is Chris Casillas, one of the hosts here at the PERC Negotiation Project, and I am very happy to be joined today by two excellent practitioners and negotiators here in Washington State: Amy Spiegel and Jared Van Kirk. Amy is with the Washington Federation of State Employees, and Jared Van Kirk is a principal at Foster Garvey. And I will give them an opportunity to say hello and introduce themselves here in a moment, but before we do that, a little discussion on our topic today which is managing complex bargains. I was pleased to be joined by both Jared and Amy at an earlier Negotiation Project luncheon where we had a great conversation on this, and it was so great that we decided to continue that conversation here on the podcast. And I was inspired on this topic, both in working with both Amy and Jared but a number of other folks as well, in some really complex negotiations. And while I recognize that not everyone in our audience will necessarily confront some of the negotiation environments that Amy and Jared will discuss today, I think everybody can learn from those environments in many different ways. In some respects, the things that you can kind of get away with, so to speak, in a smaller, more contained negotiation don't really work in a much bigger, more complex environment, and so even if you don't find yourself confronting some of the scenarios that Amy and Jared will share today, I think the lessons and the practices and approaches that both of them will speak about today can be carried into any negotiation. For that reason, I think there's tremendous, tremendous value there. So I'll talk a little bit more here in a moment about what we mean by a complex negotiation, and Jared and Amy can add their own perspectives to that as well, but before we jump into that topic, let me give both of them a chance to say hello and talk a little bit about their background. Amy, you want to kick us off there?

A

Amy Spiegel 04:11

Yeah. So my name is Amy Spiegel, and I am the director of negotiations for the Washington Federation of State Employees. We represent about 52,000 public workers across the state of Washington, and I have been working with them as staff since 2005 with the exception of a few years that I spent working for Pierce County, and prior to that, I was a member and an employee of Washington State for about eight years.

C

Chris Casillas 04:42

And thanks again for joining us, Amy. Jared, do you want to say hi as well?

J

Jared Van Kirk 04:47

Yes. Hello, and thanks for listening. My name is Jared Van Kirk. I'm with the law firm of Foster Garvey where I'm a principal in labor and employment. I focus a lot of my time on collective bargaining and other labor relations and support clients largely in the public sector. So very, very happy to be here, and I guess my perspective comes from having represented a lot of public sector clients at all different sizes and levels of complexity, including a few that I would call complex as well.

C

Chris Casillas 05:18

Well, again, thanks to you both for being here and sharing your experience and perspectives on this important topic, and as I mentioned, we're focusing today on the process as a negotiator to kind of manage a particularly complex negotiation—and before we kind of dive into the details of that, I think it's helpful to maybe give a little bit of definition and some parameters to kind of what we mean by that so you have some understanding, and I'll lean on both Amy and Jared to also share their experiences themselves of what complex means to them, but as a general matter, what we're talking about are situations where you're involved in contract negotiations that include potentially multiple unions or multiple bargaining units, so, you know, for many of us, it's often the case that it's just kind of one group or one union, but there are certainly situations where we have multiple unions or multiple bargaining units bargaining kind of either one master contract or multiple contracts but all at the same time. It could also mean a particularly large bargaining unit, so I think—I don't really have any data on what kind of the average bargaining unit size is, but a lot of times, we're talking about groups that are—you know—have dozens, if not maybe hundreds of members, but in these particularly large negotiations, we're talking about thousands or in some cases, as Amy will speak to, tens of thousands of individual employees in those units. It could also mean particularly large bargaining teams, and usually that's kind of part and parcel, I would say, with the number of units or unions that are involved in the process, but oftentimes we see that complexity grow when the bargaining teams themselves expand to potentially dozens of individuals. Also, I think these could be situations where there's just a high volume of issues between the parties, you know. It's not uncommon that two sides come in with maybe a couple dozen issues between them on any kind of standard—quote unquote—standard bargain, but even a smaller group or single union—if there's, you know, three, four, or five dozen different issues, obviously that raises the complexity of the of the process and could also kind of meet this definition. So, when we're speaking of this topic, I think any of those individual scenarios are certainly combinations of those different scenarios can create a much more complex environment and some unique challenges that negotiators have to be cognizant of as they work in these processes. Amy, for you, does that resonate with you? Do you have any other particular experiences that would kind of inform this definition?

A

Amy Spiegel 08:19

Yeah, I think for me, probably the most complex bargain that I deal with is our general government contract and what makes that complex is kind of a host of things, right? So it's 54 articles, 24 appendices, 17 MOUs, two bargaining-unit-specific addenda. It covers 88 bargaining units and counting, 44 different state agencies and counting, and that is a blend of like cabinet and independently elected leadership. We have a blend of interest arbitration and noninterest arbitration groups in that contract. For those of you familiar with state government, we have classified NWMS groups covered under that contract, the potential for supplemental tables—it's also impacted by statutory requirements with regard to coalition bargaining for things like health care. It covers more than 40,000 employees, and it is subject to a statutory deadline for completion in order to have it funded. Kind of adding another layer of complexity, the team itself comes from across the state and has been as large as 100 in different rounds of bargaining. And in the last 10 years or so, it hovers between 25 and 30, but they review thousands of proposals that are received from members across the state when we're formulating our initial proposals. And as you can imagine, when a contract covers that many people, right, there's a incredible diversity of needs, beliefs, priorities, geography, cost of living, you name it, right? And then, of course, we have the diversity of their working conditions—everything from 24/7 operations to kind of the regular office schedule you might think of, mix of in-person and telework, and everything in between, and so all of that stuff has to be balanced and considered all throughout the process—and kind of all of that put together is what makes that contract and that bargain so complex.

C

Chris Casillas 10:39

I think that definitely meets the definition of complex. Every time I hear you describe that, it invokes the 12 days of Christmas song for me because I feel like you're going to end all those numbers with "and a partridge in a pear tree" or something. I just—there's a lot there.

A

Amy Spiegel 10:57

I feel like I should now.

C

Chris Casillas 11:01

Jared, yeah, so what about the same question for you—in terms of kind of thinking about the complexity? I know you work in particular a lot in the healthcare sector, you know—what does that look like for you in particular?

J

Jared Van Kirk 11:14

Yeah, I would definitely agree that Amy's experience sounds highly complex. I might be coming in more of at the medium to complex range here, but I think it doesn't necessarily make it any easier when you're there in the moment. For me, I, yeah—everything you said, Chris, I would agree with. I think there's different ways to define something as complex. For me, things I would highlight are the idea that there might be multiple unions or multiple bargaining units and multiple contracts all simultaneous because that brings another level of trying to keep track at a very practical level and also desires to reach alignment between different units and different contracts to have similar language, which sometimes there's usually agreement that people want things aligned but not necessarily in how they should be aligned, and so that presents some complexity. Diversity—I would also say that diversity of positions is something that's really important. If you have a large group that covers a broad spectrum of different kinds of jobs, whether in a single bargaining unit or multiple bargain units at the same time, that can make it complex because you're the team on the opposite side. In my case, as a representative of the employer, the union's team has a lot of diverse interests that are being brought at the same time, which can be difficult. And two new things I would sort of stress would be sometimes it can be complex because the contracts have sort of a long history—a long evolutionary history—about how they got to be the way they were, how maybe the bargaining units changed and morphed and merged over time, the representatives may have changed over time, so sometimes this baggage—historical baggage—can be a drag on a bargaining, you know, in a way that's hard to shake. So then the last thing you mentioned—my work in healthcare—if you're a highly regulated type industry like healthcare, and I'm sure the same is true for what Amy said with respect to sort of statutory requirements for particular bargaining, but, you know, there's certain things you can and can't do, and you have to try and incorporate this level of legal compliance and regular regulatory requirements into a bargaining situation. So those are just some—in addition to what's already been said, I would add those.

C

Chris Casillas 13:47

Yeah, excellent points. And I was chuckling to myself as you mentioned the history piece because I used to represent a group, and it was a very mature contract—had gone back for decades—and they actually had clauses in the contract that were named after specific people over the years, and it was like there's one clause—like the person, I think, was deceased at that point—like you have long since retired—but still memorialized in the CBA there, so yeah. That definitely adds a layer of complexity. Well, good, I think we've kind of sussed out, you know, the parameters of kind of what meets this definition and hopefully given the audience a good perspective on just how big these contracts and these negotiations can grow. Moving into kind of some of the substance, as you both know, before we actually get to the table and start the work of, you know, passing proposals and working toward a resolution, there's a tremendous amount of work that goes into that process before you're even ready to sit down, and, of course, with these complex negotiations, that process also takes on a layer of of complexity, and I think it's important to kind of talk about what the two of you kind of do in those early stages to kind of manage all that. And one of the kind of first questions is kind of thinking about, you know, how to bring your team together. I think you both spoke on this issue, and, you know, it's always a question, I think, for any negotiator. But when we're talking about multiple units and multiple employee groups and different regulatory environments, you know, how we go about that process becomes all the more complex. Jared, do you want to start there and kind of thinking about how, particularly on the employer side of things, how you go about that process?

J

Jared Van Kirk 15:47

Yeah, I think the most important thing to start with is to think about your team and your internal decision-making process, and not only what the client needs or who in the client needs to be involved in decision making but also think about how do the people you bring to the table influence a more complex bargaining where maybe, for example, you're facing a bargaining team that is 25 or 30 people on the other side, or you're facing a situation where there are multiple dozens of proposals instead of a few. And I don't know that there's a one-size-fits-all answer, but you do have to think, you know, do we have an effective and efficient decision making process lined up where we can first of all meet our obligations to bring people to the bargaining table who can make decisions and bargain in good faith, and also so that if we sometimes get to the limits of what those folks at the table can decide, how do we quickly incorporate higher-level decision makers into the bargaining to review things? And then, at a very practical level, do we have the resources we need in order to do the things you need to do in any other bargaining but more of them, and faster? So, for me, at least, that—in the situation I'm thinking about mostly—we decided to bring in a smaller bargaining team of higher-level decision makers and dispense with some of the lower-level management that we might bring to a table because we thought that maybe the—we knew there were issues that were sort of—being at a higher level, we'd have to do less discussing about, like, particular circumstances or things that happened in particular units because we're covering such a broad spectrum of points. We said let's bring in higher-level decision makers, and few of them; maybe that will help make more efficient decision making. And then we also created a structure where we had a higher-level leadership oversight, so I called it a steering committee. You can call it whatever you want, but you talk about which executive-level leaders need to have periodic updates and need to vet and approve major decision making process and get that stuff on—to get those meetings on their calendars well in advance so that they have them, and so you don't have to try and wrangle people when you need them. And then the last thing is then you get a practical level—we kind of downstream—we created what I call the resource team, which was the people who aren't on the bargaining team but the people who knew that they weren't going to be on call, particularly right before and right after bargaining sessions, in order to do work. So that's the people who are going to do costing, financial people with financial expertise, some of those managers who might otherwise be on a bargaining team but we eliminated from the bargaining table—we still needed to have on call. So I sort of had an upstream and downstream—places I could go to get what I needed. So I think that's probably the most important sort of structural consideration.

C

Chris Casillas 18:55

Great, some very practical tips and useful advice there. Thanks. Amy, how about on your end of things, particularly kind of looking at it from the union's perspective?

A

Amy Spiegel 19:06

Yeah, and I—that's one of the things that I find so interesting about kind of the PERColator panels, right, is just hearing the differences between the prep and the work that goes into both sides of the table. On the union side, it's quite different. We elect our teams, so we have internal governing bodies that have established a structure and rules based on lessons learned over the years, and that structure is our roadmap to our pretty well-organized process at this point. So we elect through existing governing bodies that are structured to be representative of the workforce that's covered by the contract. We gather proposals from members throughout the entire prior two year cycle, and we're compiling, reviewing those for legality, consolidating duplicates, doing all of that sort of groundwork before those are then used by the bargaining team to formulate our initial position at the table. We have a really thorough two-day in-person bargaining team training curriculum that both prepares the team for the process ahead but also allows them to really form as a team—right—to have that time together to gel before they're dealing with the tough stuff, and then the training also establishes the rules of the road for them. We also are doing kind of all at the same time, right—we're doing extensive research into the proposals that we've received and requests for information and just sort of getting ready to put together our initial presentation. One of the things that I'm always mindful of and working on ahead of time is—because you have a sense, right? You have a sense of the issues if you've been working with the group over that period of time. So, I have a rough outline going of my opening statement of, you know, my proposal outline of some arguments and justifications that I've been gathering and saving over that two-year period. So, I'm doing that work in advance to the extent I can as well.

C

Chris Casillas 21:25

Yeah, it's where we talk about this a lot in our trainings, preparing for bargaining, but you really emphasize this point that it's this kind of continuous cyclical process. It doesn't—there's not really an ending point or a starting point. You're always, as soon as you're done with one negotiation, you're starting the work for the next one, including gathering information and ideas and concerns and vetting those along the way. So, yeah, absolutely. Jared, any thoughts?

J

Jared Van Kirk 21:51

I just want to—a couple of things that Amy said I wanted to echo that would have relevance on the employer side too, for sure training being one of them. I do think it is important to do some training, especially in a complex bargaining, and even if you have people on your team who feel like they're experienced and have done this before because, even if they've done it before, they're only doing it, you know, every, well, in my case, usually three years—it varies, but they're not doing it all the time, and so it doesn't hurt to do more training. And I do think there's a—the prep process may be different—definitely is different. It's easier for the employers; we have fewer people we have to consult, for sure, but there's a huge premium in a complex party, and I'm doing that well in advance, and essentially, as best you can possibly do: be ready with all your research, proposal development, initial drafting before you go into bargaining session one because the day-to-day or week-to-week needs of bargaining will be more intense, and you'll just have less time to catch up if you're not ready on time.

C

Chris Casillas 22:57

Absolutely, and you've both touched on this a little bit already but maybe just to expound for a moment here on the actual—so, you know, we got our teams together but thinking about the actual process of getting those proposals developed, there's a mechanical issue of just kind of getting those together, but you also have all of these kind of unique constituents that you're getting information from and input. How do you each go about managing all of that and then getting to the actual pen and paper? Or I guess I'm dating myself here; we don't use pen and paper anymore. We have computers for the last three decades but the actual typing of the of the proposals.

J

Jared Van Kirk 23:43

I'll go first on this one. It can actually vary—depends on the clients, you know. Some clients will have done what Amy talked about, and they will keep their own running lists over the three years, and you'll have your first meeting, and they'll pretty much have a list ready to go of what their key issues are and what they want to address. And it can range from that all the way down to where you go into the meeting and you sit down with the team for your first prep meeting, and everybody just stares at you and says, okay, what do we do now?" And so you have to kind of prompt them to and guide them through this idea of reviewing the contract. So that can take the form of having the client go off and kind of do that work on their own, in which case you need to guide them a little bit about who should be involved in that work and confidentiality and how broadly that you want the circle of preparation to be, and then they bring it back to you. Or sometimes I'll be directly involved, and we'll do something as intimate as just spending several hours over a couple of sessions just walking through the contract from the top to the bottom, looking at each section, reminding everybody this is what this contract provision is for, and seeing and having people bring issues to the table. And sometimes that's important because a lot of times what we get are people who have concerns, desires, frustrations, but they don't really know where they come from or how they might be located in the contract. So we have to identify, like, how does this actually relate to the bargaining? Or it doesn't at all. And many times things hit the cutting room floor because we decide, well, this isn't actually really an issue we need to bargain anything for. You need to either do a better job managing, or you need to follow the language as it's already written, or, you know—and a lot of stuff hits the cutting room floor there. So, you think you need to—you need to develop kind of the initial process but then there's also needs to be a process where yo..u can bet the proposals and make, you know, rational bargaining team decisions over what's appropriate to bring to the party.

C

Chris Casillas 25:46

Good. Amy?

A

Amy Spiegel 25:47

Yeah, this is another area where we've really honed the process over the years. And, you know, we're gathering, like I said, thousands of proposals over a two-year period from, you know, 40,000 folks across the state for this contract. And, you know, among those 40,000 people, you have a wide range of knowledge about the process, right? You've got folks who have no idea what you can and can't bargain, but they know this thing is important to them all the way to people who've been at the table on the team many, many times and know the process inside and out. And so we'll get proposals for things that we can't legally bargain over or for things that are already in the contract, right? And so we spend a lot of time going through each of those, and we have a referral process, so the team, through democratic processes, decides whether to support or not on each proposal, but we also refer them. So if it's, hey, we already have this language, we're sending that back to our staff team for enforcement to go help that person see where they already have that right and enforce it, or we're referring things to our leg[islature] team, right? If it's something we need to think about a bill rather than a contract proposal. So we're really thinking about it holistically, you know, looking at all the tools in our toolbox and thinking about it like problem solving, right? How do we solve these problems? Now for the proposals that make it, you know, to the table, so to speak, from the conclusion of that vetting process with the team, that's where I take that package and I go back and I start drafting language. We then hold another team meeting to go through all of the language and make any needed tweaks prior to presenting it across the table, but the other thing that factors into kind of compiling and getting to our first round of proposals is that part of my role is that I am always tracking arbitration decisions, I'm looking at patterns in our grievance filing, I'm looking at, you know, where are there gaps that we need to fill with contract language in our day-to-day process? So to your earlier point, Chris, about this being, you know, you're not done bargaining really ever, right? That's kind of my mantra: if you're doing this right, you're never done because all of those things connect, and you're really monitoring them because your chance to get a real solution to those problems is in bargaining. So a lot goes into our proposal development.

C

Chris Casillas 28:28

Yeah, and I think that's probably critically necessary anywhere but particularly this kind of environment especially. All right, well, so kind of just continuing to kind of move us forward in this process, at some point, obviously, we got to sit down at the table and start, you know, the quote unquote hard work of actually negotiating the contract. As you come into these environments, you know, I think in a lot of kind of more streamlined, you know, single group type bargains, fewer issues, you know, you might be reaching out to the other party, hey, you know, what's a good time to get our first session going and get something on the books? Are there any particularly unique processes or kind of frames of mind that you have that you're thinking about as you go into something that you know is going to be kind of infinitely more complex? What differences are there in terms of kind of setting up the process? Any thoughts there, Amy?

A

Amy Spiegel 29:37

Oh yeah. Organization. Like I have to be uber organized or I would completely lose my place with all those moving pieces in this contract in particular and kind of the competing groups, and statutes, and having to bring together kind of coalition agreements at the end. I have to be really organized, and so I actually use a color-coded tracker that tracks every piece of the contract, each proposal, you know, when it was presented, you know, TA'd, whose court it's in, all of those things, and I update that at the close of every session—not only for myself but I share that with our bargaining team so that we're all on the same page. And then occasionally, I will, you know, across the table, touch base with the other negotiator to make sure we're on the same page about the status of everything because that is one really simple thing you can do to eliminate unnecessary conflict at the table. If you've got one team thinking they're waiting on the other, and vice versa, they're both getting impatient and frustrated with each other because somebody's wrong about whose court it's in, and that's a waste of everybody's energy, so being really organized and on top of where everything is at is critical for me.

C

Chris Casillas 31:06

Okay. Jared, what about you?

J

Jared Van Kirk 31:08

So echoing without repeating everything Amy said, you do need to have some consistent way to track your proposals and try your best not fall behind on that. Get some support from your client or from somebody in your office or something to help you out with that if you need to because you got to keep track. It's so easy to get lost. Building from that, though, I would say another thing that can be really helpful: something so simple is to talk to your counterpart beforehand and talk about, like, how might we be grouping and presenting proposals because—and I've been guilty not doing this—and I have a certain way I want to put my proposals, and we get there and on the first day, we pass some proposals, and they just look completely different, right? Like the union may pass, might say, "Here's ours. We grouped them article by article," and that may or may not make sense depending on, you know, some articles have compensation and non-compensation proposals mixed together, so maybe that doesn't make sense. And I might be giving them proposals that are all organized around a single subject matter, but they're drawn from two or three different articles. And when you do that, it can get complicated really fast if you keep doing that because then they're, by definition, only responding to part of my proposals, and I'm, by definition, only responding to part of their proposals and in the tracker. So some of that may be strategic, it may be part of what you need to do, and it may not be completely resolvable, but at least attempting to get on the same page about how you're going to group things, what they're going to look like, I think is helpful. I also found it very helpful just to create a standard format for my proposals, and I'm sure most bargainers have sort of a kind of document they like to use, so I'm not talking about that. I'm just talking about, especially if you're doing multiple contracts, how are you going to make a proposal that is actually going to affect written language that exists in multiple contracts? And multiple contracts may have the same concept in them, but they may not all have exactly the same language, so if you want to make one conceptual proposal, it's actually going to look different in each of the contracts. Are you going to have one piece of paper that has three or four or five or six up to 82 different segments of similar contract language? Are you going to state the proposal conceptually and then also give the link? You know, just something that you can be consistent, and in my case, for example, something as simple as I said, when I give you proposals, we had six—we had eight contracts going at the same time. So when I give you proposals, they're always going to appear in this order: this contract first, then that one, then that one, then that one, then that one. So it was always clear, you know, if you wanted to go and say, "Well, how was it for the nurses?" you could look at the first one in the list. And I don't think there's any exact way to do it but just having some kind of consistent format is important too. And I would say my last thing, for there's lots of things I can think of for prep, but make sure you have resources that you need. One thing I think this might—this is different for employers in general, too, because, you know, for a union, you can correct me if I'm wrong, but for a union in a really complex big bargaining, it's probably one of the if not the biggest thing going on right then, right? That's where, as the employer, it will be a big thing, but it's not the only thing that's going on, and it may not even be the most important thing going on depending on what's going on the floor because they have all their operations to run at the same time. So being able to make sure that you can have the attention you need to from the people who need to give you attention, have resources from something as simple as taking notes to tracking proposals to being prepared to do costing is really important preparation, too.

C

Chris Casillas 35:04

Again, great specific pieces of advice there. As we're in these rooms, sometimes very large rooms, kind of talking about all these things and oftentimes have a lot of different voices in those rooms from both teams, different experiences representing different constituents on kind of both sides, different needs, and I'm sure as many different opinions as there are people in the room on some different topics. How do you—you know—that's tough when there's four or five people in the room, it seems almost unmanageable sometimes when there's 100 people in the room. Any particular kind of kernels of advice or thoughts about how to just kind of work with all of those different people? So many different cooks in the kitchen if I can think of more metaphors here. Amy?

A

Amy Spiegel 36:05

Yeah, I mean, I laugh when you said sometimes very large rooms. We're primarily bargaining virtually, and I do not miss getting there at 7 a.m. to set up 100 chairs. That's, um, yeah, I mean, I think what—in terms of our broader membership, right, we are in constant contact with them as a whole. We use direct messaging communication tools all throughout with our team. We have regular meetings internally and just kind of really to keep our membership united around what's happening. In terms of at the table, I mean, I'm thinking, like, you know, ways out of being stuck, right? Depending on the issue, we've got the opportunity with such a complex bargain, right, to be able to tackle a different subject. So okay, that one we're stuck in. People just are dug in, we need a minute—kind of the things that you would use a caucus for, which is always also an option. We can tackle a different subject. We can, if it's within our team, we can call back to our training. We can call back to our member survey results, which tell us what our priorities should be and help solve those debates. We can look at what have we accomplished so far and kind of ground ourselves. Something interesting, kind of psychologically, that happens in bargaining that I've always been fascinated by is toward the end of the process, as both parties are sort of withdrawing pieces of their proposals, right, and moving toward one another, it feels like you're giving something up even though you didn't have it. And so people get really dug in on this thing that they actually don't even have, right? And so reviewing what you've accomplished so far, I think, helps with that. You know, and ultimately we vote, right? We can do a round table, we can hear from everybody, and at the end of the day, we can vote. And sometimes, if things are going really sideways, we might be planning our next job action in caucus, but there's, I think, there's lots of ways—there's lots of options on the menu for how to move things along when it gets contentious or you feel stuck.

C

Chris Casillas 38:24

And I'll get Jared to weigh in here in a moment but just to follow up on one thing, in terms of kind of the participation at the table, do you like to encourage kind of all of those voices to kind of speak their minds when they see fit, or do you think there's some benefit in having a little bit more of kind of some structure to that and some focus? Do you have any?

A

Amy Spiegel 38:48

Yeah, definitely. I mean, I—where we have landed, kind of members in our structure have landed, is that it can be a very emotional process when we're talking about their work, their livelihood, right? And so they've landed on having a spokesperson. And when we have—we certainly do have members speak to issues, share stories, but when we do that, we're talking about it ahead of time so that the member has a chance to really feel prepared, you know? Kind of shake the nerves if they have any, and then it's not an emotional reaction, right? Or at least it's a thoughtful emotional reaction.

C

Chris Casillas 39:34

Jared, same question for you in terms of kind of just managing all those different voices in the room, both on your side of the table but just kind of also thinking about how the employer responds to all that different feedback and all those different perspectives at the table itself.

J

Jared Van Kirk 39:51

Yeah, I think this is probably one of the hardest areas from my experience. I think I have dealt with unions that, in a lot of ways, operate on more of a consensus basis. Or at least that's my observation of it. I don't have any of their internal decision making, but it sure seems that way and that means a lot more people speaking to each proposal and decision making that I'm pretty sure isn't happening on an internal vote. They're talking about it until they reach a consensus on it, and all that put together, really, my experience has been, it just complex parties just take a lot longer. They take much more time, they're much slower. This can be a huge frustration for the employer. You need to prepare your employer team for this ahead of time. It might not alleviate all the frustration, but they at least need to know that this can take a lot more time. You're going to spend more time listening to things. You're going to spend more time listening to things that you think are repetitive, duplicative, redundant, not saying they necessarily are, but the employer teams may perceive it this way, and there's not a lot you can do about it. It doesn't help to try and move things along and tell people you've heard enough. That doesn't work. So you need to be prepared to receive that. Obviously, one thing I have done is tried to actually, you know, limit the voices in terms of number but increase their importance. So I try and bring higher-level people to the table so that when they speak, they're speaking with authority over whatever their department or division or unit is as opposed to—and then, you know, I think it's more meaningful in that way than you hear from them, but we don't need multiple people to speak to issues. I would just say, we haven't really talked about this yet, but anything you can do to have issues being discussed or addressed or talked about in smaller groups could be helpful. I found it very frustrating, and frankly, not a very good process to have just one big table for multiple units and all simultaneously for every issue. It added inefficiency and delay to no particular purpose. I think it would be much better to look at all the possible options for handling things at side tables, small tables, several tables, subcommittees, caucuses. I mean, I think you can discuss all these different structures but trying to get smaller groups of people to talk about issues is preferable, I think, and an easier way to at least gain understanding and hopefully, you know, get towards solutions also. Because at a certain point, a lot of people talking to a lot of other people doesn't really move the needle very much.

C

Chris Casillas 42:52

Interesting. Amy, do you have any thoughts on kind of the use of those smaller side tables? Do you use that process or something similar?

A

Amy Spiegel 43:01

Yeah, I was just sitting here thinking: I can't recall a time where we have reached a deal at this table without a sidebar or two because of the complexity, you know? We've reached a deal at tons of small tables without ever doing that, but there are often times in this group where we need to have an agency-specific discussion about something that's happening at, you know, DSHS or DOD, or whatever, right? And, those smaller discussions with people who really know that work move the needle for sure.

C

Chris Casillas 43:37

Okay, so yeah, that's great. Again, specific suggestions, small tables, side tables, side bars—what else? What else did the two of you do to kind of keep those lines of communication open during this process, especially as it starts to kind of wear on and, you know, frustration levels get maybe increased, people get more tired. How do you keep those communication channels open, particularly as the lead negotiators? Jared?

J

Jared Van Kirk 44:07

Well, you got to talk to your counterparts and trying to, you know, get a sense of where their teams are heading. Maybe people might not say—obviously, people aren't going to say necessarily what they agreed to, but they might give you some hints as to where the more fruitful avenues of discussion are. And I think even if you're at a bigger table, some agreed opportunities to speak more candidly and openly and sort of what-if situation discussions are off the record type discussions where people can talk a little more fluidly about their interests and what they're—you often can expose sort of an opportunity for a compromise. You know, you learn a little something more about either what's really important to people or what they're really trying to gain, you know—are they actually trying to gain the actual contract provisions they're proposing? Or are they trying to gain recognition of the same issue, but they're a little more open to how that issue gets recognized? Because a lot of times on the employer side, you know, an initial proposal is going to come in and it's going to feel restrictive of some kind of employer, right? Right, we don't—that's something we now have discretion to make decisions on on our own, and under the union's proposal, we will lose discretion to make that decision in such at some level and that is, you know, often something that the initial reaction is like, "No, why do we want to give that up?" And I think you can sometimes find that you don't necessarily need to even approach it on that plane. If you look for other opportunities to say, okay, well, let's not talk about restricting the decision or making a decision here at bargaining, but let's talk about how do we acknowledge this is an important issue—how do we find an opportunity for the parties to discuss it? Or how do we take, you know, a time-limited step forward? Maybe do something for a limited period of time or a trial or something like that. Those sorts of solutions, I think, are good to find, but they're hard to do it at a big bargaining table, and they're hard to do when you're passing proposals. You need to find some other sorts of avenues for discussion.

C

Chris Casillas 46:23

Amy?

A

Amy Spiegel 46:24

Yeah, I mean, I agree completely with having an open line of communication with your counterpart, that's important, but I also think that it's a part of my role to remind people, especially now that we are doing so many things virtually, about the humanity, right, of the process. And like, you know, just all of our members are really feeling the issues that we're talking about. The employers' representatives might be offended by what we have to say, you know? They might feel like, "I don't do that. Why, you know, why do I have to hear this?" or whatever, you know, whatever the reaction may be, because we're all people, right? And we all, you know, I believe that people come to work wanting to do the best they can do, and it's hard to hear when something isn't working. And so I think just reminding people that it's a bunch of humans trying to get through this process together is really key to helping things flow and stay productive along the way too.

C

Chris Casillas 47:29

Yeah. So just to kind of start to work us toward the end of this podcast but also hopefully the end of these complex bargains as well, you've both mentioned kind of the importance of tracking things as you go along the way. At some point, we have to start to actually—hopefully we start to get some resolution on things, we get some TAs, and eventually hopefully get everything tentatively agreed upon. Do you have any particular tricks or tools that you use to kind of get what are maybe three, four, five dozen different article changes—kind of get all the right language wrapped up, know where everything kind of landed on those things, and get it into an actual final form? Any kind of particular things there, Amy?

A

Amy Spiegel 48:20

Yeah, ratification of this particular contract is quite the undertaking. We sign and track tentative agreements as we go, proofing those as we go, and then once we have a full tentative agreement, we're able to collaborate pretty quickly, combine all those signed PDFs into one big tentative agreement that shows all the track changes. We're also thoughtful about our formatting along the way with sort of that end product in mind. And then, given the statutory deadline to expedite the process, we just, like I said, we just use a scan of all those signed TAs for voting purposes. We make announcements and do outreach to our members using multiple communication tools. And then we have an online voting system that we use for the ratification process. We also provide highlight documents—kind of the cliff notes of what the outcome was. We set up voter assistance and information centers all across the state, so people can go to one of those if they have questions or need help with the online voting. And then we, prior to all of that, of course, we have a meeting to educate all of our staff on the tentative agreement and what it means, so that everyone can be a resource when it comes to answering questions through that process. The statutory deadline is October 1st of our bargaining year and so September—this is pretty much all we can do is just, right, we're ratifying fifteen contracts all at once, so it's quite the process.

C

Chris Casillas 50:05

Yeah. Well, Jared, some of that maybe resonates with you, but I imagine some differences there on the employer side of things with all that Amy just spoke to.

J

Jared Van Kirk 50:17

Yeah, I think there's some differences. One thing that I would agree with is in a complex bargaining, I don't think you can follow the sort of agree in principle and draft later approach. And I don't do that anyway, because it's just not me. It wouldn't work for me as a practitioner, but that's not to say, in a small bargain, you couldn't sort of agree to agreement of principle and then work together and sort of bang out the actual contract. I just don't think it works here. You've got to draft as you go. The goal should be that when you TA something, you're not TA'ing a concept, you're TA'ing the final contract language—completely red line all the periods and commas in place so you don't have to do any of that work later, which could be much, much, much later after a lot more water is in the bridge, and people may not even remember that much about early discussions at that point. So highly recommend drafting in full contract red line format and TA-ing with signatures or initials as you go. Also, really important to complex bargaining, to TA as you go just so like the physical papers people are passing become reduced in size and quantity and volume but just that seeing less come across the table and winnowing it down from, you know, fifty different documents to twenty, ten to three to one tells everybody, like, oh, we're getting near the end; we really better push. I mean, I think that really actually makes a big difference. And then, so the other thing is, for ratification, certainly we don't have to go through that kind of a ratification process, but I do think it's really important for public employers to remember to speak ahead early about the employers' needs for ratification. Because the union team members probably aren't thinking that an employer needs to ratify a document. Like I know Amy probably knows this happens—that needs to happen—but all the team members might not understand that, and I really don't want to spring on them at the last minute, like, oh yeah, our next board meeting is actually in three and a half weeks, and so we'll get to it then. That's what has to happen, that's what has to happen, but you should tell people ahead of time. And as I get close to the end, if we're coming up on a board meeting, I like to tell the union, like, hey, our next board meeting is in two weeks, so if we finish today and you ratify it in a week, obviously not Amy's contract, but if you ratify in a week, then we can approve it at that board meeting. But if we don't finish today, it's not going to happen until the next month's board meeting. And occasionally people can take that as a threat, and whatever, but I still think it's important to tell people what the timing is so they're not surprised later on that there might be some delay or that the employer actually needs a board to ratify the document. So, other than that, obviously an internal ratification at a public employer is a whole different animal and quite a bit easier than what did they describe.

**C** Chris Casillas 53:29

A little bit more streamlined, generally speaking. Well, great. Well, this has been an action-packed hour. I'm a little exhausted kind of thinking through all these complexities. I hope our audience is able to kind of go back and play this a few times because there's so many wonderful nuggets of information and tips that, again, I think, regardless of what environment any of you are facing, whether it's a small group of five or six employees and just a couple of issues or something that involves, you know, fifteen unions and 40,000 employees, I think these ideas can be applied in almost any setting and hopefully help all of you kind of manage those environments in a more productive way. So thank you Jared and Amy for your time and all of your insights. Much appreciated. And that should do it for today. Thank you.

**J** Jared Van Kirk 54:37

Thank you, Chris.

**A** Amy Spiegel 54:38

Thank you.