

Public Sector Negotiation: A Real World Integrative Case

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ABSTRACT

Negotiation skills have long been recognized as one of the critical “soft skills” that management and business students should develop for use in their professional careers and personal lives. The relevant skills can be taught in many business courses including principles of management, organizational behavior, and negotiation, as well as similar public administration courses. In their classic book, *Getting to Yes*, Roger Fisher and William Ury convincingly make the argument that the method of principled negotiation should be utilized in most integrative bargaining situations (Fischer and Ury, 1981, pp 9-14). The case presented here, *The Wyatt Public School District*, is an excellent one for teaching the basics of principled negotiation strategy. The nature of the case is integrative, versus distributive, because it meets the broad definition of integrative models as first identified in the seminal work *A Behavioral Theory of Labour Negotiations* (Walton and McKersie, 1965). The case is best approached by parties utilizing the integrative process because, like most labor contract negotiation situations, it contains all of the relevant factors; several issues to be negotiated, the possibility of mutual gains options, a sharing of information and perhaps most important – a continuing long-term relationship between the parties (Carrell and Heavrin, 2013, pp186-188).

The Wyatt Public School District case (real school district, name changed) offers several key attributes that make it ideal for classroom usage: (1) it is based on an actual case, not a fictitious one, which gives it critical “real world” student appeal; (2) it has been classroom tested and students report it increased their negotiation skills and their confidence to engage in a negotiation; (3) it includes both economic and non-economic issues which students can easily understand, evaluate, and bargain successfully due to their own educational experiences; (4) it was successfully mediated by the authors, and the actual settlement terms are available upon request to interested faculty and ; (5) the union and management teams both strongly desire to settle in negotiation and avoid final – offer arbitration, which is the next step under state law (see Carrell and Bales, pp 22-36 for discussion of the final – offer process in the public sector).

Keywords: Negotiation case, public sector, integrative bargaining

APPLICATION

The *Wyatt* case has been designed for use in an undergraduate or graduate classroom, and has been successfully classroom tested with hundreds of students. The simulation is a public sector event (collective bargaining), however, the real-life dynamics inherent in the simulation, fit perfectly within any private sector or public sector course design: group planning and strategizing; relative negotiating power/leverage; timing; separate and mutual interests; monetary and non-monetary issues; potential for packaging and trades; BATNA: Best Alternative To a Negotiated Agreement (Carrell, Heavrin and Manchise, 2014, p 245); major consequences for not reaching an agreement; opening statements; initial proposing and counter proposing and constituencies who must ultimately approve of the settlement makes this real-world simulation. The nature and complexity of the role-play forces the individual student to think about their and their team’s approach during the preparation, opening, negotiating and settlement stages of negotiations. The authors believe that after a candid and thorough processing out (classroom discussion) of each stage of negotiations, the instructor's course learning objectives will be enhanced.

The *Wyatt Public School District* case is a negotiation is about a renewal contract agreement between the school board and the teacher’s union. The parties have secured the services of a mediator to help facilitate this last day of negotiations thus making the simulation also open for mediation training (an additional feature). All of the common negotiating challenges are present: a deadline (the last mediation), consequences for not reaching an agreement (*final-offer arbitration*), relative bargaining leverage (about equal), confidential information (supplied), sufficient mutual information to negotiate the issues (also supplied), and issues laden with separate and mutual interests (to be discovered by the parties). Students are offered the opportunity to practice integrative/principled negotiations as explained in (*Getting to Yes, Fisher and Ury, 1981, pp 9-14*) by the need of the parties to solve the problems surrounding the sick leave bank, the grievance and benefit election forms, controversial hiring decisions and

certified employees. In line with the reality of most negotiations, students are also placed into a real-world setting to negotiate economic/monetary issues: the salary schedule, retiree insurance and bereavement leave. These discussions can be governed by pure integrative/principled techniques, or as determined by the instructor, combining integrative/principled and distributive (proposing and counter proposing) until a settlement is reached.

The students should be divided into a series of two separate teams. The school board team should consist of Superintendent Sawyer and Assistant Superintendent Savara. The teacher's union team should consist of Union President Thomas and two negotiating team members. The teams are given the appropriate *mutual and separate confidential* background information to help them develop negotiating strategies. Both teams should be given about one half hour to prepare for negotiations. The instructor may provide realistic additional information not provided in the case, but the instructor should not offer any advice which would place one team at the disadvantage of the other. The students should be encouraged to construct and present an opening statement to set the tone of the negotiations. The instructor is free to determine the consequences for not reaching an agreement. The negotiation ultimately challenges students to assess their natural style of negotiating.

Learning objectives

As a result of analyzing this case, students should be able to:

1. Understand the necessary negotiation processes of compromise and trade-offs of interests by the parties, which are needed to reach a settlement.
2. Experience the real – world pressures to reach a settlement in light of a less desired alternative (BATNA) if no settlement can be reached by the parties.
3. Develop realistic mutual – gains options to resolve conflict involving both economic and non-economic issues that are important to both parties.
4. Understand the need to openly discuss one's own interests as well as that of another party in an effort to resolve conflict and develop a resolution.
5. Realize personal growth through the utilization of a negotiation and conflict resolution process.

Principled negotiation concepts

The *Wyatt Public School District Case* emphasizes key concepts of principled negotiations in *Getting to Yes* (Fischer and Ury, 1981). The concepts and techniques are designed to help negotiators efficiently reach mutually satisfactory agreements, avoid impasses, effectively deal with difficult counterparts and maintain/enhance ongoing relationships. To accomplish this goal, the case requires a basic understanding of the following concepts: BATNA, the value of interests, inventing options of mutual gain and the application of objective standards/criteria.

1. BATNA = the **B**est **A**lternative **T**o a **N**egotiated **A**greement (Fisher, Ury and Patton, 2011, pp.99-108)

Students should know that before starting a real-life negotiation, whether it be for a salary increase, the purchase of a car/home, the acquisition of a rental agreement, or in this case a renewal collective bargaining agreement (CBA), the student/negotiator must realistically assess their best course of action in the event they do not reach an agreement, their BATNA. Once a negotiator clearly understands what they could/would do if they fail to reach an agreement, many of their decisions about how and what they will propose / agree to will be greatly influenced by this knowledge. A student will learn that if a final offer falls short of their BATNA, the offer should be rejected. Knowledge of one's BATNA also clearly identifies a negotiator's relative bargaining power (Carrell, Heavrin and Manchise, 2014, pp.109-111). A strong BATNA provides leverage. Ordinarily BATNA assessments are done in private. However, in the *Wyatt* case both parties share the same undesirable BATNA, final-offer arbitration. This unwanted outcome strongly motivates both sides in this case to deal more reasonably with each other.

2. Understanding the Value of Interests (Fisher, Ury and Patton, 2011, pp.42-57 and Carrell, Heavrin and Manchise, 2014, pp.109-110, p.245 and 251-252)

Exactly what is an *interest* and how is the knowledge of an *interest's* value important to a negotiator? An interest is a requirement or necessity for well-being and/or survival. Students should discuss this definition and understand its impact upon negotiations. They need to know that the wording or the articulation of all negotiating proposals are just reflections of a negotiator's attempt to satisfy their underlying *interest(s)*. The authors of *Getting to Yes*, Fisher, Ury and Patton (2011) give additional insights about the role *interests* play in negotiations by clarifying and describing them as "the basic human needs of security, economic well-being, a sense of belonging, recognition and control over

one's life." (Fisher, Ury and Patton, 2011, pp.50-51 and Carrell, Heavrin and Manchise, 2014, pp.92-93). The lesson for students is that the proposals of the *Wyatt* CBA are in some fashion satisfying these interests.

For example, the school board's *interest* within the sick leave bank issue. The board wants some control over the benefit distribution. The teachers could also use this *interest* knowledge by presenting a proposal that the board drop their grievance form position in exchange for their sick leave bank position. Both parties get a degree of control over two non- high priority issues.

3. Inventing Options of Mutual Gain (Fisher, Ury and Patton, 2011, pp.58-81)

The process of inventing options for mutual gain incorporates the previously gained knowledge of *interests*. Consider the interest underlying the Wyatt case's salary schedule. For both parties it is mostly economic. The school board believes it has a finite amount of money to devote to salary increases. The teachers lament they have not had a raise in many years. Now employ the techniques of inventing options of mutual gain. What if the teachers received a 2% salary schedule increase at the beginning of the school year and \$75,000 of the energy savings was distributed at year end as a onetime bonus to teachers who had a near perfect attendance (saving substitute pay), or for excellent evaluations, or the achievement of an additional degree? An option of mutual gain satisfies both parties' *interest(s)* and generally creates additional value for the negotiators.

4. The last *Principled Negotiation Technique* one could utilize in the *Wyatt Case* is known as *Insist on Using Objective Standards/Criteria*, (Fisher, Ury and Patton, 2011, pp.82-96).

The instructor adopting this case can provide students with reasonable standards/criteria, for example: 1. Salary increase: the average wage increase for public school teachers in the previous year was 1% - 2.5%; 2. Bereavement Leave: most teacher contracts cover only the immediate family; 3. Sick Leave Bank: most contracts include a maximum of six weeks. The instructor select other objective standards/criteria to provide to the students. The students often learn the persuasive impact these objective standards/criteria have on resolving difficult issues.

Questions

At the end of the negotiations, all groups should candidly participate in a debriefing of the experience. The authors like to compare settlements, especially for creativity and options of mutual gain. We hold a class discussion of original and revised assessments of negotiating leverage, the use of timing techniques and the impact of intra-organizational dynamics. We also like to ask the following questions:

1. What did your counterpart do well to help facilitate the negotiating process and effectuate a settlement?
2. What did your counterpart do which interfered with efficient, durable and effective settlements?
3. Did the teams utilize trade – offs of issues to reach a settlement on some issues , if so which ones?
4. Was it helpful to know the high, medium, low priority for each issue?
5. Were all of the participants able to separate the people from the their positions (Fischer and Ury, 1981, pp.9-13)
6. Was it helpful when the parties shared their reasons to need / desire an outcome on an issue?
7. Did the parties discuss or refer to their need to cooperate because they had a long-term continuing relationship ?

THE CASE

The Wyatt Public School District case contains four handouts that are provided to students: (1) Mutual Background Information , Table 1, which all students receive; (2) Confidential Information for the Union President: Louise/Lou Thomas, Table 2, which only students on the union team(s) receive; (3) Confidential Information for the Superintendent : Sean/Sara Sawyer, Table 3, which only students on the management team(s) receive; and (4) a Tentative Agreement (TA) form, Table 4, which each union and management team receives.

At the start of the negotiation the instructor explains that the case is about a labor contract negotiation between a local teachers' union and the school board. The chief negotiator for each are Louise/Lou Thomas, the union president, and Sean/Sara Sawyer, the Superintendent. A class may be divided into two teams – one management

(school board), and one union (teachers), or students may be divided into an equal number of management / union teams of 3-4 students each. Then all students are given copies of the Mutual Background Information (Table 1), and members of each team receive copies of their Confidential Information (Table 2 or Table 3). Finally, each team is given a copy of the Tentative Agreement (Table 4) and instructed that an agreement is only reached when a signed TA form is submitted to the instructor, and it must contain a summary of how each of the seven issues was resolved. The teams should be allowed about 1 ½ to 2 hours from start to finish to complete the simulation.

Table 1: MUTUAL BACKGROUND INFORMATION FOR BOTH PARTIES

After three months of active negotiating, the Wyatt Public Schools System (the administration's collective bargaining team) and Wyatt Teacher's Union (WTU) agreed to several issues, but reached an impasse over some critical remaining issues. Both sides strongly desired to reach a new Collective Bargaining Agreement. The current Collective Bargaining Agreement (CBA) expired three months ago, but by state law remains in effect and in full force until a new CBA is ratified and implemented. The CBA covers 145 teachers and staff personnel in the school system. Due to declining state appropriations and the school system's gradually declining enrollments; it has been five years since the teachers last received a raise. During the past year, Tom/Tina Savera, the former superintendent, received a vote of no confidence from the teachers' union. He was then removed by the school board and replaced by Sean Sawyer, a former elementary school principal who enjoyed strong support from the teachers. However, since Sawyer, the new chief negotiator for the administration, was a brand new superintendent with only thirty days on the job as negotiations began, the board rehired Tom/Tina Savera as Assistant Superintendent (new position) to assist Sawyer with negotiations, to handle the system's budget and to respond to all teacher grievances and issues under the labor agreement. The school board gave its full support to Sawyer and will likely approve any agreement that is within the board's forecasted budget.

All the members of the union's negotiating team know that the school board members instructed Sawyer to gain some concessions for what they believe to be previously negotiated away management rights. Sawyer knows some of these issues would not sit well with the teachers' negotiating committee. The WTU negotiating team would view them as unfair and only on the bargaining table because a raise was possible.

When the two sides first declared impasse the State Employee Relations Board (SERB) imposed the provisions of the state law which allows only thirty calendar days for an appointed mediator to meet with the parties and find a mutually agreeable tentative agreement (TA). The TA must then be approved by the school system board and ratified by a majority of the union membership. If mediation is not successful, then final –offer arbitration will be used to decide all unresolved issues. The mediator cannot by state law serve as the arbitrator. Under final – offer arbitration each side submits a package of a last offer on each issue and the arbitrator chooses one of the two packages as the final and binding decision. There cannot be any middle ground decision; the arbitrator must pick one of the two proposed packages. While many cases have been resolved in mediation, the final –offer arbitration process rarely been used - only three times in the past decade (not at this school system), and since it was authorized, the administration prevailed in two of the three cases, and a union in one. As of today, the mediator met three times with the parties. Today is the only mediation day left (in the thirty calendar days). The parties have only one session remaining in which they can reach a tentative agreement, or by law, submit a final offer package which includes a final offer on each unresolved issue and enter into final –offer arbitration.

A brief summary of the seven unresolved issues at the end of the last mediation session are listed below. Please also carefully review the respective confidential information (administration or union) for details about the current positions and the reasoning behind each issue.

1. **Salary Schedule:** The current salary schedule, similar to most other school systems, includes a twenty step process based solely on years of seniority/service within the school system. The salary schedule has two tables: one for teachers with a BA degree and the other for teachers with a MA degree. The MA schedule is 1.5 times higher than the corresponding BA level of seniority. This difference in pay incentivizes teachers to obtain their MA degree.
2. **Sick leave bank:** This benefit allows teachers to voluntarily contribute earned sick days to a pool which may be utilized by a teacher with an extended illness. The availability of the use of the pool's

sick leave is controlled by a five-person committee (three teachers and two administrators). The pool is limited to providing \$25,000 of sick pay per year.

3. **Grievance and benefit election forms:** The two forms appear as contract language in the current CBA. They cannot be changed, except by mutual agreement.
4. **Hiring decisions:** The current CBA allows the superintendent to hire new teachers and place them on the salary scale according to their years of service. The superintendent can give extra service credit for past teaching experience and/or experience equivalent to teaching.
5. **Retiree insurance benefit:** The current CBA provides all retirees up to age 65 a \$200 per month insurance stipend to help them pay for health insurance. This “bridge” was added in the CBA ten years ago as a retirement incentive for employees who are under age 65, and not yet eligible for Medicare. Currently 46 retirees receive this benefit.
6. **Certified employees:** Under the current CBA only full-time teachers certified to teach in an area can be hired as teachers.
7. **Bereavement Leave:** The current CBA provides for two days paid leave in the case of a death of an immediate family member, first cousin, aunt, uncle, niece, nephew, or immediate in-laws of these relatives.

Table 2: CONFIDENTIAL INFORMATION FOR THE UNION PRESIDENT: LOUISE/LOU THOMAS

You and your negotiating team are frustrated with the lack of progress with the collective bargaining process. You believe the teachers would ratify a tentative agreement that included at least a two percent salary increase for all pay grades because the state budget information led you and them to believe at least that level of funding was available. The team (and you) trust Superintendent Sawyer, but both of you have little confidence in Tom/Tina Savera’s willingness to reach an agreement with the teachers. Savera, they suspect, may even try to keep the administration from agreeing to any new contract and force the next step in the process: final –offer arbitration. The team members fear final-offer arbitration because the school board could place a zero percent salary increase on the table as their final offer. If at all possible, your side wishes to avoid the process. The team members are ready to stay today for as long as it takes to get a new contract. They feel the new CBA should contain a 3% salary increase for all teachers. In general, your team’s general priorities and positions on each of the remaining issues are:

1. **Salary Schedule:** The current projected personnel budget for the next calendar year is \$7.54 million, which includes \$220,000 unspent and thus available for teacher raises, and \$1,625,000 in the “Rainy Day Fund” that is available for one-time expenses such as weather emergencies, capital expenses, etc. Last year the board spent \$1.7 million from the Rainy Day Fund. Energy savings due to a brand new lighting system are expected to save about \$125,000 per year. A one percent raise for everyone in the system (union teachers, staff and non-union administrators) costs \$110,000/year. The administration’s last offer to the union was a 3% salary increase but that would necessitate the elimination of the retiree insurance benefit (\$110,000 in annual savings). Your team has all but promised the teachers a 3% salary increase. (high priority)
2. **Sick leave bank:** The team members are adamant that this benefit be continued. Because days are donated by teachers who have earned them, the team does not understand why the administration has proposed elimination of the benefit. In addition, the union has noted only three employees have ever utilized the Sick Leave Bank since its creation six years ago. (high priority)
3. **Grievance and benefit election forms:** The committee members want to keep the forms in the CBA so they cannot be changed, except by mutual agreement by both the union and the administration. An attempted change of the forms last year by Savera would have caused a member to have lost a major grievance due to missing Savera’s shortened grievance filing date, from 30 days to 15 days. Savera was frustrated when the union would not agree to his proposed modification. (medium priority)
4. **Hiring decisions:** Several of the union negotiating team members are upset because last year Savera hired a new teacher with only two years teaching experience, but eight years of counseling experience. The new hire was placed on the MA salary schedule at the ten year pay level. While no one disputes the new hire has worked out very well, the rumor is Superintendent Sawyer may make similar hiring decisions for “hard to hire” teaching positions (math, science, technology, etc.) in order to offer competitive salaries to applicants. The union wants some say in these situations. (medium priority)
5. **Retiree insurance benefit:** The administration proposes to eliminate this benefit to generate \$110,000 in annual savings, which would free up the additional funds needed to provide a 3% salary increase to everyone. The administration has also proposed that if this benefit is not eliminated, the salary offer will

be only 2%. The union team has repeatedly rejected this idea. Only retirees, who do not vote on a proposed tentative agreement, receive the insurance benefit. The union team wants to keep it. They cannot fathom telling the retirees they have given this benefit away. (low priority)

6. **Certified employees:** The union does not want the superintendent to be able to hire temporary or part-time certified teachers to save money, and thus wants to keep current CBA language which prevents the superintendent from doing so. The union feels the temporary/part-time proposal will eventually reduce and erode the union membership. (medium priority)
7. **Bereavement Leave:** The union has proposed to add “close friend” to the list in the current CBA, and to increase the number of days from two to three. One team member insisted the union propose these changes, but as president you largely view them as “throwaways”. (low priority)

Table 3: CONFIDENTIAL INFORMATION FOR THE SUPERINTENDENT: SEAN/SARA SAWYER

The school board members chose to let you and Tom/Tina Savera negotiate with the union without any interference from the board members. However, you are well aware of the fact that while you have the support of the majority of the board, Savera has a few board members who are loyal to him and regularly and privately communicate with him. You are also keenly aware that Savera, while not blaming you for replacing him, would very much like to be re-appointed superintendent – which would be likely if you fail to get a new contract with the union, or you approve one that exceeds the budget. If at all possible you would like to reach a tentative agreement (TA) with the union today, rather than moving on to final-offer arbitration, which may cost the school system dearly if the arbitrator picks the union’s final offer for settlement. The union could increase their final salary offer to a four or five percent salary increase just to see if the arbitrator would agree with them. In general, your team’s general priorities and position on each of the remaining issues are:

1. **Salary Schedule:** The current projected budget for the next calendar year is \$7.54 million, which includes \$220,000 unspent and thus available for teacher raises, and \$1,625,000 in the “Rainy Day fund” that is available for one-time expenses such as weather emergencies, capital expenses, etc. Last year the board spent \$1.70 million from the Rainy Day Fund. Energy savings due to brand new lighting system are expected to save about \$125,000 per year. A one percent raise for everyone in the system (union teachers, staff and non-union administrators) would cost \$110,000. Your last offer to the union was a 3% salary increase but that would necessitate the elimination of the retiree insurance benefit (\$110,000 in annual savings). If the retiree insurance benefit is not eliminated, then you will propose not giving a raise to the top two pay levels (teachers with 20+ years of service which would save about the same amount of money, \$108,000, because the top levels include 45 teachers (no staff). You believe and have stated to the union that not giving increases to the top levels is justified because they are highly paid and will retire soon, while newly hired teachers, those in the lower pay levels, need the increase more. (high priority)
2. **Sick leave bank:** Savera has convinced you to propose the elimination of this benefit. He believes the control of the pool by a majority of union members makes it subject to unreasonable use. In addition, he thinks now is the time to eliminate this “perk” because teachers will not go to final -offer arbitration and risk losing the proposed pay increase of your final offer. Savera believes he has the teachers in “a corner” on this issue. (low priority)
3. **Grievance and benefit election forms:** The board members believe that administrative forms should not be part of the CBA because they need to be changed from time to time due to changes in laws, health care plans, etc. The board notes that a review of the three nearby school districts found none included these types of forms in their CBA’s. (medium priority)
4. **Hiring decisions:** Several of the union’s negotiating team members are upset because last year Savera hired a new teacher with only two years teaching experience, but eight years counseling experience. The new hire was placed on the MA salary schedule at the ten years pay level. No one disputes that the new hire has worked out very well. You and the board members strongly believe management needs to reserve the right to make similar hiring decisions for “hard to hire” positions (like math, science and technology teachers) in order to offer competitive salaries to applicants. The school is located in a small rural community and sometimes has had difficulty hiring these types of teachers. (medium priority)

5. **Retiree insurance benefit:** You have proposed to eliminate this benefit to generate \$110,000 in annual savings which would free up the additional funds needed to provide a 3% salary increase to everyone. If you cannot get this concession, or save an equal amount of money elsewhere in the CBA, you can only agree to a two percent raise and stay within the budget. (high priority)
6. **Certified employees:** You want to be able to hire temporary or part-time certified teachers to save money, and /or be able to find “hard to hire” teachers. Thus you want to change the restrictive language in the current CBA. (high priority)
7. **Bereavement Leave:** The union has proposed to add “close friend” to the list in the current CBA and increase the number of days from two to three. The cost estimate to increase the number of days is \$10,000 per year. The board is strongly opposed to any increases in this benefit. The cost of adding the “close friend” is unknown at this time. (medium priority)

Table 4: Tentative Agreement Form

Tentative Agreement
Between representatives of the
Wyatt Public Schools System and Wyatt Teacher’s Union

1. Salary Schedule:
2. Sick leave bank:
3. Grievance and benefit election forms:

4. Hiring decisions:

5. Retiree insurance benefit:

6. Certified employees:

7. Bereavement Leave:

Union President	date	Superintendent	date

DISCUSSION

The *Wyatt* case is a real world case in which the authors mediated the final settlement. All of the issues and facts presented are from the actual case, which gives it credibility with students. Students almost always ask for the details of the actual settlement. The settlement details are available from the authors: carrellm@nku.edu, or manchisell@nku.edu. After many classroom student team negotiations, several conclusions about the case and students’ performance can be provided: (1) students often reach the same settlement on at least a majority of the seven issues as in the actual case! ; (2) students quickly grasp the issues of the case with minimum instructions – possibly due to their experience in K – 12 schools, and they begin negotiating about 20-30 minutes after receiving the case materials. ; (3) students do not generally reach settlements that only favor either union or management – a very important attribute of the case. ; (4) the case includes both economic and non-economic issues which enables students to learn the differences between the two, and yet the importance of the two as well – similar to actual integrative negotiations. Therefore, overall, based on classroom testing, the case has proven to be an effective tool for teaching integrative negotiations!

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