

## Negotiations Primer

Negotiations with the County for a successor Memorandum of Understanding (MOU) is a complex process where the goal is to reach an agreement that both sides feel comfortable in recommending ratification by the OCMA Membership and the County Board of Supervisors.

The fact that negotiations occur implies that each side has a different opinion on what are acceptable terms and conditions for the employment of Managers by the County. Since the agreement impacts over 1100 Managers, it is obvious that not all conditions and terms are important to everyone, but the goal is to reach an agreement that has the most positive impact on the majority (hopefully all) Managers.

OCMA has **always** used a professional negotiator during MOU negotiations. Since the end product is a legal document (a contract) that has legal implications and ramifications, OCMA uses a law firm that specializes in representing labor organizations. Reich Adell & Cvitan was founded more than forty years ago and is vigorous in fighting for the rights of individual employees, labor organizations, and union-related trust funds. If interested, you may learn more about them at [www.rac-law.com](http://www.rac-law.com).

The negotiations team for OCMA is the Lead Negotiator (currently Marianne Reinhold, a partner with Reich Adell & Cvitan), the OCMA Board of Directors and the OCMA Executive Director. The Board of Directors make all final decisions regarding offers/counteroffers during the negotiations. While the Lead Negotiator and Executive Director offers advise and counsel, the final and binding decisions belong to the Board.

The negotiation process starts with the setting of Ground Rules. The Ground Rules are a negotiated item whereby each side will agree on how the negotiating process is to take place and move toward an agreement. The Ground Rules cover easily agreed to items, such as dates, time and locations of meetings, as well as details about who can attend, how information is obtained and shared, how a caucus is conducted and how to resolve a dispute. The setting of Ground Rules is important and actually sets the tone for the negotiations.

As defined by the Ground Rules, each side has a select number of members on their respective negotiating team. Special attendees may be invited to discuss issues particular to their area of specialty, however to maintain continuity, the team membership remains constant. The lead negotiator is the sole spokesman for each side and while team members are free to ask clarification questions or make appropriate comments, in order to avoid chaos, the lead negotiators conduct the majority of the back and forth.

The teams are free to ask for and hold private caucuses during the negotiating sessions, where ideas, rebuttals and strategies are discussed. These caucuses are important and provided a safe space where the team members can share ideas and thoughts that are best kept outside the actual negotiating session. The best road to success is by insuring that a united front is presented and that no schisms can be taken advantage of should random and un-vetted ideas/comments be presented at the table.

Once the Ground Rules are agreed to, each side presents to each other an opening proposal. These can be shared on the same day, or at different sessions depending on strategy or conditions. The County proposal usually contains information that requires (actually demands) research, so OCMA will ask for supporting documentation that is used to either justify or dispute a conclusion. Since not all supporting documentation is readily available, the information is provided at subsequent meetings or e-mailed when available and it usually takes time to absorb or decipher such information and then determine a strategy on how to respond. In order to best utilize the time, session topics are decided upon in advance continuous progress can be achieved.

Depending on the importance or significance of a particular issue, one issue might be discussed and debated for several sessions. There have been times when the County will want to discuss and agree to compensation up front. While some will say that is a good idea, in the larger picture this is usually a disadvantage because there becomes an urge to discount the lesser (but also important) issues because the compensation issue is resolved. An accusation of "leaving money on the table" is sometimes made because of the refusal to discuss or immediately agree to compensation. While most agree that compensation is important, other terms and conditions of employment deserve thorough discussion due to its direct impact upon employment.

As stated, the goal is to reach an agreement. It is important to understand that there are "give and takes" involved and sometimes each side is willing to drop a demand/proposal to gain a concession that has a larger and more significant impact upon the majority of Managers. Not all demands/proposals can be achieved, so at times, a demand or proposal is dropped with the understanding that it will be asked for and hopefully gained in a successor agreement. Negotiations are a dynamic process that can take many months. Patience is crucial and a rush to an agreement is not always in the best interest of Managers.

If a tentative agreement can be reached (a tentative agreement is an agreement that the negotiating teams have agree to, but the terms have not yet been agreed to ("ratified") by the OCMA membership or the County Board of Supervisors) then each side is obligated to present the agreement for a vote to the membership and Board of Supervisors. If either the membership or Board rejects the offer, then it is back to the table for more negotiations.

In the event a tentative agreement or final agreement cannot be reached, the County can then offer its “Last, Best and Final Offer,” which is presented for a vote. This offer must be equal to or better than any offer/proposal made during negotiations. If the offer is rejected, then the process of imposing a terms and conditions of employment begins. This process begins with mediation (where a mutually selected mediator attempts to facilitate an agreement) and if that is not successful, a process called “factfinding” must occur. Factfinding is a process where a factfinding panel (consisting of one member selected by each party as well as a neutral chairperson) conducts an investigation/hearings and recommends terms of settlement. Factfinding is for advisory purposes only, however there must be a public hearing detailing the recommended terms of settlement from the factfinding panel.

At any point in time, an agreement can be reached, but if an agreement cannot be reached through either negotiations, mediation or factfinding, the County then can impose its “Last, Best and Final” offer which becomes the terms and conditions of employment (**not** a MOU).

It is in no one’s best interest for an imposition of terms and conditions of employment to occur; therefore OCMA will make every effort to reach an agreement that benefits the majority of County Managers