



TRADE-OFFS AND PACKAGING AS BARGAINING TACTICS

The most common words of wisdom given to novice negotiators is “Don’t give it away without getting something in return.” Any experienced negotiator will tell you that this is the only guarantee that boards can have to ensure that the potential settlement will include benefits for the board of education. New board negotiators recognize that this is good advice but frequently do not know how to proceed to obtain concessions from the union. In the absence of tactical know-how, board negotiators may attempt to create a rational, conciliatory atmosphere which, they hope, will encourage the union to respond in kind, with equal rational recognition of the board’s needs and fair, sensitive acceptance of the board’s proposals. Although the tone of bargaining can be conducive to amicable agreements, it is generally not enough to guarantee the union’s acceptance of the board’s desire to change the status quo. In addition to creating a mood of mutuality, board negotiators will be well-served to adopt bargaining tactics which are designed to elicit union movement towards the board’s position.

Experienced negotiators have found that trading is a useful bargaining tool. Variations on the simple concept of an exchange provide good and reliable incentives for the union to move towards an acceptance of board proposals. Conscious utilization of appropriately designed trades can be a most effective bargaining tactic.

Trading Tactics

A trading tactic conditions your willingness to move on an issue on the other side’s reciprocal and concurrent movement on your proposals. It expresses your readiness to make concessions in return for a similar readiness on the union’s part. It suggests your ability to agree under certain conditions and allows you to use that ability as leverage to achieve your own bargaining needs.

Consider, for example, two language proposals concerning prep time in a district where only high school teachers have contractually guaranteed prep time. In this round of negotiations, the union has, once again, proposed a guaranteed daily prep time for all K-8 teachers. The board, dissatisfied with the current use of prep time, also has a prep time proposal on the table to define its purpose as a period of professional preparation. The board

is sympathetic to the needs of the elementary teachers for prep time during the day and is willing to provide a weekly guarantee as long as it provides the administration with its needed scheduling flexibility.

The board decides to counterpropose on the union’s prep time proposal, in the hope that this will lead to an agreement and will induce the union to accept the board’s prep time definition. The board proposes a prep time guarantee of 150 minutes per week except in cases of emergencies or shortened school weeks. The union accepts the board’s counterproposal and moves on to another one of its proposals. The board objects to the changed topic and expresses its desire to have the union respond to the board’s prep time proposal. The union responds that it is not interested in limiting a current benefit and moves on to its other topic.

The union is, legitimately, no longer interested in the prep time issue: it has obtained its goal and is properly ready to seek the achievement of its other bargaining needs. The board has given a benefit without gaining anything in return. This is the risk of reaching isolated agreement to a single issue; goodwill will not necessarily result in a grateful concurrent agreement to your position.

Conditioning agreement to one issue upon acceptance of another proposal eliminates that risk and improves the likelihood that the agreement will be beneficial to both parties. For example, under the same situation described above, had the board linked its prep time proposal to the union’s proposal, the outcome would have been different. The board could have conditioned its counterproposal to the union’s acceptance of the board’s definition; the board could have “traded” its movement on guaranteed prep time for the union’s movement on the board’s position.

Obtaining the union’s acceptance of the trade-off could have taken more time; agreement may not have occurred at the same point in time but agreement would have resulted in some form of mutual gain for the parties. Yet, if the union had determined that the cost of obtaining prep time for a large portion of its membership was not worth the price of the board’s definition, it would have rejected the board’s “trade” and the board would not have succeeded in changing the *status quo* to its benefit, but it would not have damaged its position by extending a union benefit without getting anything in return.

Trades link agreements. Trades establish your willingness to deal and your resolve to improve your position through negotiations. Trades highlight the cost of agreements as well as the costs of disagreement as they clearly communicate that the union can obtain its needs only by accepting yours. Trades also highlight the possibility of benefits available through the transaction. They signal the possibility of gains under certain conditions and thus force the union to assess the importance of its proposals and to consider its willingness to concede on your issues in order to obtain theirs.

Individual, unconditional board concessions seldom impel the union to concede or compromise a position; unconditional concessions, predictably, do not carry bargaining leverage. Trades, however, enhance your chances of achieving your desired changes; they help you narrow the issues on the table and help you move closer to agreement. Trades do carry bargaining leverage.

Trading tactics take various forms which are shaped by the parties needs, the timing of negotiations, and the nature of the bargaining issues. Generally, bargaining issues can be classified into one of two broad categories: language issues which seek to change terms of employment without carrying economic costs; and economic issues which involve board expenditures. Although the two categories are not always easily separated, as many language issues carry indirect cost implications, specific trading tactics tend to be identified with each category. Language items are often handled by “trade-offs,” that is, a simple trade, while the more sophisticated trade of “packaging” is reserved for economic items. However, during the later stages of negotiations, important unresolved language issues may be included in an economic package. What are these tactics and what do they involve?

Trade-offs

A trade-off is a simple trade which conditions your willingness to move on one issue to the other side’s concurrent movement on one of your proposals. The prep time illustration described above is a typical trade-off.

A trade-off involves a linkage of one or two issues, but rarely involves more than a simple connection; it is therefore well-suited to deal with language issues. Language proposals in bargaining are items which seek changes in the current agreement to express a party’s bargaining needs but do not represent any economic costs to the board; for example, a board proposal to extend the date by which tenured evaluations must be completed and a union proposal seeking staff input in the formulation of agendas for faculty meetings are both language proposals.

Language proposals tend to stand or fall on their own merits; a rationale is presented for the need for the language change and it can be accepted, rejected, or modified based on its perceived merits to both parties. Therefore, language items can be resolved individually.

However, if agreement to language items is based on the separate consideration of each individual proposal, the board cannot control or assure that its agreement to a union proposal will evoke the union’s acceptance of its proposal. Trade-offs, or the establishment of necessary conditions for your agreement, increase the likelihood of obtaining the union’s agreement on your proposal.

Constructing Trade-offs

Trade-offs can take various forms. Acceptance of one proposal can, as in the previous example, be conditioned on the union’s acceptance of a board proposal, or agreement to withdraw a board proposal can be conditioned upon the union’s withdrawal of one or more of its proposals; any combination is possible.

Some trade-off combinations are obvious; when both sides have proposals on the same issue, as in the prep time example, a linkage appears natural and the possibility of a trade-off becomes evident. However, trade-off issues need not be topically related. Language issues reflect perceived needs; as long as these needs have a similar importance to the parties, a linkage in a trade-off is legitimate. You can, for example, condition your acceptance of the union’s proposal for input in faculty meeting agendas to their acceptance of your proposal to extend the deadline for completion of tenured evaluations. The union may challenge the relationship you have established between these two seemingly unrelated proposals. You can respond that the relationship is your needs for the language: they have a need for theirs and you have a need for yours; both needs can be met through this trade-off.

Trade-offs can work to provide the necessary leverage for you to obtain acceptance of your bargaining positions. However, to be successful, trade-offs must demonstrate an understanding of the dynamics of bargaining, of the parties’ bargaining needs and an appreciation of your bargaining goals. There are several simple rules to constructing trade-offs which enhance their effectiveness as a tactic to give you bargaining leverage. These rules are as follows:

Trade-offs should contain only language that is acceptable to you. Any time a trade-off is placed on the table, there is a possibility, no matter how slight, that the trade will be accepted. If your proposed trade-off contains an element that will cause you, your board or your administration severe, unacceptable difficulties, don’t place it on the table. If prep time for K-8 teachers is completely unacceptable to you, don’t link your prep time definition to an acceptance of the union’s proposal. However, if you could agree to some form of contractually guaranteed prep time, then a trade-off may be proposed. Modify the union’s proposal to reflect your most desired form of prep time guarantee; for example, the union’s proposed guarantee of “45 minutes per day” could be changed to propose a guaranteed prep time for classroom

teachers “when the class is scheduled for physical education, art, or music” and link that agreement to your most desired and most restrictive prep time definition.

Continue to negotiate within trade-offs. The presentation of a trade-off should not represent your final position on the issue but should be constructed to provide you with room to modify your position in each of the linked issues. Your proposed trade is an expression that, under certain circumstances, the union’s proposal could be acceptable; the first condition of acceptability is the union’s acceptance of your position. The specific conditions of each proposal within the trade-off, however, can and should still be open to negotiations and subject to the tactic of slow, incremental counterproposals.

For example, within your proposed prep time trade you can counterpropose additional guarantees of non-student contact time and you can be more flexible in your prep time definition. Your counterproposals, within the trade-off issues, should be based on the union’s expressed interest and its response to your initial trade and should be paced to retain some flexibility in your movement. Continued negotiations of the trade, however, also need to reflect the first rule of trade-offs: do not counterpropose what would be ultimately unacceptable to you or to the board.

Negotiations over possible trade-offs is designed to establish the mutually acceptable conditions which make agreement to the linked proposals possible for both parties; these negotiations establish a balance between the cost of the concession and the gains of obtaining the sought benefit. Reaching an agreement to the trade-off may take some time; not only will agreement involve the natural give-and-take of bargaining but the cost/benefit relationship may change as negotiations progress. A trade-off which is seen as “too costly” in February may appear reasonable in June when it has become obvious that a variation on the trade is the only possible way to obtain agreement on the issue in this round of negotiations.

Similarly, at one point in time during negotiations, either party may choose to expand the trade-off, to increase the benefit and reduce the cost of agreement, by adding another issue to the trade. In order to reduce the lost freedom of the high school teachers’ use of prep time, the union may add one of its proposals which provides a benefit for that classification of teachers, to your trade-off. The acceptability of the expanded trade will depend upon an assessment of the acceptability of all its components and of its overall cost/benefit ratio.

Construction of trade-offs must reflect issues of similar importance. For trade-off tactics to be successful and meaningful, trade-offs should be based on issues which have similar importance to each side. This is particularly true if you are using trades to withdraw issues from the table. A trade to withdraw which matches a board proposal of moderate importance with a union proposal which is insignificant to the union is a tactical

error. The insignificant union proposal would, most likely, have disappeared on its own; the trade cost the board the possibility of achieving its proposal and did not result in any gains. Similarly, agreement to a significant union proposal in exchange for the union’s acceptance of an insignificant board proposal does not result in a fair trade; it does not represent a meaningful gain for the board but may represent a significant concession.

Remember that trade-offs are tactics which are intended to provide the board with bargaining leverage; they are designed to provide the board with an ability to get what it needs out of bargaining. Trade-offs which are not balanced by the importance of the issues are not likely to produce successful settlements for the board of education.

Initiate trade-offs only when you understand the issues. Given the importance of establishing similarities in the value of linked issues, successful trade-offs cannot be constructed until the issues on the table are understood. The use of trade-offs thus cannot begin until each party has presented, explained and clarified its bargaining proposals. Trade-off tactics do not, and cannot, replace the need for a full exploration of the union’s proposals nor do they bypass the need for the board to assess its responses to the union’s positions. Rather, trade-offs should be used only when the board team has completed its understanding and assessment of its position vis-a-vis the bargaining issues; trade-offs then become a means of resolving the issues.

Use trade-offs appropriately. Trade-offs, though extremely helpful in obtaining union concessions, are not a panacea to bargaining problems. Indeed, trade-offs which are poorly constructed, timed inappropriately, over-utilized, or applied mechanically may create more problems for a bargaining team. It may be inappropriate, for example, to construct trade-offs for unimportant “throw-away” proposals; a simple counterproposal which protects both parties’ interests may be all that is needed to reach agreement on a proposal; unacceptable union positions should never be linked in a trade-off, and a trade-off tactic is not a substitute for saying “No.” Not every language issue on the table lends itself to the trade-off approach.

Further, economic issues should generally not be approached in a piecemeal trade-off approach (see “Packaging” discussion below). However, there are situations in which a trade-off which involves a cost item is both natural and appropriate. For example, a union proposal to increase the number of personal days can be a perfect trade-off for the board’s proposal to increase administrative control of personal leave; or the union’s desire to improve the district’s tuition reimbursement plan can be linked to the board’s desire to control course eligibility for reimbursement. In both situations, the union’s proposal holds a potential increase in the board’s expenditures, but concurrent agreement to the board’s positions can also offset the increased costs and provide

the board with the administrative control it desires. This type of trade-off should therefore be considered, even though it does not represent a “pure” application of the concept that trade-offs are best suited to language proposals.

In considering the use of trade-offs, the board team should therefore carefully examine the issues, their importance, their potential acceptability, the conditions necessary for acceptability, and the board’s priorities. Trade-offs should be used judiciously, rather than mechanically, to assure the union’s considerations of, and concessions to, the board’s position.

Packaging

Packaging is a sophisticated, more complex form of trade-offs generally reserved for economic issues. Packaging involves handling all economic issues together as an indivisible group or package. This approach is a particularly protective means of negotiating economic issues as all economic issues involve a board expenditure: keeping economic issues together assures that the board will not lose track of the total cost of the settlement and that the union will recognize the relationship of each cost item to the total cost of the settlement. The union may, for tactical reasons of its own, wish to divide the board’s economic package and obtain agreement to individual economic proposals. However, it is far more advantageous to the board to insist on a total package approach as this provides the board with predictability of cost and bargaining leverage.

For example, after several months of bargaining, the union has finally reduced and narrowed its proposals to: an improved dental plan to cover family; an increase in the payment for accumulated sick leave; a new optical plan; continuation, at board expense, of retirees’ health insurance benefits; and a 12% salary increase. Faced with these proposals, the board has determined that further narrowing of the issues must occur. The board’s research indicates that most of the county’s comparable districts do provide family dental coverage but that few districts anywhere provide optical insurance or paid insurance for retirees; that its current payment for unused sick leave compares very favorably to other districts’ provisions; and that the average settlement in the county is slightly higher than 8%. Hoping that its reliance on comparative data will induce the union to similarly respond with movement towards the norm, the board team decides to utilize a trade-off approach and proposes to accept the union’s proposal on the improved dental plan in return for the union’s withdrawal of its optical proposal. The union accepts the board’s trade and responds with minimal movement in its retiree proposal but retains its position on all other outstanding issues.

The board’s hopes and expectations that its position would elicit an equally positive union reaction did not materialize. The board’s trade-off, which granted the union an important benefit simply in return for the

withdrawal of an unexpected pie-in-the-sky position, was essentially an unconditional board concession to an improved benefit.

The board’s strategy in this situation did not enhance its bargaining position; the board cannot withdraw its offer; it has committed itself to an increased cost without obtaining containment on any of the other outstanding economic items. Indeed, in most situations, trade-offs on selected economic issues do not impel settlement on all outstanding economic issues; a generous settlement of one issue does not assure restraint in other economic areas nor is an isolated economic agreement related to the total cost of the eventual settlement.

Packaging, that is grouping all the economic issues together, can avoid piecemeal, nonproductive and frustrating negotiations over economic issues. In the above situation, the board could have constructed an indivisible package which conditioned its acceptance of the improved dental plan on: no change in the sick leave plan, no optical insurance, no retiree benefits, and a specified percentage increase which was slightly higher than its last offer. This strategy would have placed the board in a better position; it would have succeeded in narrowing the issues and in expressing the totality of the conditions under which it could accept the dental plan, without committing itself to an isolated expenditure unrelated to the total cost of the settlement. The board could have expressed movement, without granting a benefit and losing bargaining leverage, which required further union movement towards a resolution of all the issues.

Packaging offers board teams a significant and effective bargaining tactic which can provide control in the conditions of allocating funds necessary to reach a settlement. Packaging can also provide boards with additional bargaining leverage to resolve outstanding and important language issues. In school negotiations, economic bargaining is usually reserved as the last topic to be bargained. Generally, by the time the cost items come under serious negotiations, many language items have been resolved and only the most difficult and most important language items remain on the table. Although the packaging technique is generally reserved for economic issues, important language items can be added to the package to be “bought” in, or out, of the settlement. Packaging can therefore be an effective board strategy if it is applied knowledgeably and appropriately. A knowledge of packaging strategy and the rules of packaging can assist board negotiators in developing and perfecting the use of bargaining packages.

Constructing Packages

To achieve its goal and to provide bargaining leverage, an economic package must be a carefully calibrated and carefully timed instrument. Packaging, like trade-offs, should not be initiated too early in negotiations but should be reserved, generally, for the economic phase of bargaining. Then, the board team, understanding the

issues and their priorities, can construct packages that include all the economic issues it wishes to address and any of its remaining language items. However, to construct effective packages board negotiators should follow some simple, but important rules:

Packages are indivisible. Packages are accepted or rejected in total. The union cannot be allowed to separate a package, taking what it likes and rejecting the rest. There is a linkage among all economic items which should be established at the beginning of economic bargaining and which should be carried throughout the process. If a package is not accepted in its totality, it is considered as withdrawn by the offering party. Similarly, the counterproposed package must be considered in its entirety. Packages are always indivisible.

It is clear, therefore, that the board should never design a package which contains a component that the board has absolutely no interest in including in the final settlement. Since the package cannot be divided, it becomes an “all or nothing” proposition for both parties. Should the board package, containing an unacceptable item be accepted by the union, the board would then be bound to include the objectionable provision in the final settlement.

Given the “totality rule” how can a board react to a union package which contains some acceptable components, but is on the whole, unacceptable? The board rejects the union package but offers a counter package which includes the acceptable union positions as well as the board’s positions. This not only indicates board movement but also provides the package with the necessary component to attract the union.

Once a board undertakes a packaging strategy, it must insist that it will only deal with the totality of the economic items and cannot address individual economic proposals. The union may try to separate the items as it is to its advantage to divide the issues and to obtain concessions in a piecemeal approach. The board should be firm in its position that it cannot split the cost items as all economic items impact on each other and on the board’s ability to afford, and to fund, the agreement.

Always cost-out the package. The totality rule is designed to give boards an ability to predict and control the total cost of the settlement. One of the most important advantages of the packaging technique is its ability to provide the board with the total cost of the entire package offered to the union. Therefore, before packages can be constructed, the board must be well-prepared with cost estimates for all outstanding economic issues. The cost of different dental plans, or the cost on the variations of acceptable alternatives for considered accumulated sick leave pay plan and the cost of any considered economic issue must be readily available and retrievable to the board team. Similarly, the cost of any proposed salary increases should be calculated in advance.

Board negotiators frequently want to be able to compare exchanged proposals with current costs for the

bargaining unit. An easy shortcut method is to figure out in advance the cost of a 1% increase in salary, and the cost of a 1% increase in the unit’s total compensation, including all economic benefits. If the Board carefully costs out its first package, it can quickly apply its 1% figure to gauge any increase in its future packages as well as to establish the costs of the union’s proposals.

Continue to negotiate with packages. The total cost of each successive board package should increase slowly and incrementally; it is sometimes more than sufficient to increase only one component of the package. However, it is always essential to keep track of the total cost of the package. The extent of movement in each succeeding package is primarily a function of each party’s perception of how much the other party has moved away from its own proposals and toward yours. With good faith on both sides, every time a package is transmitted from one side to the other, less important items are withdrawn, differences are narrowed, and what remains in the closing stages of negotiations are those important items which have not yet been resolved.

In dealing with the remaining cost/benefit items in the later stages of economic packaging, what is transmitted, when it is transmitted, and the language used to transmit it are all of paramount importance. If there ever was a time to pay careful attention to the nuances of language, it is at this stage of negotiations. For example, in the preceding example, it would be perfectly acceptable for the board to indicate that it is sympathetic to the union’s proposal on the dental plan, but that such movement has to be contingent upon similar movement from the union away from its proposals on salary and payment for unused sick leave and towards the board’s proposal on personal days. How it is said becomes important. Language such as “The board may be able to make some movement on the dental plan, but we’re prohibited from doing so at this point because of the total cost of the union’s proposal” may be appropriate. Under the best possible circumstances, the union will come back to the board with the package that the board would have offered if they knew it would have produced agreement. It’s easy to see the strategic advantage the board has in this setting: it has not made a proposal, but just hinted at a direction it may be willing to go with general statements. Under the worst possible circumstances, if the union remains intransigent in its position, then at least the board is no worse off than it was before the package trade. However, a board’s continued negotiations within its packaging technique may weaken union opposition and evoke serious union interest.

Packages must contain elements that are attractive to the union. To be regarded seriously, packages should be made attractive to the union and contain concessions indicating some board movement on a union proposal or some modification of a board proposal. Without elements to entice union interest, the package will not elicit union consideration or response, nor will it be successful in

conveying to the union their need to concede to the board's position in order to obtain their bargaining goals. Attractive elements stress the necessity of concessions to obtain agreement.

How extensive the concessions are and at what point they are given involves a multitude of factors. One has to constantly keep in mind not only the cost aspects of the package, but also the timing and strategy behind proposals. At what time are various components of the board's package altered? Naturally this will always change from one negotiations to another and will depend upon the board's judgment, a feel for the history of bargaining in a particular unit, as well as movement from the union. A sixth sense would help, but in its absence, the board should always keep in mind the tremendous advantage it has in possessing what the union wants and the leverage which comes from the slow, careful, and conditional disbursement of its economic means.

Reject individual counterproposals. The board should attempt to persuade the union to formulate a package response to the board's package proposal. Union negotiators who are unaccustomed to this bargaining technique may resist the approach and respond only by individual counterproposals. The board should reject these responses of individual proposals. The board should explain its need to be fully aware of the total costs of the settlement and should continue its packaging strategy and formulate packages which contain elements attractive to the union. For example, the board can respond to the union's slight decrease in its accumulated sick leave proposal by stating: "We cannot respond to that individual proposal. We will, however, restate that we can accept your proposal for an improved dental plan if the agreement also includes the *status quo* on accumulated sick leave, reasons for personal leave and a salary increase of 5%." If the package containing the desired improved dental plan is repeated frequently, even the most recalcitrant union will understand that the improvement in the benefit can only be obtained in tandem with other conditions and will begin to respond in kind. The board will then have successfully dealt with the totality of the economic costs of the settlement, and will have been successful in communicating to the union that its gains must be matched by concessions to the board's bargaining positions.

Use packaging appropriately. Packaging can be a useful tool to reach a settlement. However, once again, a valuable bargaining technique may not work in all situations, at all times. Experienced negotiators will not follow the rules slavishly if they sense that a deviation will result in a desired agreement. For example, we have already discussed that important language items can be included in an economic package to be bought in or out

of the settlement and that some economic items become natural trade-offs with language proposals. Similarly, boards should not mechanically reject a union concession to a board position simply because it involves dealing with an economic issue in the context of language negotiations. For example, if the union is willing to accept a modification of your desired cap on a dental benefit in return for their demand for binding arbitration, this trade may, depending on the board's goals, deserve serious consideration. If, on the other hand, you sense that the union is ready to agree to your high priority proposal to increase the number of instructional preparation periods if you were willing to agree to provide a new dental plan, then this trade may also be worthy of serious consideration. To reject these possible agreements simply because they do not fit the rules may be foolish. However, if an agreement will cost the board additional funds, do not forget to calculate that cost when you assess your ability to move in economic bargaining.

Further, appropriate timing of the packaging technique is important to its effectiveness. Like trade-offs, effective packaging requires an understanding of the issues: their importance and their achievability. While packaging is useful in encouraging movement in the later stages of negotiations, it does not encourage the discussion and exploration of issues which are necessary to a thorough understanding of the items on the table. Packaging which is initiated too early in bargaining may, therefore, be counterproductive; it may complicate or prevent communications and may exacerbate, rather than narrow, the differences in the parties' bargaining positions. Packaging can be a useful bargaining tool but it cannot replace other valuable bargaining techniques nor can it, by itself, guarantee the achievement of a good settlement.

Summary

Trade-offs and packaging can be effective bargaining tactics which can elicit union movement towards boards' bargaining positions. These bargaining techniques can increase your bargaining leverage by highlighting the mutual costs of disagreement and the shared benefits of agreement. Utilizing these tactics clearly establish the conditions of your agreement and your resolve to be an equal partner in the bilateral decision-making process. They are proven techniques designed to help you obtain some of your bargaining goals while the union is achieving some of theirs. However, for your bargaining effort to be successful, these tactics must not be applied mechanically, rather they must be used judiciously, knowledgeably and appropriately as you consciously and deliberately move towards an acceptable settlement.