



SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

**BOARD OF EDUCATION MEETING
MINUTES**

September 19, 2015

A special meeting of the Santa Monica-Malibu Unified School District Board of Education was held on Saturday, September 19, 2015, in the District Administrative Offices: 1651 16th Street, Santa Monica, CA. The Board of Education called the meeting to order at 9:11 a.m. in the Board Room at the District Offices.

III. CALL TO ORDER

A. Roll Call

Board of Education Members

Laurie Lieberman – President

Jose Escarce – Vice President

Oscar de la Torre – *absent*

Craig Foster

Maria Leon-Vazquez

Ralph Mechur – *absent*

Richard Tahvildaran-Jesswein

B. Pledge of Allegiance

Led by Craig Foster

II. INTEREST-BASED BARGAINING (IBB) TRAINING

Jonathan Pearl from Dannis Woliver Kelley (DWK) will provide training for board members in Interest-Based Bargaining (IBB) techniques. SMMUSD is using IBB for negotiations with both SEIU and SMMCTA.

***** ***** ***** ***** ***** *****

Mr. Pearl's presentation is attached.

II. PUBLIC COMMENTS

Public Comments is the time when members of the audience may address the Board of Education on items not scheduled on the meeting's agenda. All speakers are limited to three minutes. When there is a large number of speakers, the Board may reduce the allotted time to two minutes per speaker. The Brown Act (Government Code) states that Board members may not engage in discussion of issues raised during "VIII. Public Comments" except to ask clarifying questions, make a brief announcement, make a brief report on his or her own activities, or to refer the matter to staff. This Public Comment section is limited to 20 minutes.

V. ADJOURNMENT

It was moved by Ms. Leon-Vazquez, seconded by Dr. Escarce, and voted 5/0 to (Mr. de la Torre and Mr. Mechur were absent) adjourn the meeting at 12:03 p.m. The next meeting is a special meeting scheduled for **Tuesday, September 29, 2015, at 9:00 a.m.** at Lincoln Middle School pathway schools. The next regular meeting is scheduled for **Thursday, October 1, 2015, at 5:30 p.m.** in the **Malibu City Council Chambers:** 23825 Stuart Ranch Road, Malibu, CA.

Approved: 10-15-15

President

Superintendent



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CALIFORNIA'S THOUGHT LEADERS
IN EDUCATION LAW

THE FUNDAMENTALS OF INTEREST BASED BARGAINING AND THE BOARD'S ROLE

Santa Monica-Malibu Unified School District
September 19, 2015

Presented by:
Jonathan A. Pearl, Attorney

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Traditional vs. Interest Based Bargaining: In a Nutshell

- Who does what?
- When?
- How?
- Why?

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TRADITIONAL BARGAINING

In Traditional Bargaining:

- Each party first writes proposals separately,
- And seeks to exercise power to attain,
- Language which is their desired resolution,
- Of their underlying issue, problem or concern,
- Which may never be fully revealed to the other party..



INTEREST BASED BARGAINING

In Interest Based Bargaining:

- The process is reversed.
- The parties first share interests – their underlying concerns, fears needs and desires,
- Identify shared, different, opposing interests,
- Then work together to find mutually acceptable options, and
- To craft contract language together designed to best meet those interests.



THE METHOD

The Interest Based Model Is Based On The Concept That:

- Negotiators are people first
- Every negotiations involves both substance and relationships
- The relationships tend to become entangled with the problem

*Getting to Yes
Fisher and Ury*

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THE METHOD

Separate The People From The Problem:

- See the ideas of others as contributing to the solution rather than being part of the problem
- If the opinions or ideas differ, criticize the ideas, not the individuals
- Separate your relationship with others from the substance of negotiations

*Getting to Yes
Fisher and Ury*

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THE METHOD

Separate The People From The Problem:

- Put yourself in their shoes
- Don't react to emotional outbursts
- Speak about yourself, your feelings, not about others and their motivations
- Be soft on the people, hard on the problem
- See participants as partners in problem-solving

Crediting to You
Fisher and Ury

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NEGOTIATIONS STYLES

Styles

Descriptions

Adages

1. Competition

Hard-nosed, conflicting, moving against the other stand.

Put your foot down where you mean to

2. Compromise

Splitting the difference, sharing, horse-trading

You have to give some to get some

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NEGOTIATIONS STYLES

Styles

Descriptions

Adages

3. Avoidance

Moving away from the other, Losing/leaving, withdrawing

Let sleeping dogs lie.

4. Accommodation

Yielding/losing, friendly, helping moving toward the other.

It is better to give than to receive.

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NEGOTIATIONS STYLES

Styles

Descriptions

Adages

5. Collaboration

Problem solving, integrating evenhanded

Come, let us reason together.

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NEGOTIATIONS STYLES MATRIX

Unassertive → Assertive	Competition	Collaboration
	Avoidance	Accommodation

Uncooperative -----> **Cooperative**

In which quadrant would you place the following?

- Lose/Lose
- Lose/Win
- Win/Lose
- Win/Win

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INTERESTS

- UNDERLYING MOTIVATIONS
- NEEDS AND CONCERNS
- BASIC HUMAN NEEDS:
 - Security
 - Economic well-being
 - Sense of belonging
 - Recognition
 - Control over one's life

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POSITIONS

- Things you say you want
- Demands
- Things you say you will or won't do

**IT IS EASIER TO RECONCILE
INTERESTS RATHER THAN
POSITIONS**

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CLARIFYING INTERESTS

- Keep an open mind.
- Discuss the matter objectively.
- Ask open-ended questions.
- Ask, "why?" Or "why not?"
- Ask, "what can it hurt?" Etc.

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KINDS OF INTERESTS

Shared

Opposing

Differing

All interests of both
sides are legitimate

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OPTIONS



Possible solutions which require
the agreement of both parties





DEVELOPING OPTIONS



DECIDING (Traditional)

- Committing
- Judging
- Narrowing
- Arguing
- Evaluating

INVENTING (Interest Based)

- Not Committing
- Improving
- Generating
- Brainstorming
- Suspending Judgment

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SEPARATE INVENTING FROM DECIDING



Traditional Approach:

- Don't say anything you haven't rehearsed with your "second table."
- Hold your cards close to your vest.
- Disclosing what you really seek weakens your power.
- Letting them know what you really want weakens your position.

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SEPARATE INVENTING FROM DECIDING

Interest Based Approach:

- Ask "What if...?"
- Declare a period of inventing (brain-storming), in which nothing said is binding.
- Seek multiple options.
- Focus on future outcomes, not past problems.
- Circulate a single text.

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CREATIVE THINKING



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Analytical v. Creative Thinking

Analytical Thinking

Creative Thinking

Selective: Tries to select the best approach.

Generative: Generates different approaches.

Directional: Moves only if there is a direction in which to move.

Unfocused: Moves in order to generate a direction.

Judgmental: Evaluates the feasibility of ideas.

Nonjudgmental: Suspends judgment.



Analytical v. Creative Thinking

(cont.)

Sequential: Moves forward in logical steps.

Nonsequential: Jumps around.

Relevant: Focuses on what is relevant.

Irrelevant: Happy to play around with irrelevant things.

Familiar: Follows the most likely paths.

Unfamiliar: Explores the least likely paths.

Destination-oriented: Expects to come up with an answer.

Exploratory: Does not feel compelled to come up with an answer.



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BRAINSTORMING PHASE ONE

- Don't criticize ideas, even the most outrageous ideas anyone might voice.
- Don't edit what is said.
- Go for quantity of ideas at this point; narrow down the list later using the filtering technique.

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BRAINSTORMING PHASE ONE (cont.)

- Encourage wild, exaggerated, and humorous ideas. Creativity is the key here.
- Build on the ideas of others (*e.g., one member might say something that "sparks" another member's idea*).

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BRAINSTORMING PHASE TWO

- Review and evaluate each option according to the following criteria:
 - **Impossible:** Cross out those options that are unrealistic or incompatible with your interests.
 - **Maybe:** Put an "M" next to those options you might consider.
 - **Outstanding:** Put a check mark (✓) next to those options that strike you as especially creative, realistic, or appealing.



HUMAN DYNAMICS AFFECTING EVALUATION OF OPTIONS

- Interests are not explained clearly or are not disclosed
- Some interests conflict with each other
- "Gotcha" options
- Unrealistic expectations of constituents
- Personalities, time, acquiesce to roles
- Elephants in the room

PROBLEMS GENERATING AND EVALUATING OPTIONS

- Problems regarding creativity
- Critical analysis/consensus
- Relationship and trust
- Evaluation of options in relation to values
- Evaluation of options in relation to interests

STANDARDS

OBJECTIVE CRITERIA THAT
CAN BE USED TO MEASURE A FAIR
AGREEMENT





USING INDEPENDENT STANDARDS

- Make the negotiation a joint search for independent standards.
- Use standards as a sword to persuade or a shield to protect.
- Distinguish which standards are more appropriate; more relevant to the time, place, or circumstances; more widely accepted; more on point.
- Reason and be open to reason.

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STANDARDS

- State And Federal Laws
 - Education Code
 - Labor Law
 - Title 5
 - PERB Decisions
- Comparability
- Consumer Price Index
- Competing Offers
- Precedent
- Total Compensation

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ALTERNATIVES

WHAT YOU CAN DO ON YOUR OWN WITHOUT AGREEMENT OF THE OTHER SIDE

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COMPARISON

Options

- Possible agreements
- Joint actions
- With the other party

Alternatives

- Actions you take if no agreement
- Unilateral actions
- On your own

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BATNA

**Best
Alternative
To a
Negotiated
Agreement**

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BATNA

(Best Alternative To a Negotiated Agreement)

- Brainstorm alternatives you might conceivably take if no agreement is reached
- Tentatively select the one alternative that seems best
- Your BATNA is your baseline measure of success
- BATNA protects against:
 - Accepting an unfavorable agreement
 - Rejecting an agreement which might be in your interest

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BATNA

(**B**est **A**lternative **T**o a **N**egotiated **A**greement)

- The better the BATNA, the greater the negotiating power.
- The worse the BATNA, the lesser the negotiating power.
- Improve your BATNA, if possible.
- Recognize that your BATNA may change.
- Estimate their BATNA.
 - Is it as good as they think?
 - Can you legitimately change it?

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REACHING AGREEMENT

- CLOSURE:**
- * Begins before you sit down at the table.
 - * Picture an agreement before you begin.
 - * Move toward closure gradually.
 - * Don't commit until the very end.
- TO GAIN CLOSURE:**
- * List the issues on both sides.
 - * Draft a framework outline for agreement
 - * Convert framework into a working draft of the agreement.
 - * Leave blanks in the draft where there is no consensus.
 - * Create emotional commitment.
 - * Improve the draft by filling in details.
 - * Exchange contingent offers to bridge remaining differences.
 - * Don't commit until the very end.
 - * Be generous at the end.

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EVALUATING NEGOTIATION RESULTS

Strive for outcomes where:

- The parties are better off (or at least not worse off)
- All relevant parties have been involved
- Resolution is based on use of relevant scientific, technical, and community knowledge
- There are no joint gains left unrealized
- No one feels "taken" – including the public
- Relationships are maintained or enhanced
- A process for resolving future problems is built into the agreement

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COMPARISON

INTEREST BASED BARGAINING	POSITIONAL BARGAINING	
COLLABORATION	ACCOMMODATION	COMPETITION
Participants are problem solvers	Participants are friends	Participants are adversaries
The goal is a wise outcome reached efficiently and amicable	The goal is agreement	The goal is victory
Separate the people from the problem	Make concessions to cultivate the relationship	Demand concessions as a condition of the relationship
Be soft on the people, hard on the problem	Be soft on the people and the problem	Be hard on the problem and the people
Proceed independent of trust	Trust others	Distrust others

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Interests
Options
Standards

Communication **Relationship**
Commitment **Alternatives**

Source: Video, Getting To Yes In School, Roger Fisher

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FUNDAMENTAL DILEMMAS OF BARGAINING

TRUST **SUSPICION**
OPENNESS **SECRECY**
COOPERATION **COMPETITION**

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BOARD DIRECTION

THE ROLE OF THE BOARD IN NEGOTIATIONS [AND IBB]



BOARD DIRECTION: THE BOARD'S ROLE

- Acknowledge and understand nature of the forum: sharing of authority and power.
- Clearly define and articulate the Board's philosophy for employer-employee relations.

BOARD DIRECTION: THE BOARD'S ROLE

- TIME!
 - Talk to your team before and during the process.
 - Share goals, priorities, fears and concerns (INTERESTS).
 - Provide standards (CORE VALUES).
 - Invest authority in team = Instill confidence in team.
 - Provide direction, not strategy.

BOARD DIRECTION: THE BOARD'S ROLE

- Setting Standards (core values) for the Team; How Will This Affect --
 - Children?
 - The teacher's performance in the classroom?
 - The classified employee's performance?
- Will it enhance/improve teaching (not working) conditions?

BOARD DIRECTION: THE BOARD'S ROLE

- Setting Standards (core values) for the Team
 - Will it improve the caliber of our teaching staff or impede us from doing so?
 - Will it threaten the maintenance of educational programs?
 - How will it affect budget this year and in future?



BOARD DIRECTION: THE BOARD'S ROLE

- The Team Reflects the Board
 - Superintendent is key communicator between Board, administration and team.
 - Other team members: What are their roles and why are they there?



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BOARD DIRECTION: THE BOARD'S ROLE

- Don't Negotiate in Public
 - Understand collective authority vs. individual roles.
 - Defer to your designated spokesperson.
 - Don't fall for "The Savior Syndrome."
 - Understand "sunshining" requirements of EERA.
 - Understand public's right to comment vs. negotiating in public.

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THE BOARD'S ROLE IN IBB: SOME THINGS ARE DIFFERENT

- Interests vary with constituent subgroups.
- "The District" is not monolithic:
 - Governing Board
 - Central administration
 - Site level administration
 - Classified management
 - Confidential employees
 - Other?

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The Board's Role in IBB: Some Things Are Different

The team and the Board: A symbiotic relationship:

- The team hears the interests first hand – the Board's and the association's.
- The teams brainstorm options.
- The teams craft potential solutions.
- The team is responsible for helping the Board understand the "interim and end results."
- The team assists the Board's logic and reasoning in understanding a nonlinear process/result.

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THE BOARD'S ROLE IN IBB: SOME THINGS ARE DIFFERENT

Direction

Delegation

Authority

Individual Board Member Conduct

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THE BOARD'S ROLE IN IBB: SOME THINGS ARE DIFFERENT

- **Direction** – Know how to guide the team:
 - Interests
 - Parameters
 - Core Values
 - No “bottom lines”



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THE BOARD'S ROLE IN IBB: SOME THINGS ARE DIFFERENT

- **Delegation** – Trust that the team will:
 - Honor interests
 - Uphold Core Values
 - Know when to say “no”
 - Know when to consider “yes” (even if unanticipated)
 - Know when to stop, report back and seek more guidance from the Board



THE BOARD'S ROLE IN IBB: SOME THINGS ARE DIFFERENT

- **Authority** – Expect the team to:
 - Bring back subjects you never discussed before
 - Recommend options you never heard of before
 - Offer ideas you never thought of before.

Brainstorming is like that!

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THE BOARD'S ROLE IN IBB: SOME THINGS ARE DIFFERENT

- **Individual Board Member Conduct:**
 - Foundation of IBB: The teams attack issues together
 - The teams brainstorm options that best meet mutual and different interests.
 - The teams create solutions; individuals do not lobby for positions.

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THE BOARD'S ROLE IN IBB: SOME THINGS ARE DIFFERENT

- **Individual Board Member Conduct:**
 - Side conversations do not further or support the collaborative intent of IBB
 - To the contrary, such conduct undermines the process and disempowers the team.
 - If individuals "outside the room" lobby for positions (even disguised as "options") the principles of IBB are violated.

TRADITIONAL BARGAINING

- In Traditional Bargaining:
 - ❖ Each party first writes proposals separately,
 - ❖ And seeks to exercise power to attain,
 - ❖ Language which is their desired resolution,
 - ❖ Of their underlying issue, problem or concern,
 - ❖ Which may never be fully revealed to the other party..



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INTEREST BASED BARGAINING

- In Interest Based Bargaining:
 - ❖ The process is reversed.
 - ❖ The parties first share interests – their underlying concerns, fears needs and desires,
 - ❖ Identify shared, different, opposing interests,
 - ❖ Then work together to find mutually acceptable options, and
 - ❖ To craft contract language together designed to best meet those interests.

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Thank you!

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