

Tactics for Negotiating

Better Performance Contracts

Proudly supported by



With donations to



Prepared by Phil Darkins, Organiser, Equity New Zealand; making performers' lives better

Sources: New Zealand Council of Trade Unions course, 'Advocacy at the Table'; Australian Council of Trade Unions course, 'Developing Workplace Leaders'; Department of Labour, NZ Government; Neil Rackham, author of 'Spin Selling'; Prof. John Barkai, University of Hawaii, 'The Ugli Orange Negotiation' - YouTube.

Introduction & Plan

Bio: Phil Darkins, Organiser, Equity New Zealand.

I have been a professional performer since the age of 15. I grew up in Wainuiomata, and have lived in Christchurch, Brisbane, Melbourne and Wellington. I have a 28 year old daughter, who is in H.R., a one year old grandson who is into everything, a 25 year old son who is in I.T. and a 5 year old adopted daughter who is in my face. My wife, Natalie, is in the learning and development team at IRD.

My performance background is in singing, radio announcing, voice-overs, stage and screen acting, music and musical theatre. My direct involvement with Equity began in 2006 when MEAA (pronounced as in "steer") - the Media and Entertainment Arts Alliance - of Australia was invited by Actors Equity to open a branch in New Zealand. I became the chair of the Wellington Performers' Committee, a member of the National Performers' Committee and was invited to join the board of Equity as a Vice President. I stepped down from the VP role in order to get my hands dirty and became an Organiser; at the coalface, as it were. My areas of expertise include strategic planning, marketing, targeted membership growth and negotiating.

The Purpose of Equity New Zealand

The Plan for the Seminar

1. Registration.
2. The Actors' Benevolent Fund.
3. Who is in the room and why are you here?

4. Rules of Engagement (ROE): How do we intend to behave towards one another?
5. The Purpose of the Seminar; what do you expect from today?
6. Contracts
 - a) Good
 - b) Bad
7. Negotiating
 - a) What is it and why do we do it?
 - b) The 4 stages of a negotiation

1. Registration

2. The New Zealand Actors' Benevolent Fund

3. Who's in the house?

Dancers? Choreographers? Actors? Stunties? Crew? Writers? Producers? Directors? Agents?
Casting Directors? Health professionals?
Why are you here? What has attracted you to the seminar?

4. Rules of Engagement (ROE)

(Our contract with each other for today) How will we behave toward one another during today's discussion?

Why have we set ROE today? It's a contract to ensure that we respect each other.
Congratulations! You've just participated in the creation of a co-op deal; a contract.

5. The Purpose of the Seminar

Agents

If you don't have an agent, we hope that today's material will be invaluable to you.

If you have an agent who handles *all* of your engagements, then today's material will be relevant to how you *interpret* contracts that your agent has already negotiated on your behalf. In other words, today may help you suggest to your agent how to make contracts better for you. Over time, that can help build a better understanding between you and your agent.

If you have an agent, that only takes care of the commercial side of your work, today will help you negotiate better deals for the other work you do. e.g. some agents are only interested in dealing with screen work as opposed to stage work. In that case, today's material will be relevant to your stage work because everything else will be covered by your agent.

6. Contracts

What is a contract?

At what stage in your career should you start using contracts? Yesterday.

It doesn't matter if you are earning or not, a contract defines the respectful relationship between you and the people you work with. *Always* insist on a contract.

Does a contract have to be complicated? No. "I have this. Do you want it? Yes. OK, it'll cost this much. OK, done." That's a contract.

When do you need a contract?

Who do you have contracts with?

Co-op agreements between performers. Contracts that stipulate who is involved in the co-op, what is expected of them and what percentage of the net profit - or loss - is theirs.

Why are contracts essential?

What does a good contract look like?

What does a bad contract look like?

Who can you go to for genuinely independent advice?

Why not your agent? By definition, your agent may have a conflict of interest. Agents earn commission off the earnings of the artists they represent. Often, when a performer's deal is part of a large group of similar contracts, the interests of the individual performer get lost in the agent's desire to secure their own collective income stream. Every agent will tell you that they have your best interests at heart - and most do an awesome job - but it pays to get wiser sooner and realise two things: 1. Your agent works for you; not the other way around, and 2. Generally speaking, your best interests are usually better served by those who have nothing to gain financially from your performances. The entertainment industry is littered with the metaphorical corpses of performers who claim that they have been ripped off by their agents or managers. Whether or not that is true, remember that your agent works for you. Your agent does not hire you to exploit you; you hire the agent to exploit their skill set as they exploit yours. Hold them accountable to your *reasonable* expectations.

Examples of good contracts

Questions

7. Negotiating

How Do We Become Expert at Something?

What is a negotiation?

Why do we negotiate?

***When* do we negotiate?**

What is meant by 'good faith bargaining'?

The Four Stages of Negotiation:

Prepare, Debate, Propose, Bargain

1. Prepare

What do you want? What do you need? What would you prefer? What would be your ideal?

Before you go into any negotiation, you must know these answers, otherwise there will be no way of knowing whether the contract has delivered on your needs, wants, preferences and ideals.

The Bus Analogy: How do you know whether or not to get on a bus? Your need is to get from A to B. You want a bus on the route that goes from A to B. You would prefer a seat and that the bus is on time. Your ideal would be a chauffeur driven limousine with champagne on ice and canapés. After the bus has delivered you to your destination, are you satisfied that your needs, wants, preferences and ideals were met?

You see? You can measure those outcomes. What gets measured gets done.

If you don't know what you want, how will you ever know that you succeeded?

Expectations

Yours - What specifics do you want the contract to provide for you?

Theirs - What specifics do you know - or imagine - they want the contract to provide for them?

Prioritise - What is the priority order of your expectations? What do you think their priority order of their expectations will be?

The bottom line

Yours - What are you firm on and what are you prepared to negotiate on?

Theirs - What do you think they will be firm on and what will they be prepared to negotiate on?

Role play - Knowing what you now know, imagine how you think the discussion will go and role play it, either by yourself - playing yourself and them in turn - or with a trusted friend who understands the importance of the negotiation. Alternate roles in order to discover possible strengths and weaknesses in your approach. This will help you prepare for responses that you may not be expecting.

Preparation allows you to lead - or share a lead in - the negotiation, rather than be led.

Handout: Quotes About Conflict and Dispute Resolution - Prof. John Barkai, University of Hawaii

Four Steps to Accomplishment.

What is Leverage?

As a solo performer, how much leverage do you have?

As a member of a group of highly skilled performers who have agreed to work together to improve the lives of all performers, by insisting on contracts that are fair and equitable, how much leverage do you have?

Are you stronger as a lone voice, or as part of a collective voice?

2. Debate

What do *they* want?

Ask open questions.

S.P.I.N. Solutions - Neil Rackham

Situation - What is the specific situation they are in?

Problem - What is their problem with that situation?

Implication - If the problem is not solved, what will happen to them?

Need - What, therefore, can you offer to help solve their problem?

Explicit & Implicit Needs

Debate - Seeking information and questioning

Heightened Relaxation - this is something performers know how to do; breathe deeply and efficiently in order to manage the fight/flight reflex effectively. Never utter anything of importance in a negotiation without first taking a conscious deep breath.

Test your assumptions by questioning. Test their 'facts' by asking to see their supporting evidence.

Identify their interests, intentions and inhibitions.

Test their level of commitment to their own expectations. What are they firm on and what are they prepared to let go of?

Take an element of control over the process.

Active listening

Open questions - All begin with either, Why? When? Who? How? Where? or What?

Your Goal is to Uncover Their Implicit Needs

Avoid Arguing

Do challenge 'statements of fact' by respectfully asking for the evidence that supports them.

Build Rapport

3. Propose - What could you trade?

Based on the information you now have, you may be in a position to formulate a proposal that takes into account their implicit needs as well as your own. You can present this as a quid pro quo (something for something), which will demonstrate that you have recognised and considered their needs and are acting in an equitable and professional manner. It's difficult to disrespect a person who respects not only themselves but you too.

The Echo Effect

Proposals Advance Negotiations

Be realistic and assertive

The Two Elements of a Proposal

The condition and the offer together create a conditional offer; quid pro quo.

4. Bargain - What will you trade?

Nothing is settled until everything is settled.

Negotiations are Dynamic & Fluid; not linear

Handout: Gambits for Negotiating (opening moves for each stage in a negotiation)

It is important to know what stage you are in so that you can apply the appropriate techniques. This allows you to manage the process and move incrementally towards an agreement.

Closing & Settling

The Euphoric Error

Nothing is settled until it is written down and signed

Discussion

Update on Equity New Zealand

Rebranding. Why?

In the past few years, Equity has been approached by many performers from disciplines other than acting, who want help to make their lives better. Those approaches have grown to the point that Equity must broaden its coverage to act for the interests of ALL performers. So, instead of being known as *Actors Equity*, we are now known as *Equity New Zealand*, and our purpose is to make all performers' lives better.

If all performers stand together in support of one another, it is nigh on impossible for others to ignore performers' wishes or negatively exploit performers' talents.

Activities.

SPADA Negotiations - SPADA stands for Screen Production & Development Association. It is essentially the New Zealand's producers' professional association.

After a lengthy period of negotiations, for the first time in history, Equity and SPADA have agreed on legally enforceable, minimum terms and conditions for the engagement of performers working on publicly funded screen productions. Essentially, this contract defines what we mean by mutual respect between producers and professional performers. There has been much goodwill expressed between Equity and SPADA during the negotiation of this contract. It sets a new high water mark in the respect for each others' implicit needs.

Equity Growth

In the past several years, Equity has steadily grown in membership to over 760 members. The target for the end of this financial year is an even 1,000.

The Road Ahead

The SPADA agreement is the first in a series of similar negotiated contracts that will address inadequate protections for performers in all disciplines, including all forms of dance. It is essential that professional performers are recognised for their artistic contributions and fully respected for their commitment to their work. This will happen when all performers decide to stand together to insist that their industry acts in a fully professional and respectful manner.

Working for Nothing

Put your hand up if you have worked on a commercial production, where tickets were sold to the public, but you did not get paid.

Keep your hand up if you believe your performance was *worthy* of payment.

Keep your hand up if you would prefer to be paid for *every* production that you contribute to.

Keep your hand up if you are willing to support negotiations for legally enforceable standard terms and conditions of engagement that will *make sure* that you are paid for every production that you contribute to.

Congratulations! You are the people who will most benefit from becoming Equity members. Equity needs to gather the evidence of your experiences, in order to improve the lives of all professional dancers in Aotearoa New Zealand.

For the rest of you who are performers, I'm afraid to say that you have a wee way to go before you are ready to fully respect yourselves as professional performing artists.

I would urge you to complete this statement: "If I respected myself, I would..."

What would you do and why?

And remember this: If you always do what you always did, you'll always get what you always got.

Change only occurs when the pain of staying the same exceeds the pain of change.

Thank you all so very much for taking part in this seminar. I hope that you have found it valuable.

Phil Darkins

Organiser, Wellington

Tel: 64 4 476 7720

Mobile: 64 27 227 3838

E: phil.darkins@actorsequity.org.nz

www.actorsequity.org.nz

P.O. Box 6127, Marion Square, Wellington 6141, New Zealand

Like Equity on Facebook - <http://www.facebook.com/NZActorsEquity>

Follow Equity on Twitter - <https://twitter.com/NZActorsEquity>

Watch Equity videos here - <http://www.youtube.com/user/NZActorsEquityNZ?feature=watch>



Equity New Zealand acts for the interests of New Zealand's professional performers, to make their lives better. By adhering to our core values of Respect, Responsibility, Courage and Unity, we offer all fair consideration, provide clear leadership and accountability, and stand up for our beliefs with one united voice; Kāore koe e tū mokemoke ai (You never stand alone).