Oregon Tackles Equal Pay… and Wrestles with Bipartisan Compromise Teaching Plan

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Synopsis

In 2017, Democrats in the Oregon state legislature made passage of a Pay Equity Act one of their top legislative priorities. While Democrats held a voting majority in both the House and Senate, the traditional roles and personalities of the two chambers were quite different. In the House, Republicans tried to negotiate a bipartisan bill, but the effort fell apart; in the end, the bill passed on a party-line vote. When the bill reached the Senate, however, lawmakers dedicated themselves to achieving a bipartisan bill. There are two versions of this multimedia case, both designed to support discussion of what makes bipartisan negotiation more (and less) likely to work:

- **Version 1** (no-prep), specially designed for busy executive education students, requires no preparation before class, but does require 100 to 120 minutes of class time. The instructor begins the class by playing a 15-minute video about the House negotiations, accompanied by a

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This teaching plan was written in collaboration with Kessely Hong, Faculty Chair of MPA Programs, at the Harvard Kennedy School of Government (HKS). HKS cases are developed solely as the basis for class discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

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handout that includes two pages of text and four exhibits. Discussion follows. Next comes a string of 3 short videos about different aspects of the Senate negotiations, each followed by discussion. A brief video finale ends the class.

- **Version 2** (low-prep) is similar, but requires less class time—75 to 90 minutes. In lieu of the 15-minute video about the House negotiations, it requires students to spend about 30 minutes before class, working through a multimedia website with a text-and-video account of the House negotiation (slightly more detailed than the video for the no-prep version).

Learning Objective

This case supports discussion of the benefits and risks of bipartisan negotiation, and strategies to increase the chance for success—identifying traditions and norms that can cultivate bipartisan culture, procedures to help get past thorny issues, and internal negotiation techniques to maintain support from political allies. The case is designed both for traditional classroom teaching and executive education, and for students with and without experience in legislative negotiation.

The instructor may want to vary the teaching plan below, depending on the available class time and how much legislative experience the students/participants have. Whether students prepare ahead, or watch the House video in class, the teaching plan is essentially the same, beginning with discussion of the House negotiations.

Recommended Reading

It will be helpful for the instructor to introduce or review Robert Putnam's concept of two-level negotiation, in which legislators need to negotiate both with members of the other party (Level I) as well as within their own side (Level II) with fellow party members, constituents, and lobbyists. See Putnam, R. "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization*, MIT Press, summer 1988, pp. 427-460.

Case Materials & Links

- **Version 1**: The instructor will need the following link to access the House video and four Senate videos to play in class: https://www.hksslate.info/wp/oregon-equal-pay-short/. In addition, the instructor will need the Version 1 Handout (Backgrounder).
- **Version 2**: Students will need to access the multimedia case about the House negotiations before class: https://www.hksslate.info/wp/oregon-equal-pay-long/. In addition, the instructor will need access to the four Senate videos to play in class: https://www.hksslate.info/wp/oregon-equal-pay-long-classroom/.Finally, the instructor may choose to distribute two handouts in class: Version 2 Handout (Senate Flow Chart) and Version 2 Handout (Key Players).

Road Map

- Assumes a 100-minute class with the 15-minute video and supplementary written handout provided in class (**Version 1**) *or*
- A 75-minute class with pre-class preparation by students (**Version 2**)

Introduction, 5 min

The House Negotiation Version 1, 30-35 min
- Class reads the Handout, 5 min
- *House Video, 14.5 min*
- Discussion, 10-15 min

OR

The House Negotiation Version 2, 10-15 min
- Discussion, 10-15 min

The Senate Negotiation, 45-55 min
- *Senate Video 1, 12.19 min*
- Senate Video 1 Discussion, 10 min
- *Senate Video 2, 6.30 min*
- Senate Video 2 Discussion, 5-10 min
- *Senate Video 3, 4.25 min*
- Senate Video 3 Discussion, 5-10 min
- Class Finale—*Senate Video 4, 2.36 min*

Wrap up, 5 min

Discussion Plan

Introduction

The instructor should distribute any handouts and ask students to review them before the start of the discussion. The instructor may want to orient students to the purpose of the class, and remind them that the strategies employed in bipartisan negotiation—for example, trust-building, making progress on challenging issues, and securing buy-in from "Level II" constituents—can be applied to non-partisan conflicts, such as union/management negotiations. The instructor may also want to clarify upfront—because students are likely to wonder about it—that Rep. Ann Lininger, the bill's sponsor, declined to be interviewed for this case, as she had since become a judge, a nonpartisan role.

The House Negotiation

The instructor may want to kick off this discussion by asking students to provide an overview of the partisan landscape in the Oregon legislature. [See Slide 1, The Numbers.] The instructor may then want to ask, *What do you think are the potential benefits and risks of working across the aisle on a bill if one party holds a strong majority, and you are a legislator in the majority party? The minority party? (*To record answers simply, the instructor may want to employ the template in Slide 2. Sample answers to this question are found in Slide 2 Sample Answers.)

The instructor may want to follow this overview conversation with a specific strategy question: *What do you think of Republican Rep. Jodi Hack's strategy of gathering signatures from her Republican colleagues indicating that they would support the Democrat Equal Pay bill, including all the protected classes, if Democrats compromised on the issue of including an "affirmative defense" for employers?* The main point in favor is that it was a good—and perhaps the only—way to win over moderate Democrats. It did risk alienating Republicans, who opposed the legislation altogether or opposed the inclusion of certain protected classes that were flashpoints for their constituents. An interesting question is whether it was wise or short-sighted for her to start by giving way on the protected classes right at the beginning, which left very little room for further concessions.

Next, the instructor may want to ask, *What do you think of Republican Minority Leader Mike McLane's "gotcha" move, of adding veterans to the list of protected classes in the Minority Report?* The point here is that it is a risky move designed to make Democrats lose either way (either they would need to back the Republican Minority Report, or they could be accused of voting against veterans). It was at odds with Hack's straightforward trust-building approach, and may have backfired, causing moderate Democrats to vote against the Minority Report who otherwise might have supported it.

The instructor may want to end this discussion by asking, *Why do you think Ann Lininger decided not to accept Hack's affirmative defense language by amending the Democrat version of the bill?* Here we are speculating, but likely answers are that (1) she had the votes and didn't need to; (2) activists supporting the bill were adamantly opposed to including this language; (3) she knew the legislation would probably be moderated in the Senate, so it made sense for the House to pass the strongest possible version of the bill.

Below are other questions the instructor may want to ask the students, depending on the level of experience in the room:

- *What were the dangers for individual Democrats of crossing over to the other side and supporting a Minority Report? What could make it worthwhile to do that?*
- *If you are in the minority and you get so close to getting enough votes to pass your own version of the bill, is that a success or a failure?* (Some could argue that it puts pressure on the Senate and enables you to influence the content of the bill. Others might say that it further alienates the other side, who's in the majority.)

Play Senate Video 1

Discussion for Senate Video 1

The instructor may ask students to comment on the strategies and process choices shown in the video—for example, relationship-building and process transparency—or others that they've seen in their own lives, that make bipartisan collaboration easier and more likely. [See Slide 3 for a template for recording student responses. Sample answers to this question are found in Slide 3 Sample Answers.]

Depending on the students' level of experience, the instructor may also ask:

- *Is there a difference between the long term and the short term when it comes to attempting a bipartisan approach?* Here, the instructor and the students may want to explore how, even if the majority scores a victory in the short term, engaging with the minority may lead to a more rigorous discussion of the merits of the bill, and that in turn might strengthen it. Also, a bipartisan bill has more guarantees of surviving in the long term if the political balance changes and the minority becomes the majority.

- *How important is transparency in these situations?* Here, the instructor might ask students to share their experience: Have they ever felt blindsided? If so, what was the impact of that on the negotiations? What strategies have they developed to avoid blindsiding others?

Play Senate Video 2

Discussion for Senate Video 2

The instructor may ask students to comment on thorny issues in the negotiation, and the choices made on both sides to compromise. In this case, the question was how to address the strong wish of employers for an affirmative defense provision, while satisfying the bill's ardent advocates that such a provision would not render the bill meaningless. She may also invite students to comment on other strategies they've used/witnessed to get through the hardest parts in a negotiation. [See Slide 3 for a template for recording student responses. Sample answers to this question are found in Slide 3 Sample Answers.]

Depending on the students' level of experience, the instructor may also ask:

- *When dealing with sticking points like "affirmative defense", is it better to broaden the pie, thus including more issues in the bill that can make it possible to have trade-offs (with the business community, for example), or to keep the bill as clean as possible?*

- *In these situations, what are ways to mitigate the risk the other side would be taking if it was perceived as having caved in?*

Play Senate Video 3

Discussion for Senate Video 3

The instructor may ask students to comment on strategies used in the video, and in their own lives, to maintain credibility with their allies while negotiating with opponents and to make it safe for fellow party members to either join or stay in the effort. One especially smart move, in this case, was the

successful effort by the lead Republican negotiator to persuade a prominent business group not to "score" legislators negatively if they supported equal pay. [See Slide 4 for a template for recording student responses. Sample answers to this question are found in Slide 4 Sample Answers.]

Play Senate Video 4

The fourth video is a crowd-pleaser, in which the charismatic Senate President tells the story of his surprise and delight when the Equal Pay bill ended up passing the Senate not only with bipartisan support, but with unanimous support. It is a great way to end the class.

Slide 1. The Numbers

Oregon House: 60 Representatives	Oregon Senate: 30 Senators
→ Need 31 Votes	→ Need 16 Votes
35 Democrats (but 6-8 are more moderate than others) + 25 Republicans	17 Democrats (but 3-4 are centrist and sometimes vote with Republicans) + 13 Republicans

Slide 2. Template, Pros & Cons

	Potential Benefits to Working with Other Side	Potential Risks/Downside to Working with Other Side
Minority		
Majority		

Slide 2 Sample Answers

	Potential Benefits to Working with Other Side	Potential Risks/Downside to Working with Other Side
Minority	• *Try to shape outcome and protect own constituents* • *Only path to influence, weak alternatives* • *Avoid potential long-term losses if expect other side to stay in power*	• *Other side may not fulfill promises* • *Short-term publicity wins to opposing* • *Can be seen as traitor*
Majority	• *Longer lasting, stronger agreement implementation* • *Legislation may be less prone to inadvertent mistakes if subjected to rigorous debate* • *Build long-term trust and relationship—may need other side later as you may lose power*	• *Costly: time & may make expensive concessions* • *Dilute own interests* • *Seem weak internally*

Slide 3. Template, Strategies for Trust-Building & "Sticking Points"

Strategies and Process Choices to Build Trust with the Other Side	Strategies to Move Past "Sticking Points"

Slide 3 Sample Answers

Strategies and Process Choices to Build Trust with the Other Side	Strategies to Move Past "Sticking Points"
• *Differentiate people from issues* • *Joint meetings with external parties such as lobbyists (transparency)* • *Find the "path to yes" for/with the other side* • *Build relationships (e.g. eat together, discuss family/personal topics)* • *Custom of physical "guest chair" at desks on Senate floor to promote conversation* • *Appreciate other side's constraints and provide safety*	• *Rename contentious issues to avoid triggers* • *Defining shared desired outcome and finding a way to get there* • *Bring different issues to the table and look at sub-components of challenging issues* • *Use 3rd party facilitator* • *Be vague when necessary*

Slide 4. Template, Internal Negotiations

Strategies to Maintain Internal Credibility When Working with the Other Side (and Make It Safe for Others on Your Side to Join a Bipartisan Effort)

Slide 4 Sample Answers

Strategies to Maintain Internal Credibility When Working with the Other Side (and Make It Safe for Others on Your Side to Join a Bipartisan Effort)

- *Frequent updates to your party, deliver good and bad news together*
- *Build credibility internally on other issues*
- *Reframe; consider history and moral appeal*
- *Avoid political scoring*
- *Create a "buddy system" for bill sponsorship so the sponsors are not lopsided in favor of one party*
- *Get political cover from influential lobbyists or constituent groups*
- *Maintain personal relationships with own side, and invite members of own side to participate in joint meetings*
- *Avoid emphasizing triggering issues and reframe to be appealing to both sides*