

COLLECTIVE BARGAINING

THE COLLECTIVE BARGAINING PROCESS



INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS®



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Collective Bargaining: The Collective Bargaining Process

What is Collective Bargaining?

Collective bargaining gives IAFF members a voice in matters that directly affect their employment. Actively negotiating a contract is one of the most important functions an IAFF local can perform for its members, and is the key ingredient in fire fighter-employer relations.

During the collective bargaining process, representatives from your local meet with representatives of your employer to negotiate issues important to both of you and to mutually determine the general terms and conditions of employment. Negotiating meetings are generally several in number, with each side attempting to obtain the best advantage for those they represent. This is accomplished through the presentation of proposals, the offer of counter proposals, and the exchange of information. These negotiations result in a written agreement covering wages, hours, fringe benefits, discipline, safety, and other working conditions, and is the contract under which your fire fighter members will operate for a specified period of time. During the term of your contract agreement, your local is responsible for monitoring its implementation and for protecting it when violations of the agreement occur.

Preparing for Negotiations

The foundation of the collective bargaining process begins with comprehensive preparation. Before your local can sit down at the bargaining table it must identify its strengths and weaknesses. You will need to consider the environment in which you operate, the support network of your membership, what resources are available to you, the types of relationships your local has developed with other professionals, how your community views its fire department, and the effectiveness of your political action.

The environment in which your local serves is multifaceted. It embodies demographics (population, age distribution, location, and economics), community attitudes (politics and values), and governmental policies (laws and regulations). Each of these classifications will have some type of bearing on how successful your local may or may not be during the negotiation process and each should be carefully considered before developing your proposals.

To be successful at the bargaining table, your local must lay the appropriate groundwork for building a sound organizational structure. Cohesion and morale must always remain a top priority because your local's strength is in its unity. You need to know the determination of your own members and to have their full support before beginning the collective bargaining process. If your local wants to be perceived by its employer as being united and having influence, then it will need to project that kind of image.

While your greatest assets are your members, your local must be willing to examine all of its resources and if necessary, internally admit to any limitations it may have. For example, does your local have the finances essential for waging a media campaign, if necessary? Can your local combat any legal battles that might possibly arise? Will it have to call on outside experts to help it win any of its arguments during negotiations? Questions, such as these, need to be answered before making any demands of your employer. While your proposals may be justified, you must be certain that you have the resources to back up your requests.

Relationships with other professionals in and out of the labor movement are important to your success as well. Your local must develop business-like associations with those persons who can influence the attainment of your goals. These professionals should include members of other labor organizations, local politicians, and citizens of good standing in your community. The level of support from persons such as these will have an impact on your success rate.

Before your local can effectively negotiate its contract, it needs to know the degree or potential for public support of its demands. To gain the backing of your municipality, your local must make community relations an ongoing process and continually expand its viability. Your local cannot surface only when it is seeking a resolution to a problem. The best way for your local to become more involved is through community service. Your membership should consider supporting special events, developing fund raisers for charities, and conducting health and safety informational programs for service groups. Your local should join community groups or clubs, such as rotary, chamber of commerce, senior citizens, homeowners, etc. You should develop a speaker bureau to educate your community on what services you provide them as fire fighters. It is through activities such as these that your local can establish its character, integrity, and business-like demeanor and attain favorable status and support from your community.

Politics plays an important role in all negotiations. It is imperative that your membership seek out, support, and help get elected those politicians who are on the side of your local. These are the people who have the ability to set policy for your community. You need to understand their personalities and philosophies, as well as who is in trouble and who is not. It is also vital for your local to know the laws of your city and state, the financial condition of your municipality and its ability to pay or raise revenues to meet your demands, and the timing of your move for greater benefits. To be effective, strive to maintain political connections with as many politicians as possible and keep abreast of the political climate of your community.

Forming a Negotiating Committee



Your local's constitution and by-laws may dictate how the members of your local's negotiating committee are selected. In some cases, the members of the negotiating committee are elected. However, in most instances the members of a negotiating committee are appointed by the local union president with the president serving as committee chairperson and chief negotiator.

The number of members on your local's negotiating committee will vary according to the size and complexity of your union. However, in most instances a negotiating committee should never consist of more than seven persons. Keep in mind that larger committees tend to be more difficult to work with. To avoid the possibility of any deadlock votes, your negotiating committee should also consist of an uneven number of members.

Most importantly, the members of your local's negotiating committee should be representative of your local's membership. They should be knowledgeable about the subject matter being negotiated and should include individuals who are able to make a positive contribution to the collective bargaining process. It is also important to select members who possess a certain amount of objectivity when it comes to dealing with issues that affect your entire membership. Empathy and understanding of your employer's needs and concerns is necessary as well. Other attributes that should be considered include persuasiveness, credibility, stamina, patience, and diplomacy. And, while they may seem to contradict one another, each member should have the ability of being firm while simultaneously recognizing when to be flexible on an issue.

Even though your employer's negotiating committee may consist of specialists such as lawyers, economists, and personnel experts, your local should only consider calling experts as they are needed. Lawyers tend to be an exception to this rule though. More and more lawyers are serving as members of local union negotiating committees and as technical advisors on contract language. While this has become more acceptable, your local should never allow the collective

bargaining process to become an exercise in legalities. Your local's negotiating committee must maintain its decision making authority and never delegate this role to an attorney.

When it comes to performing its duties, your local's negotiating committee should function the same as any other committee in your union. Your local's chief negotiator should serve as the committee's chairperson by directing the committee and assigning duties. One member should serve as secretary and be responsible for keeping a permanent record of the entire proceedings, and the duties and responsibilities of each individual committee member should be assigned based on a member's expertise. The expectations of each committee member must also be clearly articulated.

The Chief Negotiator

The chairperson of your local's negotiating committee should serve as your local's chief negotiator. In general, this will be your local union president. He* is the person who directs the members of your local's negotiating committee and assigns duties to each member. The chief negotiator is also the person who will lead your negotiating committee when sitting at the bargaining table.

Your chief negotiator should possess a number of different characteristics. He should be able to effectively communicate with the principal players on both negotiating teams. He should be able to put himself in your employer's place and have a thorough understanding of the problems your employer faces. Above all, he should be a skillful negotiator with a sound knowledge of your department's overall operations.

The way in which your chief negotiator presents himself will also have an impact on your local's success. If your chief negotiator wants to be accepted as a leader, he needs to look and act like a leader. He should always possess a demeanor of self confidence and authority. He should also consider wearing appropriate attire when negotiating. For example, by wearing his uniform during negotiations, he may be perceived as a subordinate and employee rather than a leader of equal status.



Developing Your Proposals

Before your local and employer can sit down at the bargaining table, each of you must establish your objectives and develop your proposals. In general, your employer's objectives will be to keep his costs as low as possible while trying to attain the maximum degree of control over your members as feasible. Your local, on the other hand, will attempt to obtain the most profitable settlement it can while achieving maximum strength and stability for your members as possible. Your local should begin developing its proposals based on these two assumptions.

To develop its proposals, your local must determine the priorities of your membership. This can be accomplished by polling members through confidential questionnaires, personal contact and general meetings to find out what they would like changed in the current contract and what priorities they would like bargained for in the upcoming contract. Your negotiating committee should also analyze grievance files, arbitration awards, past experiences and other related problems for clues as to what can be done to better serve the needs of your membership.

Once the priorities of your membership are established, your negotiating committee must determine the realistic nature of obtaining its goals. This can be accomplished by gathering data on economic conditions, wage rates and the financial health of your municipality, as well as compiling data comparisons of other fire fighter locals in your area and their contract settlements. Your negotiating team should

* Whenever a male gender is used in this manual, it shall be construed to include both women and men.

know how to effectively analyze budgets and other financial documents of your municipality. After obtaining all pertinent data, your local can then prepare appropriate cost estimates of these preliminary demands. Keep in mind that the strength of your local for backing up its proposals comes from legitimate facts.

Each of your local's proposals should also have overall objectives, including strengthening your local internally, maintaining your local's reputation within your community, and reinforcing your local's position as much as possible for future negotiations. Based on the analysis of these objectives and all of your facts, your local can begin to develop the proposals that it will present to your employer.

While your local is preparing its list of demands, your employer is doing the same. He will be analyzing data on economic conditions and studying economic forecasts to build his case for hindering the demands of your local. He will also be examining his relationship with your fire fighter members by studying grievances and disciplinary problems. He will also remain alert to rumors about what your local will ask for and what it will settle for during negotiations. Your local must anticipate these actions and prepare for them accordingly.

Breakdowns in the collective bargaining process are most often caused by one or both of the parties involved making unrealistic demands of one another. Before finalizing your proposals, your local must determine if your employer is able to agree to a proposal without serious damage to his operations, and your local must be able to agree to a proposal without severe consequences to your organization and without harming its reputation within your community. In general, you must determine if your goals are within the bargaining expectancy of your employer. Ideally, he should do the same.

A well thought out plan of proposals is a major key to your success. Your local should not overwhelm your employer with a "want" list, and you should always be aware of the reasonableness of your demands. Unfortunately, not all proposals by labor and management are fair and equitable. However, this is what collective bargaining is about - each side trying to get what is best for those they represent.



How you present your proposals can be just as important as the proposal itself. The drafting of contract proposals is primarily the responsibility of your negotiating committee. Some general rules your negotiating committee should consider, include:

- Writing the proposals in clear and precise conceptual language.
- Avoiding long sentences, lengthy paragraphs and repetition.
- Writing the proposals with the intent of solving problems.
- Avoiding the use of complicated or legal terms.
- After they have been typed, proofreading them twice.
- Providing documentation for the proposals, such as information and examples that illustrate incidents relating to the problem that the proposal will solve.
- Avoiding "weasel" words such as "in general", "whenever possible", "except in emergencies", "under normal circumstances", which help the employer weasel out of contract obligations.

First Meeting

During the first meeting of the negotiating process, you will have the opportunity to size up your employer's representatives, debate the ground rules to be used during all meetings, and present your proposals. Remember though, you are under no obligation to have ground rules. At the beginning of your initial meeting, each member present should introduce themselves or be introduced by

their respective chief negotiator. Observe your employer's representatives and try to pick up on verbal and non-verbal cues that might hint at the tone of the upcoming talks. Who is doing the talking? Are there any specialists for your employer? Note the things that you feel to be of importance.

Once these preliminaries are taken care of the ground rules for all meetings should be determined. The best ground rule is no ground rules. However, some examples of ground rules that are often discussed include:

- 🔥 Reviewing your collective bargaining laws and their timetables.
- 🔥 Determining the location of each meeting. Will negotiations take place at the same location? Is the location a neutral one? Does it provide for private rooms for caucuses whenever necessary?
- 🔥 Deciding how long each negotiating session will be.
- 🔥 Confirming the composition of each negotiating team.
- 🔥 Making it clear that all members of your negotiating team are to have equal status with your employer. Union members must have the ability to be straightforward and candid during negotiations. (Generally, this is understood and does not need to be said.)
- 🔥 Establishing how the negotiating sessions will be recorded. Will your employer require an audio recording or transcript? If so, who will be paying? Your local should have a recording secretary to keep records for your union. Other team members can take notes as well.
- 🔥 Determining how proposals will be exchanged. Which side will give a brief explanation first (usually the union)?
- 🔥 Creating an agenda for detailed negotiations. Once both sets of proposals have been presented, are the proposals negotiated in the order in which they appear in the contract?
- 🔥 Making it clear that counter proposals will be allowed. Both teams need to be able to make appropriate counter proposals and modify or withdraw existing proposals when necessary.
- 🔥 Establishing the right to caucus.
- 🔥 Determining agreement on a proposal. When an agreement is reached, a method to indicate mutual acceptance is needed. Usually the accepted proposal is initialed by each team's chief negotiator.
- 🔥 Establishing the means and methods by which a third party can be called in to facilitate negotiations during an impasse.
- 🔥 Deciding on a method for approving the new agreement. Will the approval of the membership be necessary? How much time will the ratification process take? Who has the authority to make a contract for the employer? What is their process?
- 🔥 Creating rules for dealing with the media. What will be discussed and who will be speaking?

Once the ground rules have been agreed upon, both parties simultaneously exchange copies of their proposals. After doing so, generally the union's chief negotiator will be invited to give a verbal explanation of your local's demands. Do not fall into the trap of negotiating before all the proposals on both sides have been outlined and generally understood. Your local should never respond to your employer's proposals until a later meeting. This way your negotiating committee will have adequate time to review their impact. Also, never accept a proposal without an explanation of why the proposal is being made, and be prepared to explain, if asked, why your proposal is being made.

Setting the ground rules and exchanging proposals will generally take up your entire first meeting. Your local and employer now have the other's proposals to study, notes to consult, and impressions to consider. With this information in hand, your local should promptly begin preparing for the intermediate sessions.

Conducting the Negotiations

When you are negotiating, there are a number of items that your negotiating committee should bring with them to the bargaining table. These items should be well organized, so that they are easily accessible at all times during each meeting. They include: copies of your local's proposals and counterproposals; copies of your employer's initial offer; copies of your current contract agreement, rules and regulations, grievance records, and health, life and insurance plans; copies of new articles,

clauses, and sections which were offered to your employer as initial offers, along with supportive data and documents; and copies of newly agreed to articles, clauses, sections and other such provisions.

The importance of keeping notes during negotiations cannot be over-emphasized. These records are your local's official transcript of the collective bargaining process and must be accurate, complete and reviewed for accuracy after each session. Questions over the interpretation of your contract will arise throughout the term of your agreement. In order to resolve these issues, it is imperative that your local be able to document the intent of the two parties in negotiating the agreement.

The name and title of each person present, as well as the time and location of each negotiating session should be include in the minutes. A dated copy of each proposal and counterproposal (written and verbal) made by your employer and your local should be stated in reasonable detail, and those proposals that have been tentatively accepted or that have been withdrawn should be included as well. Your records should also include any supporting data that is passed over the table.

The minutes should also contain what information one party has agreed to supply to the other and the time this information will be supplied. Any statement of interpretation regarding any clause that is agreed to if questions are asked regarding interpretations or implementation should be recorded. The issues that remain open at the end of each session and each party's position on these issues, as well as the time and place of the next session should be noted at the close of the session.

When statements are recorded in the minutes, the persons making the statements should be identified. Also, if an article or section of the current or proposed contract is mentioned, its number should be included. Once the minutes of the meeting are completed, they should never be altered. They may need to be used to verify a point in an arbitration hearing or in the processing of a grievance against your employer.

Good negotiations are both competitive and cooperative. While negotiating, your local should continually strive to receive positive commitments from your employer. However, your local should never be afraid to respond negatively if the situation warrants this type of response.

The key to positive results in negotiations is effective interaction with the other side. This means keeping the lines of communication open with your employer and attempting to stay on reasonably good terms with him but not to the extent of compromising your position or becoming too accommodating.

Negotiations are a bilateral process in which your local has equality with your employer. Your local has the right to be treated with respect at the table and your employer deserves the same. While your local needs to be tough on the issues, it must remain courteous to the people involved. The best negotiations are conducted in an atmosphere of mutual respect.

While negotiating, stay with your point and pursue your objective, but do not attempt to devastate your employer. Apologize when you are wrong and gracefully acknowledge the significance of your employer's comments. Listen carefully to the reasons your employer gives for an objection and be willing to make modifications if possible.

When negotiating, resolve the easy issues first. This helps to establish an environment of agreement and cooperation. It also gets the simple issues out of the way so that they don't get lost later on. However, negotiating economic issues, such as wages, should always be your first priority.

If your employer chooses not to accept one of your proposals, probe to understand reasons for his refusal. Be aware of any signs indicating the possibility of agreement or compromise. From the stand-point of your local, do not allow your employer to put you on the defensive, and do not accept statements from your employer as fact without reliable documentation.

As agreements on issues are tentatively reached, initial, date, and set them aside. Also, remind your employer that all agreements made during negotiations are not final until ratified by the members of your local, and that any agreements reached are tentative based on agreement of the total package.

The Caucus

The right to caucus should be established in the ground rules you develop with your employer during your first meeting. Caucuses can serve a number of different purposes. In general, though, caucuses help to keep the members of your negotiating committee focused on the issues at hand. It allows them the opportunity to make sure that everyone on the committee understands your employer's proposals and positions, including the implications they may have on your local's members.

The opportunity to caucus also allows your committee to react to what is happening at the bargaining table. Your committee members should *never* react in a positive or negative manner at the bargaining table. At times, they may need the chance to vent their frustrations. If disagreements among your committee members are beginning to show, then a caucus should be called before the disagreements become obvious to your employer.

There may also be times when some of your committee members will need the chance to cool off after a heated exchange at the table. A brief caucus will allow for this, as well as slow down the pace of the negotiations when your employer is pushing too hard.

Caucuses can be utilized to take care of general business as well. Your negotiating committee can make use of them to plan its strategy for the remainder of the bargaining session or to simply review its basic plan of action. Caucuses also allow your committee to deal with unexpected developments and evaluate your employer's position on your local's proposals. If necessary, a caucus can provide your committee with the opportunity to modify its position and develop counter proposals.

Each caucus should be conducted in an orderly but informal way with one member acting as a chairperson. All efforts should be made to arrive at a consensus. However, this may not always be possible. If, after every member has had the opportunity to voice their opinion, a consensus cannot be obtained, a vote should be taken so that an agreement can be reached.

Keep in mind that it is not uncommon to spend more time in caucus than at the bargaining table. This is because this is where your committee will usually draft its counter proposals.

Bargaining Techniques

The bargaining techniques you choose to utilize in an attempt to persuade your employer to agree to your demands are part of a larger strategy your local has in mind. Your local's strategy is its plan of action that it believes will give it a competitive edge over your employer. Your strategy may include financial arguments, political action, or use of the media to gain public support for your proposals. Whatever strategy your local develops, it should focus on convincing your employer of your serious intent (without the use of threats), the clout of your local and its members, your ability to win, and your fervent determination.

A variety of bargaining techniques should be used in an attempt to persuade your employer to agree with your local's proposals. Bargaining techniques range from using open hostility to enlightened cooperation. During negotiations, your local's and employer's techniques will more than likely fall somewhere between these two extremes. Instead of relying on one technique, your local should plan to use a variety of different bargaining techniques, involving a combination of persistence, cooperation, and persuasion, to help it to achieve its goals at the bargaining table.

There are three types of bargaining techniques your local should consider utilizing while negotiating - conflict bargaining, problem-solving bargaining, and attitudinal bargaining. Each of these are discussed below.

Conflict bargaining is used to resolve issues, and when your local and employer want to attempt to win as many concessions from the other as possible. The outcomes of this type of bargaining are usually measured by what both parties know and feel they have won. The issues usually negotiated using this technique tend to be issues concerning economics and fringe benefits. Conflict bargaining is used most often during negotiations. However, it can be restrictive. For example, it limits interaction between the two parties and individuals involved. Because communication is at a minimum, there is very little opportunity to share different ideas.

Problem-solving bargaining is used when the two sides seek to solve problems and not issues. The function of problem-solving bargaining is to maximize the exchange of information relative to mutual problems. Ideally, your local and employer are working jointly for the betterment of fire fighters and your city. Outcomes of problem-solving bargaining are measured so that both parties know and feel they have won something.

Attitudinal bargaining is used to influence the attitudes of the participants toward each other and to affect the basic bonds that relate the two parties represented by the negotiators. Your employer may not prefer to deal with your union, but he accepts its role. From your local's perspective, your members are more educated towards your employer's arguments and try to analyze the issues from both perspectives.

How to Deal with Employer Responses



Your employer will generally respond to a proposal in one of three ways: outright rejection, conditional rejection, or with a counter proposal. If your local receives an outright rejection from your employer on one of its proposals, it should not give up on the issue. You will need to discover why the proposal was rejected. Is it because of cost or principle? Is it rejected in whole or in part and is the rejection unanimous? Listen carefully to the reasons your employer gives for an objection and be willing to make slight modifications in order to make the proposal more acceptable. At the very least, an attempt should be made to get your employer to give in on part of the issue so that the rejection is not a total one.

When your employer makes a conditional rejection of a proposal, he is rejecting a part of the proposal that he feels is unacceptable, while suggesting that he is agreeable to the overall proposal.

Your local must determine what part is not acceptable and why. Furnished with this information, your local can decide if it will accept his assertion or push for full acceptance of the proposal.

A counter proposal is an offer made by your employer in response to one of your local's proposals. Your local can either reject it, or accept it for study and consideration by your negotiating committee. Your local must be open to suggested wording from your employer, flexible in proposing a change of its own, and willing to delete or amend parts or to remove a proposal from consideration if necessary. Agreement is usually reached after a series of proposals and counter proposals have reduced the range of your disagreement.

Drafting Contract Language

Bad language written into your contract can result in bad relations during the life of your agreement and can result in costly arbitrations. There are three ways in which to draft your contract language. The most frequently used method is to simply research and modify existing contract language. Your negotiating committee knows the situation and uses this knowledge when studying other contracts. The IAFF can provide your local with model contract language to help you accomplish this task. Other IAFF locals are a valuable tool for this method as well.

Another way in which to draft contract language is through the direct use of language from existing contracts. While this method is easy to use, it is important to remember that contract clauses are sometimes the result of compromise and may not accomplish as much in one situation as in another. When you are aware of its limitations, you can successfully adapt language from existing contracts for your own use.

A third way to draft contract language is to use original language. An advantage to this method is that the language can be customized for each specific situation. A disadvantage is that there is no past history to show that the new language will accomplish what your negotiating committee has intended.

Whatever method or combination of methods your local decides to use, there are some general rules that it should follow. They include:

- ❖ Keeping the language as simple as possible (concise but precise).
- ❖ Checking with your local's counsel before finalizing the contract.
- ❖ Being consistent through the contract in the use of terms.
- ❖ When it is to your local's advantage not to be specific, keeping the language general in order to permit flexibility.
- ❖ Basing your contract on administration problems and changes needed in contract language as suggested by operating experience and grievances.
- ❖ Being aware that a change or addition to a contract may affect other areas of the contract.

When drafting your contract language, think like an arbitrator. You should consider how an arbitrator would interpret the language if he was required to examine your contract. An arbitrator would be required to review a number of items, including the following.

- ❖ Carries the intent of the parties - interpretation of a contract is made on the basis of what the language meant to the two parties when it was written and not what meaning can be read into it.
- ❖ Valid under the law - when two interpretations are possible, the legal definition will be used.
- ❖ Continuity of meaning - a word given a meaning will continue to be given the same meaning throughout the contract.
- ❖ Give effect to all clauses and words - interpretation will not be made that renders other clauses meaningless and ineffective.
- ❖ Harsh or absurd results - where two interpretations would be consistent, one leading to harsh results, the other leading to reasonable results, the interpretation leading to just results will be used.
- ❖ Specific versus general language - where there is a conflict between the specific and the general language, the specific language will govern.
- ❖ Custom and past practice - what the parties do versus what the contract says they should do.
- ❖ Prior grievance settlements - will be given weight for interpretation of ambiguous language.

Ratification Strategies

While it may take days or even months, after each side has presented their proposals, offered their counterproposals, and exchanged their ideas, a proposed contract is developed. This proposed contract is your employer's offer for the terms and conditions of work for the members of your local. If your



negotiating committee concurs with this proposed contract, then your local and employer have reached a tentative agreement. Upon reaching a tentative agreement, your local and your employer agree to recommend the proposed contract to each of your respective principals. In the case of your local, this would be your membership.

The collective bargaining process is not complete until the proposed contract has been ratified by both sides. For a proposed contract to become a contract, the members of your local must accept it in its entirety. Your members cannot accept certain things they like in the proposed contract and reject the rest. They must accept or reject the entire proposal.

Most locals present a proposed contract to their membership at a ratification meeting. A ratification meeting serves three important functions. First, to explain the proposed contract. Second, to give the negotiating committee's recommendation on whether to accept or reject the proposed contract. (Note: if the proposed contract is a tentative agreement, then your committee's recommendation must be to accept. Your committee can only recommend rejection if it has not reached a tentative agreement.) And third, to give the membership the opportunity to vote on acceptance or rejection of the proposed contract.

Before presenting a proposed contract, your negotiating committee must prepare itself for the ratification meeting. It should know the proposed contract and any changes from the previous contract. You should have your notes of the negotiations, the exhibits, and other materials used in negotiations at the ratification meeting. These materials should be organized and easily accessible for quick reference.

The ratification meeting should be held for the sole purpose of presenting the tentative agreement and providing your members with the opportunity to vote on the proposed contract. Your members want to know the results of the negotiations, so it is important to tell them as soon as possible. Using a ratification meeting to take care of other business may cause confusion and demeans the significance of a ratification vote.

A brief written summary of the proposed contract, no more than a few pages in length, should be prepared and distributed. This document can be used to structure your presentation and makes for a more orderly meeting by answering a number of questions your members may already have.

Your negotiating committee should make a clear, straightforward presentation of the proposed contract without any interruptions. Ask your members to hold their questions until after your committee has had the opportunity to make their critical evaluation of the entire package.

An exact evaluation and judgment of the proposed contract including an indication of the positive and negative aspects of the package, should be given. If your negotiating committee has reached a tentative agreement with your employer, then it wants the membership to vote to accept the proposed contract. This means the presentation of the contract should emphasize the positive aspects of the package - why it is a good package and why it should be accepted by the membership. New additions to the contract, along with improvements of existing items, should be emphasized. If the negotiating committee has not reached a tentative agreement, then it wants the membership to vote to reject the package. This means the presentation of the package should emphasize the negative aspects of the package - why it is a bad settlement and why it should be rejected.

There is nothing improper about a negotiating committee attempting to persuade its membership to accept or reject a proposed contract. This is an important part of your negotiating committee's leadership responsibilities. Most members want to know what their negotiating committee's opinion of the proposed contract is and what its recommendations are for acceptance or rejection.

Most unions conduct their ratification vote by secret ballot. In general, the secret ballot is the preferable means to poll the members on acceptance or rejection of the proposed contract. The ballot should be worded such that a "Yes" vote is for the acceptance of the proposed contract and a "No" vote is for a rejection of the proposed contract.

If the proposed contract is rejected by either side, your local and your employer must meet again to negotiate until a tentative agreement is ratified (or follow the rules of your particular collective bargaining laws). In instances where an agreement cannot be reached, a mediator may have to be called in to help settle the dispute.





State Labor Laws

In 1935, Congress gave unions increased support by passing the National Labor Relations Act (NLRA). This Act gave employees the right to organize themselves by joining labor unions of their choice. It also created the National Labor Relations Board (NLRB) to prosecute those employers who break the law by committing unfair labor practices. Congress later decided the NLRA gave too much power to unions and in an effort to more “equalize” management and labor, it passed the Labor-Management Relations Act (LMRA) of 1947. This Act more clearly defines unfair labor practices for both employers and unions.

Currently, though, there are no federal laws that require an employer to meet, confer, discuss, or bargain with representatives of your local. Fire fighters and other public employees remain the last major group in the United States who do not have the right under federal law to bargain collectively with their employers.

Over the years, Congress has passed numerous laws granting the right to bargain collectively to private sector employees, non-profit association employees, transportation workers, federal government employees, and most recently, congressional employees – but not to municipal fire fighters. The extension of collective bargaining rights to all members of the professional fire service is long overdue. As such, delegates to the 1996 biennial IAFF Convention unanimously adopted Resolution #38 calling for a national collective bargaining law for all professional fire fighters. It states:

WHEREAS, thousands of our brothers and sisters suffer economic and other hardships, due to absence of collective bargaining in over twenty states; and

WHEREAS, many of our brothers and sisters have little if any hope of ever gaining the benefits of collective bargaining in these states; and

WHEREAS, the only way collective bargaining will become a reality in many of these states is by a national collective bargaining law; and

WHEREAS, the IAFF is a respected and energetic lobbying force in Washington, DC; and

WHEREAS, the IAFF has a very important political tool in its IAFF FIREPAC; and

WHEREAS, in the past legislative sessions a national collective bargaining bill has not been the IAFF's number one issue; therefore, be it

RESOLVED, That the IAFF make a national collective bargaining law its number one legislative priority; and be it further

RESOLVED, That the IAFF is empowered to take any actions necessary, including withholding political contributions, to any candidate that has a publicly stated position against a national collective bargaining law for fire fighters, to make the passage of a national collective bargaining law a reality; and be it further

RESOLVED, That the IAFF General President ask the AFL-CIO Executive Council and the other international unions to adopt similar collective bargaining policies in support of the IAFF; and be it further

RESOLVED, That the IAFF inform its membership quarterly of the progress of this legislation in the *IAFF Leader* or the *IAFF Capitol Alert*.

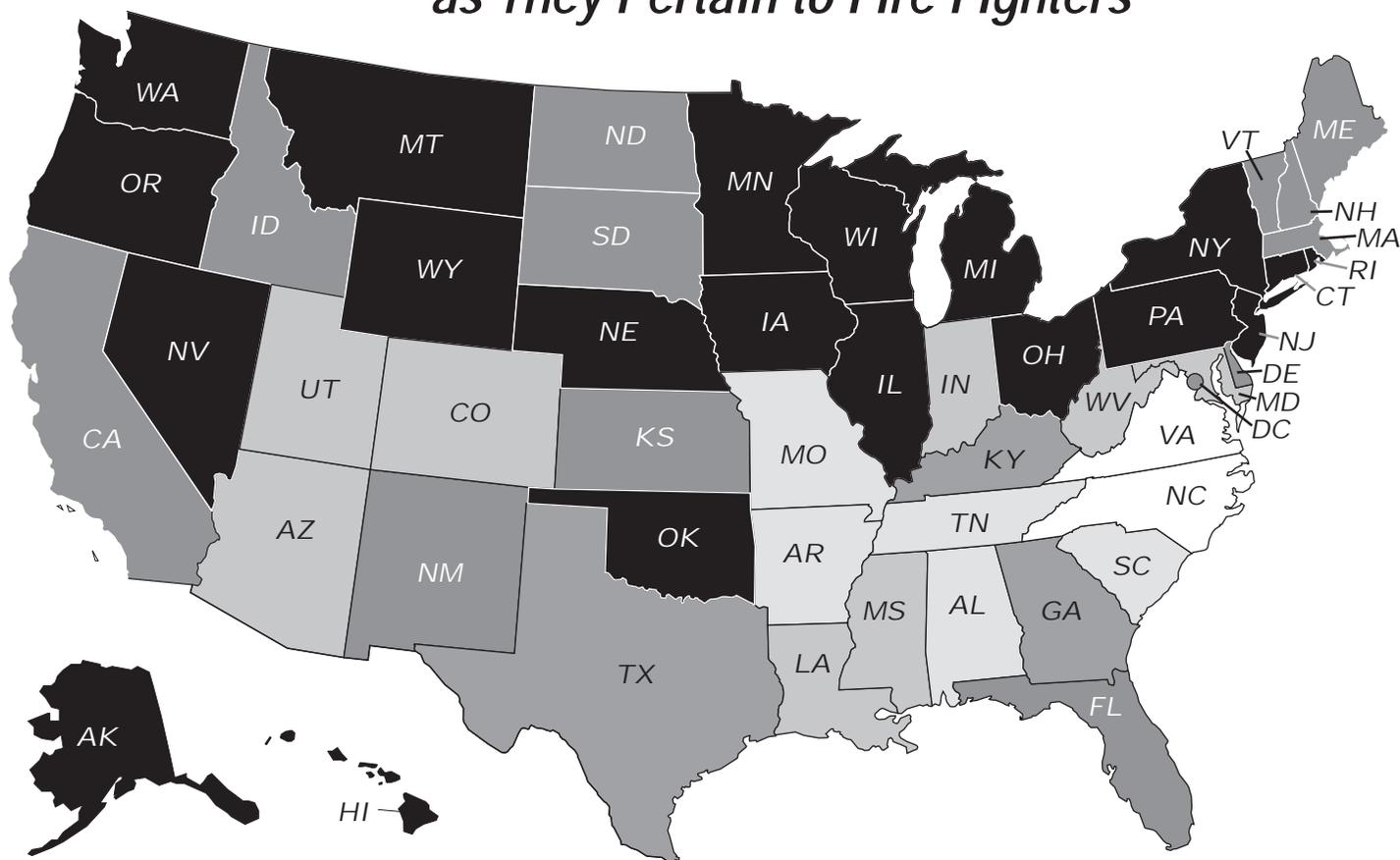
Since there are currently no federal laws regulating collective bargaining for public sector employees, each state must adopt its own labor laws for its public sector employees. Some states have adopted progressive labor laws, even allowing for binding arbitration. Some states have not adopted labor laws for public sector employees at all, while some actually prohibit collective bargaining. Consequently, your local cannot begin the collective bargaining process, until it has familiarized itself with the state, county, and city laws it will be operating under. The state laws, as they pertain to fire fighters, are summarized below:

<i>Alabama:</i>	The state of Alabama does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option but they are non-enforceable.
<i>Alaska:</i>	The state of Alaska has compulsory binding arbitration.
<i>Arizona:</i>	The state of Arizona does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option.
<i>Arkansas:</i>	The state of Arkansas does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option but they are non-enforceable.
<i>California:</i>	The state of California does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>Colorado:</i>	The state of Colorado does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option.
<i>Connecticut:</i>	The state of Connecticut has compulsory binding arbitration.
<i>Delaware:</i>	The state of Delaware does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>District of Columbia:</i>	The District of Columbia does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>Florida:</i>	The state of Florida does have a collective bargaining statute for public employees. Advisory arbitration; after hearing labor and management positions, a Special Master issues recommendations. These recommendations are implemented unless rejected by written notice to PERC. If either party rejects the proposals, the matter is referred to the legislative body. The legislative body conducts a public hearing and takes action deemed to be in the public interest.
<i>Georgia:</i>	The state of Georgia permits collective bargaining under state statute if adopted under local option.
<i>Hawaii:</i>	The state of Hawaii has compulsory binding arbitration.
<i>Idaho:</i>	The state of Idaho does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>Illinois:</i>	The state of Illinois has compulsory binding arbitration.
<i>Indiana:</i>	The state of Indiana does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option.
<i>Iowa:</i>	The state of Iowa has compulsory binding arbitration.

<i>Kansas:</i>	The state of Kansas does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding. If the impasse is not resolved after the fact finding process, the parties must submit recommendations for settling disputes to the legislative body. The legislative body will conduct a hearing and take action deemed to be in the public's interest.
<i>Kentucky:</i>	The state of Kentucky permits collective bargaining under state statute if adopted under local option.
<i>Louisiana:</i>	The state of Louisiana does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option.
<i>Maine:</i>	The state of Maine does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>Maryland:</i>	The state of Maryland does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option.
<i>Massachusetts:</i>	The state of Massachusetts does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>Michigan:</i>	The state of Michigan has compulsory binding arbitration.
<i>Minnesota:</i>	The state of Minnesota has compulsory binding arbitration.
<i>Mississippi:</i>	The state of Mississippi does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option.
<i>Missouri:</i>	The state of Missouri has a meet and confer statute for public employees. Contracts are non-enforceable under state statute.
<i>Montana:</i>	The state of Montana has compulsory binding arbitration.
<i>Nebraska:</i>	The state of Nebraska has compulsory binding arbitration.
<i>Nevada:</i>	The state of Nevada has compulsory binding arbitration.
<i>New Hampshire:</i>	The state of New Hampshire does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>New Jersey:</i>	The state of New Jersey has compulsory binding arbitration.
<i>New Mexico:</i>	The state of New Mexico does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>New York:</i>	The state of New York has compulsory binding arbitration.
<i>North Carolina:</i>	Collective bargaining is prohibited under state statute.

<i>North Dakota:</i>	The state of North Dakota does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>Ohio:</i>	The state of Ohio has compulsory binding arbitration.
<i>Oklahoma:</i>	The state of Oklahoma has compulsory binding arbitration.
<i>Oregon:</i>	The state of Oregon has compulsory binding arbitration.
<i>Pennsylvania:</i>	The state of Pennsylvania has compulsory binding arbitration.
<i>Rhode Island:</i>	The state of Rhode Island has compulsory binding arbitration.
<i>South Carolina:</i>	The state of South Carolina does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option but they are non-enforceable.
<i>South Dakota:</i>	The state of South Dakota does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>Tennessee:</i>	The state of Tennessee does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option but they are non-enforceable.
<i>Texas:</i>	The state of Texas permits collective bargaining under state statute if adopted under local option.
<i>Utah:</i>	The state of Utah does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option.
<i>Vermont:</i>	The state of Vermont does have a collective bargaining statute for public employees. The collective bargaining statute provides for fact finding or non-binding arbitration.
<i>Virginia:</i>	Collective bargaining is prohibited under state statute.
<i>Washington:</i>	The state of Washington has compulsory binding arbitration.
<i>West Virginia:</i>	The state of West Virginia does not have a collective bargaining statute for public employees. Fire fighters may have collective bargaining rights under local option.
<i>Wisconsin:</i>	The state of Wisconsin has compulsory binding arbitration.
<i>Wyoming:</i>	The state of Wyoming has compulsory binding arbitration.

State Collective Bargaining Laws as They Pertain to Fire Fighters



- Collective Bargaining with Binding Arbitration*
- Collective Bargaining with Fact Finding or Non-Binding Arbitration*
- Local Option by State Statute*
- Local Option without State Statute*
- Local Option without State Statute but Non-Enforceable Contract*
- Collective Bargaining Prohibited by State Statute*

This map attempts to identify the similarities of state collective bargaining laws and how they pertain to fire fighters. It should be noted that these six categories are generalizations. As such, this map is not meant to imply that the states sharing the same category have identical collective bargaining laws. When analyzing this map, bear in mind that there are no federal laws requiring an employer to bargain with representatives of your local. Because of this not only does each state operate differently with regards to collective bargaining, but in most instances, each municipality within each state operates differently with regards to how, if at all, they will negotiate with your local.



Canadian Provincial Labour Laws

The authority to pass labour legislation is divided between the Parliament of Canada, the ten provinces, and the territories of the Yukon and Northwest Territories. The division of legislative authority is set out in the Constitution Act, 1867. Most workers are governed by provincial legislation with federal jurisdictions confined to industries that are inter-provincial, national, international and crown corporations.

Each jurisdiction has its own labour legislation providing the right to bargain collectively. The provincial laws are summarized below:

<i>British Columbia:</i>	The province has conciliation and binding arbitration.
<i>Alberta:</i>	The province has conciliation and binding arbitration.
<i>Saskatchewan:</i>	The province has conciliation and binding arbitration if the union constitution has a no-strike clause.
<i>Manitoba:</i>	The province has conciliation and binding arbitration.
<i>Ontario:</i>	The province has conciliation and binding arbitration.
<i>Quebec:</i>	The province has conciliation and binding arbitration.
<i>New Brunswick:</i>	The province has conciliation and binding arbitration.
<i>Nova Scotia:</i>	The province has conciliation (binding if both parties agree) and the right to strike.
<i>Prince Edward Island:</i>	The province has conciliation and binding arbitration.
<i>Newfoundland:</i>	The province, excluding St. John's, has conciliation and the right to strike. St. John's has binding arbitration.

In the Yukon and Northwest Territories the Canada Labour Code applies to collective bargaining, while labour standards are regulated by territorial ordinances.



Appendix A: Selected Papers on Collective Bargaining

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Criteria for a Realistic Goal

Undoubtedly, breakdowns in the collective bargaining process are caused more often by the failure of one or both of the parties to set a realistic goal than for any other single reason. The question may be asked: What criteria should be used to determine a realistic goal? Most negotiators would agree that a realistic goal, to be attained without an economic contest, must be based on the following minimum considerations:

- ☛ Does the other party have the ability to concede the issue? The employer must be able to conclude the issue without serious damage to his operations, or any danger that he may be put out of business. The union must be able to concede the issue without serious internal injury, or any danger of disintegrating as an organization, or losing out to a rival union, and without seriously impairing its external relationships in the labor movement, or with other employers.
- ☛ Are you warranted, by your strength, in setting such a goal?
- ☛ Is your goal within the bargaining expectancy of the other party? (This third point may be disregarded only if you are ready to wage an economic contest for your minimum goal.)

The goals of parties are numerous. A few of the most common objectives are:

- ☛ Simply to attain the most advantageous settlements possible without a strike. For example, a union leadership may be groping for the minimum settlement which will satisfy the membership and is not too sure of what that will be. It attempts to muddle through, keeping itself closely attuned to the membership, and not aggressively opposing any prevailing sentiments among them.
- ☛ Goals intended to strengthen the union internally, such as a union-shop, anti-paternalism issues, or to maintain with its membership a leadership reputation for militancy.

In general, for the union, whatever the issues, its over-all objective is to achieve the maximum strength and stability with its membership commensurate with its reputation in the international union, as well as in the labor movement. For the employer, his over-all objective in negotiations is to keep his labor costs as low as possible commensurate with the morale of his employees and with other factors that determine the efficient operation of his business; to attain the highest degree of loyalty from his employees; to attain the maximum degree of disciplined control over them as a producing unit; and to strengthen his position as much as possible for future negotiations.

In general, the most important single quality required of a negotiator who would set a realistic bargaining goal is the ability to put himself in the other fellow's shoes. Too often a negotiator will fail in this respect because he does not sympathize with the problems of the opposing negotiator. He forgets that it is not a matter of sympathy, but one of understanding. He must understand the problem of the other party, or else be severely handicapped in setting his own goal.

As a negotiator, you may be completely out of sympathy with your opposing negotiator's problems, because they stem from what you regard as unworthy objectives - objectives which you are determined to thwart and defeat if possible. But you are wise to pursue your own course of action, if you can, in such a manner as to give your opponent a way out, should he decide to take it. Even as you drive him into retreat, if you understand his problems, you can provide or allow him an avenue of withdrawal. You do this not for his sake, but for your own. Otherwise he will go on fighting because he has no other

choice, and will force you to pay a high price for your lack of understanding. Remember, victories that sustain heavy losses are common in the labor relations arena.

Sophisticated bargainers often underestimate the importance of adequate preparation and effective presentation of a position, because this feature of negotiations they consider to be no more than window dressing for the harsh realities of economic strength. They feel that discussion itself contributes little or nothing to the settlement of disputed issues. This misconception is held by people who confuse discussion on the merits of a position with discussion by the parties in sign language - a form of communication practiced by negotiators, which is dealt with more fully later in this appendix.

Regarding strength, the problem would be simple if the parties could convey an idea of their strength simply by hurling threats at each other. As it happens, threats are not only the most dangerous, but usually the least effective form of indicating strength. Negotiators in a conflict situation, who are proceeding from bargaining positions and testing each other cautiously every step along the way are not going to believe something just because it is said to them in the form of a threat. As often as not, people who make threats find it necessary to do so because they are bluffing. An experienced negotiator will tell you that if you have the strength, you don't need to make threats and if you haven't the strength, when the showdown comes you must choose between taking some suicidal action, or eating your words.

The necessity of asserting strength, while at the same time exploring the possibilities of a peaceful settlement, is an intrinsic part of negotiations. However, these two aspects of the bargaining process, even though fused together, are at cross-purposes with each other. One aspect conveys a readiness to make war. The other conveys a willingness to explore the possibilities for peace.

To be effective, a negotiator must have the skill and ability to combine the two and pursue a balanced course in negotiations, so that one aspect does not undermine the other. Negotiators who think that they need do more than assert strength, who play it safe and wait for the other side to put out peace feelers, may avoid the danger of indicating weakness. Nevertheless there is a limit to how far the other side will go in exploration without reciprocity, and in the end the parties may become completely deadlocked.

From Bargaining Position to Final Offer

The bargaining goal has a twofold aspect because it comprises a minimum expectation and a maximum expectation. If we take, for example, a particular wage negotiation, the employer's maximum expectation (meaning the most favorable settlement he could hope for) might be six cents an hour. His minimum (least favorable) expectation, or breaking point, might be ten cents - he would take a strike rather than go higher. The union's maximum expectation might be twelve cents. Its minimum, or rock-bottom, expectation might be seven cents - it would strike rather than settle for less.

In skillful hands the bargaining position performs a double function. It conceals, and it reveals. The bargaining position is used to indicate - to unfold gradually, step by step - the maximum expectation of the negotiator, while at the same time concealing, for as long as necessary, his minimum expectation.

By indirect means, such as the manner and timing of the changes in your bargaining position, you, as a negotiator, try to convince the other side that your maximum expectation is really your minimum breaking-off point.

Since you have taken an appropriate bargaining position at the start of negotiations, each change in your position should give ever-clearer indications of your maximum expectation. Also, each change should be designed to encourage or pressure the other side to reciprocate with at least as much information as you give them, if not more.

The bargaining position should be a dynamic tool of operation. Unfortunately, all too often it is used solely as a screen for concealment - something behind which one can hide and play it safe. Unions are worse offenders in this respect than employers. Unions possess a mobility, a flexibility in their opening positions, that is usually denied to employers.

Once the parties have reached the stage where they are able to discern the real area of difference submerged under their bargaining positions, then they can be said to have joined the issue. From then on, the question of who moves first can sometimes be extremely important in deciding how they come out in the final settlement.

Therefore, when you as a negotiator reach that stage, you must weigh carefully each move and proceed with due caution. An impulsive premature move can never be recalled. You may formally shift back to your previous position, but the damage has been done. You have already tipped your hand. When you once turn up a card at the wrong time, the mistake cannot be rectified by turning the card face-down again.

However, the line between well-considered prudence and over-cautiousness is a fine one. You cannot expect your opponent to take all the chances, nor can he lean back and consistently put the burden on you.

If both parties choose to stand pat - and neither one of them generates enough pressures outside the conference room to force the other side to make the next move - then the situation remains static until they reach the deadline stage of negotiations. The parties must then try to close a gap between them that should have been partially closed in the weeks preceding. Now, under the lash of deadline pressures, they must telescope the bargaining activity of several weeks into a few days, or even a few hours. The failure to take lesser risks in the intermediate stages of negotiations now means that they must take big risks in the deadline stage.

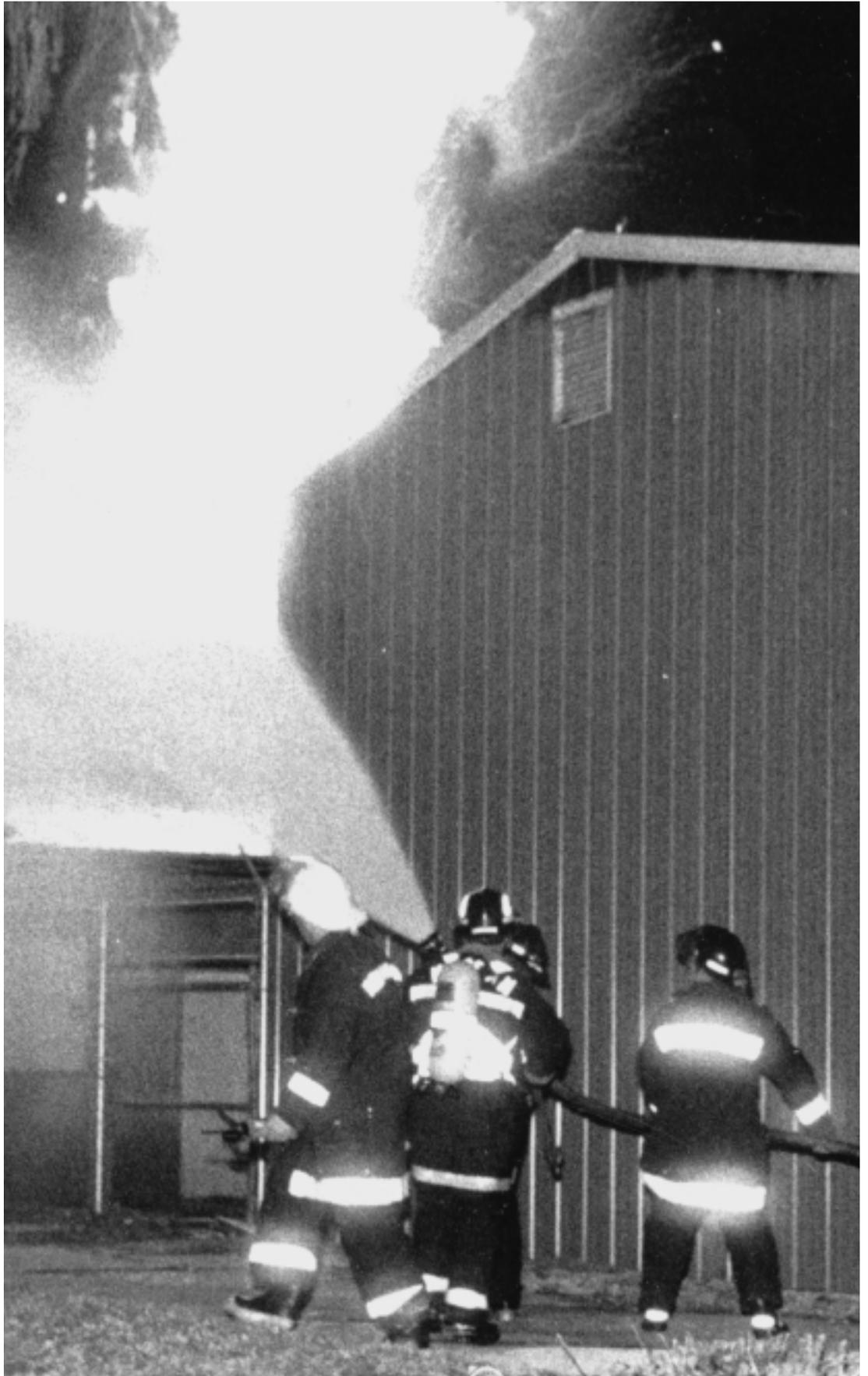
There are many different tests of strength which take place in the intermediate stages of bargaining. These tests must of necessity be limited in nature if the parties are to keep control of their strategies and tactics. Otherwise a result will be produced which neither party has desired or intended. A partial test of strength which gets out of hand can develop into a full-fledged test - a premature all-out contest - and usually over a secondary issue.

Prestige, Power, and Paternalism

The mere setting of a realistic goal will not of itself assure the successful outcome of negotiations. A course of action must be pursued which makes it possible to attain that goal. This involves some complex considerations. For example, let us suppose that one of the parties announces its goal at the outset of the negotiations instead of at the climax. In all likelihood, no matter how realistic the goal, the bad timing in approach will stir up such opposition that only through a victorious economic contest will the attainment of the goal become possible.

Here we shall consider a factor at work in negotiations, which must be reckoned with to make a realistic goal attainable. It is a factor that limits the flexibility and freedom of action of the parties because it chains them to their own strategic and tactical decisions. Informed negotiators usually call it "prestige." Among the uninformed it is often derisively referred to as "face-saving."





Prestige is an intangible quality in the sense that it is a symbol - a symbol of the potential and actual strengths of the parties in all of their relationships. In the balancing of strengths, prestige reflects itself in the relationship of the parties to each other and especially to the workers in the plant.

No matter how potent and effective its alliances, the basic strength of the union is derived from the support of its own membership. The union members are also the employees of the municipality. The municipality cannot long exist without enough disciplined control and influence over these employees to direct them as a productive force. It tries to build an influence, also, which can minimize the damage potential of the union in the event of an economic contest.

Therefore, at all costs each side must maintain a sufficient degree of loyalty among the workers to safeguard its own well-being and existence. These are minimum considerations symbolized by the term "prestige." Neither side rests content with these minimum considerations. They strive for the maximum degree of loyalty and support from the employees to carry out an effective collective bargaining policy.

The Bargaining Book

The Bargaining book is the union negotiating team's bargaining bible. Everything the team needs to know for use at the table should be at its fingertips by being in the bargaining book: the demands to be negotiated, the settlement ranges, proposed new language, and the necessary supportive data needed to negotiate.

The book can either be as simple or as complex as the team or situation dictates. The union may make other research available which can be of immense value. If any of this material can be copied and inserted directly into your bargaining books, then do so. A simple format for a union bargaining book might look like the following:

- a. Title page
- b. Index divider labeled "Strategy"
- c. Copies of union strategy and demands
- d. Index divider labeled "Initial Offer"
- e. Copies of union's offer to management
- f. Index divider labeled "Management's Offer"
- g. Copies of management's initial offer
- h. Index divider labeled "Current Agreement"
- i. Copies of the current agreement, shop rules, grievance record, and health, life and insurance plans
- j. Index divider labeled "Data"
- k. Copies of new articles, clauses, and sections which were offered to management as initial offers. However, supportive data and documents are kept here along with any alternate proposals. This section is your research section. A convenient way of keeping this section organized is to arrange it by demand. That is, complete a form for each union demand and place it with the new language data, or any other information you might wish to have for ready reference. This section should be the largest part of your bargaining book.
- l. Index divider labeled "New Agreement"
- m. Copies of all newly agreed to articles, clauses, sections, and other such provisions.

A bargaining book can very quickly provide each union negotiator with a fast and concise reference to union strategy, management offers, and current practice in the office. The time saved at the table and the image of organization and control given to you at the table by the use of the book is almost beyond calculation. The effort it takes to make a functional union resource unit - the bargaining book - is well worth it.

Do's in Developing and Writing Contracts

1. In writing contract language, keep it simple.
2. Check language with union counsel before finalizing contract.
3. Be consistent through the contract in the use of such terms as “regular rate,” “premium rate,” “seniority,” “length of service,” etc.
4. When it is not necessary to be specific, contract language should be as broad as possible. For example, in writing a “transfer of workers” clause, it is better to keep the language general in order to permit flexibility.
5. Prepare a checklist of points to consider when drafting or modifying such standard contract provisions as paid holidays, sick leave, vacation or jury duty.
6. Prepare language in advance of contract negotiations, not under “11th hour” bargaining pressures.
7. Reduce agreements to writing at time of agreement. Language should be initiated by all members of both committees.
8. Keep a file of contract language which should be (1) “avoided” or (2) “used” as suggested by sources such as published arbitration awards or other contracts.
9. Keep a file of contract administration problems and changes needed in contract language as suggested by operating experience and grievances.
10. Be sure any agreement on contract language made in negotiations is conditioned on agreement on total contract.
11. Put yourself in an arbitrator’s shoes when reviewing the new language.

Standards for Interpreting and Writing Contract Language

1. *Carries the intent of the parties*
 - ☛ Interpretation to accomplish the contract’s evident aims.
 - ☛ Interpretation will be made on the basis of what the language meant to the parties when they wrote it - not what meaning can be read into it.
 - ☛ A problem may arise due to the manner in which contracts are developed and evolve over time - the handiwork of many revolving committees and people. Be sure to:
 - a. Keep records of negotiations.
 - b. Review each clause to ascertain and re-establish freshness and continuity of meaning.
 - c. Remove all unnecessary clauses.
2. *Clear and unambiguous*
 - ☛ No other meaning will be given than that expressed.
3. *Valid under the law*
 - ☛ Where two interpretations are possible, the legal definition will be used.
 - ☛ Interpretation may be made in accordance with “public interest.”
 - ☛ Interpretation may be made in accordance with meaning given to words that appear in the same or similar legal language used elsewhere.
4. *Latest in time*
 - ☛ Where there are two conflicting clauses, the clause of recency will be applied (see subnote (c) under item 1).
5. *Continuity of meaning*
 - ☛ A word given a meaning will continue to be given the same meaning throughout the contract.

6. *Dictionary meaning*

- ☛ Trade terms used in a trade industry.
- ☛ Industrial relations terms (i.e., Roberts' Dictionary of Industrial Relations).

7. *Agreement construed as a whole*

- ☛ Interpretation will be made with regard to the construction in which it is used, the subject matter, and its relations to all other parts of the agreement.

8. *Give effect to all clauses and words*

- ☛ Interpretation will not be made that renders other clauses meaningless and ineffective. If a word is used, it is presumed to have had meaning. To declare it surplus might render its use elsewhere surplus, thus rendering significant clauses inoperable and meaningless.

9. *Avoid harsh or absurd results*

- ☛ Where two interpretations would be consistent, one leading to harsh results, the other leading to reasonable results, the interpretation leading to just results will be used.

Example: "Employees on active duty with one (1) year of continuous service on June 30 of the calendar year shall be entitled to five (5) days of vacation," would not be interpreted to mean that an employee who reported in "sick" on June 30 was not on "active duty" and therefore ineligible for vacation.

10. *Expressio unius est exclusio alterius ("To express one thing is to exclude another")*

- ☛ The inclusion of one or more of a class excludes all other.
- ☛ Stating certain exceptions indicates there are not other exceptions.

11. *Ejusdem generis ("of the same kind")*

- ☛ Specific terms followed by general words ("layoffs, transfers and other adjustment of personnel"), the general terms will be construed to cover only things of the same nature or class.

12. *Specific vs. general language*

- ☛ Where there is a conflict between the specific and the general language, the specific language will govern.

Example: The City will make reasonable provisions for employee health and safety ... wearing apparel and other equipment necessary to protect employees will be provided ... in accordance with practices now prevailing. This clause would not require management to provide raincoats unless past practices so indicated.

13. *Noscitur a sociis ("Construction in light of context")*

- ☛ The meaning of words may be controlled by those with which they are associated.

14. *Avoidance of forfeiture*

- ☛ When an agreement is susceptible to two constructions, one of which would work a forfeiture and one of which would not, an interpretation that will prevent the forfeiture will be inclined to be adopted.

Example: The penalty of back pay for an improperly discharged employee will be considered a forfeiture if it is found that the employee incurred no financial loss (e.g., was fully employed during the period at earning equal to or greater than those he would have earned had he not been discharged).

15. *History of negotiations*

- ☛ Recordings, notes of bargaining
- ☛ Union negotiations bulletins
- ☛ Management negotiations bulletins to supervision
- ☛ Oral testimony
- ☛ Mediator's notes may be privileged and not admissible into evidence.
- ☛ If the agreement is not ambiguous, it cannot be modified by a contrary record of negotiations.
- ☛ Intent manifested during negotiations will be used rather than intent undisclosed. (i.e., if one party misleads the other party with respect to intent, the second party's understanding will prevail.)
- ☛ A proposal in bargaining made for the purpose of clarifying a contract clause does not necessarily mean that the interpretation sought by the unsuccessful party is wrong.
- ☛ The withdrawal or rejection of a clause does not imply that an alleged right does not exist without the clause.
 - a. The right may be inferred from other parts of the contract.
 - b. The right may be inferred from a strong statement of the party during negotiations that it would stand on its right even without the clause.
 - c. The right may be inferred when withdrawal of a proposal was encouraged by the other party as being unnecessary.

16. *No consideration to compromise offer*

- ☛ Compromises offered during the pre-arbitration meetings (along various steps of the grievance procedure) which are rejected are given no consideration as concessions or modifications of the party's interpretation.

17. *Experience and training of the negotiators*

- ☛ Strict interpretation of ambiguous agreement will depend upon the training of the negotiators, (i.e., laymen untrained in the precise use of words will have their words interpreted as to how intent was understood rather than written.)

18. *Custom and past practice*

- ☛ What do the parties do vs. what does the contract say they ought to do?

19. *Prior grievance settlements*

- ☛ Prior grievance settlements will be given weight for interpretation of ambiguous language.
- ☛ Oral settlements and agreements will be given weight when clearly proven.
- ☛ If the agreement is not ambiguous, past settlements inconsistent with the clear language of the agreement may and can be disregarded.

20. *Interpretation against the party selecting the language.*

- ☛ Proponent of a contract provision has the responsibility of drafting language which does not leave the matter in doubt. Failure to do so, the resulting ambiguity may be removed by construing the ambiguity against the party proposing the language - if it cannot be removed by any other rule of interpretation.

21. *Reason and equity*

- ☛ Where clear and unambiguous language exists, the matter of equity will be disregarded no matter how harmful the interpretation may be to the party.
- ☛ Where the language is ambiguous, the interpretation will be one that does the least violence and damage to both parties.



Sign Language

Essentially, collective bargaining is a process of asserting strength, while at the same time exploring the possibilities of a peaceful settlement. Sign language is not a communication device contrived arbitrarily. It flows out of the specific situation and has meaning as a symbolic mode of expression in a particular conflict of interests or goals. It is a special form of communication that enables contradictory forces to draw closer together in negotiations.

As a negotiator, to assert strength you must indicate a kind of stubbornness - a refusal to retreat. Yet bargaining involves more than assertions of strength. Accommodation is an integral part of the relationship, even though it can be fused with conflict. Sign language is a protective device. You want to offer a concession, but you want to protect yourself against a rejection. You want to maintain a strong position even as you indicate a concession.

You make concessions because you want to have an accommodation. There can be no collective bargaining relationship in the real sense of the word without an accommodation. You would like to attain your bargaining objectives with a minimum of struggle, but the situation imposes conditions where you must struggle. Sign language enables you to indicate concessions without having your actions interpreted as weakness. It gives you the flexibility to move in the direction of peace - or to move back to a position of strength.

Sign language can indicate the direction you are taking. It both informs and serves warning to the other side of your intended goal. You are saying by indirection: This is where I'm going and, if you are going with me, reciprocate - come back at me, give me a sign. Through symbols you convey a new position without making explicit your concessions until you have received reasonable assurance of their acceptance. In this manner, both of you can move toward an agreement and yet protect your respective bargaining positions at each step of the way.



Sign language requires skill and experience. Unskilled negotiators seldom resort to symbolic forms of communication. Not only is sign language a product of experience, but it must be used within the context of a particular relationship in a given situation. What would be considered a sign in one situation would not necessarily have the same significance in another.

Another favorite device for conveying a position is to indicate a settlement made somewhere else, perhaps in an unrelated industry. The union spokesman says, "Why, you won't even offer us the butchers' health and welfare plan." It just happens that the butchers' plan approximates an acceptable settlement for the union. Another union negotiator, with an innocent stare, will add, "Why don't we look at it and see how it shapes up? Perhaps it sets a pattern agreeable to both of us. I've got an open mind."

There comes a certain point in many deadlocks, where, even for the most experienced of negotiators, sign language is not enough. The parties must come to grips with each other's real positions with a degree of flexibility not permitted by sign language. They want to bargain from their final positions, but if their efforts fail and a job action does take place, they do not want these positions to be a matter of record.

A go-between, such as a government mediator, will not provide them with the flexibility of communication that is needed. They must lock horns with each other directly. The most effective method devised for this purpose is the "off-the-record" discussion between the two leading spokespersons of the opposing sides. The off-the-record discussion is the last move, taken when all the normal lines of communication are inadequate or have broken down. Speeches are out. The two leading spokespersons let their hair down and talk to each other "person to person." They can negotiate with the utmost freedom because no third person is present to bear witness to what has been said. If the confidence of one of the participants is violated, he is free to deny any statement attributed to him and call the other person a liar. Since neither person can hold the other to what has been said, the off-the-record discussion gives to a bargaining position some of the protection afforded by sign language, and yet allows the parties to come to grips with the issues, in direct negotiation.

It must be underscored that, to accomplish its purpose, an off-the-record discussion should not be engaged in prematurely. It is a last-ditch effort, resorted to when normal approaches have failed. Critics of this device like to point out that the use of such discussions can develop into a habit and become the only way to arrive at an agreement.

A much more serious criticism seems to be contained in the accusation that this procedure is undemocratic, especially when practiced by a union, because it can pave the way for a sellout. Such fears are a carry-over from the days when the organized labor movement was small, and back-door deals, not submitted to a membership for ratification, were fairly common. Although contract negotiations have tended to become more and more of a leadership function, union leaderships are much more responsible to their memberships than was the case, say twenty-five years ago. In the early and middle thirties, membership distrust often resulted in rank-and-file committees being elected to take the negotiations out of the hands of the paid union officials.

Nowadays, however, unions which are regarded as among the most militant in the nation will, in a pinch, frequently make use of one-person negotiation committees. Apparently, the intrinsic usefulness of the device is not questioned, but the objection is raised that a conservative union leader cannot safely be entrusted with the responsibility of one-person negotiations. This objection, I believe, is a rehash of an outmoded slogan that ceased to have any validity nearly two decades ago. So long as his activities are subject to ratification by the full union committee and the general membership, it makes no real difference whether a conservative or a militant union representative conducts the one-person negotiations.

There is more point to the criticism leveled by militants at off-the-record discussions, when the negotiations are an important device for rallying support from the membership. As one militant put it:

“You’ve got to involve the workers in the negotiations. They are much more impressed by five cents that they feel they won themselves, than by twice that amount when they get it while being mere spectators.

It should be noted that you cannot communicate in signs and symbols with an opposing negotiator unless you are willing to take chances. In other words, don’t be so suspicious that you ignore a smoke signal. Don’t be so afraid of a double-cross that you make it impossible to communicate in sign language. Time and again, possible settlements are muffed because of too much suspicion.

There are occasions when even silence can convey a position. It would depend on what the actions of the parties had been before the moment of silence. For instance, an employer has been saying no - no - no each time a union has raised a certain issue. Then, at a later stage of the negotiations, when the union expounds on the issue, for the umpteenth time, the employer does not say no or shake his head in rejection. He just sits there without a word of rebuttal. That silence can mean a willingness to concede the point, provided other issues are settled to his satisfaction. If the employer wants to make the indication even stronger, he might say, “Well, I don’t know, we’ll take another look at it and talk it over among ourselves.”

Another typical use of sign language may be seen when an employer won’t make a counter offer because the area of hard bargaining is somewhere between five, ten, and fifteen cents, and the union has opened with a cost package of forty or fifty cents. Even though he offers nothing, he makes it clear that a counter offer will come from him later if the union will substantially reduce its bargaining position.

“Sorry, fellows,” he will say over and over again, “you’re asking for the moon, and we haven’t got it. I could take another look at my situation and try to come up with something, but what’s the use? Not while you’re still up there in the clouds.”

The industrial relations director has his counterpart in the union spokesman who appears to be stepping out ahead of his committee. “I haven’t even talked this over with the committee, and maybe they’ll overrule me, but I personally would be willing to try to sell this ...” He then lowers the union’s bargaining position. If management shows no immediate response to the feeler, someone on the union committee might shake his head quickly, “Oh, no - I wouldn’t go for it if you did try to sell it.”

Sometimes, when a union spokesperson appears to be reducing the demands of the union on his own initiative, one of his committee will remind him that this is contrary to the instructions of the membership. But, after making that point, he doesn’t take issue with his leader, and thus leaves the inference that he would be willing to go along with the new proposal.

Bargaining In Good Faith

Undesirable bargaining practices make for poor relationships between the parties, but they do not necessarily violate the rules of the game. The parties, in order to gain short-range advantages, do many unwise things which intensify conflict in the long run.

Therefore, this is not a section on moral and ethical practices which will prevent conflict, or lessen its intensity after it has begun. Rather, it is an attempt to outline some minimum standards of fair play which it behooves the parties to observe in their own self-interest, once there is a conflict.

For an elementary example of such a standard, let us consider the matter of off-the-record conversations between negotiators. There are no extenuating circumstances that would justify one of the parties’ using an off-the-record statement against the other. To cite a military analogy: Even the most bitterly warring groups which are above the level of barbarism will not kill a man bearing a flag of truce. Aside from the moral and ethical considerations, they act against their own self-interest when they destroy a basic line of communication with their opponent.

Respect the lines of communication adapted to that bargaining relationship. The parties had to take chances, relax their guard to some degree, in order to establish those terms of communication. Don't foul them up in order to gain a temporary advantage, or, as a colleague succinctly put it: "Don't bomb Switzerland!"

Without good faith, there can be no sign language. Without good faith, how can a negotiator indicate an offer through symbols, hints, or other indirect means and still expect to be taken seriously?

A negotiator who knowingly gives the false impression that he is in agreement on an issue, in order to get the other party to improve its offer on another issue, can get away with this unethical maneuver only once. After that, he has nullified his effectiveness as a negotiator, because he has made it impossible for anyone to bargain with him on a give-and-take basis.

In general, the goal of the parties can be a practical criterion of their good faith if they bargain honestly. Frequently, negotiators pursue what many people should consider undesirable social objectives - some of them illegal and yet conduct themselves according to a rigid code of ethics in the conflict.

Standards of fair play cannot be based upon conflicting social outlooks and philosophies. The one basic criterion of good faith, recognized and accepted by the parties, is contained in the iron rule: Preserve the sanctity of your lines of communication.

The very existence and stability of every collective bargaining relationship depends on a rigid adherence by negotiators to this rule. Misusing sign language, or tampering with other symbolic forms of communication, is the unforgivable crime. If you, as a negotiator, should yield to temptation and commit this crime in order to gain a temporary advantage, a technical appearance of innocence will not absolve you.

People do not form judgments like jurors in a court of law. No imaginary judge instructs and admonishes them: "You will retire and weigh the evidence, and if there is a reasonable doubt in your mind, you will find in favor of the accused." If the negotiator who has been victimized feels in his heart that you did commit this crime, then, so far as he is concerned, you are guilty.

Contrary to popular belief, the astuteness and competence of negotiators are not measured by their ability to sneak things over on each other. Parties who indulge in such practices usually end up by out-smarting themselves. Collective bargaining is not an exercise in sharp practices, where each side tries to finagle contract clauses through, before the other side realizes the full implications of what it has accepted. Settlements must be grounded on the real conditions of life and not distort the basic relationship of the parties, otherwise the situation remains inherently unstable until the true balance of forces is restored through a violent upheaval.

Industrial conflict is an aspect of collective bargaining which can often be contained and minimized, but never wholly eliminated. It expresses the ultimate power of the parties themselves to reconcile conflicting interests by their ability to check and balance each other. Thus, so long as both sides adhere to the broad rules of the game, bargaining conflicts can perform an important social function.





Glossary

ABILITY TO PAY—A contention made by an employer during collective bargaining negotiations that it is not possible to bear the cost of the wage increase demanded by the union. The union may be able to demand proof of the employer's financial ability or inability to pay. It is also a common criteria considered by fact finders and arbitrators in making their awards.

ACROSS THE BOARD INCREASE—A raise in wages, in terms of dollars or a percentage, given at one time to all workers in a bargaining unit. This should be distinguished from a raise that gives different rates of increase to different groups of employees.

AGENCY SHOP—A union security provision that calls for non-union employees in the bargaining unit to pay the union a sum equal to union fees and dues as a condition of their continued employment. Workers are not required to join the union, however. The agency shop was designed as a compromise between the union's desire to eliminate the free rider through compulsory membership and management's desire to make membership in a union voluntary.

AGENT—A person who acts on behalf of either an employer or a union. Any illegal actions the agent commits, such as unfair labor practices or conduct subject to court litigation, implicate the employer or union being represented, even if the illegal act was not authorized or approved.

AGREEMENT, COLLECTIVE BARGAINING—A written agreement or contract that results from negotiations between an employer or a group of employers and a union. It sets out the conditions of employment (wages, hours, fringe benefits, etc.) and ways to settle disputes arising during the term of the contract. Collective bargaining agreements run for a definite period - usually one, two or three years.

AMERICAN ARBITRATION ASSOCIATION (AAA)—A private, nonprofit organization established to promote arbitration as a method of settling labor disputes. The AAA is one of several services which provides lists of qualified arbitrators to employee organizations and employers on request, as well as rules of procedure for the conduct of arbitration.

AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)—A federation of craft and industrial unions, as well as unions of a mixed structure, created by a merger in 1955. Not in itself a bargaining agent, its primary functions are education, lobbying and helping constituent unions in their organizing.

ARBITRATION—A method of settling a labor-management dispute by having a neutral third party or panel hold a formal hearing, take testimony and render an award. The decision may or may not be binding upon the parties. The two major types of labor arbitration are grievance arbitration and interest arbitration.

ARBITRATION CLAUSE—A provision in the collective bargaining agreement requiring the parties to submit unresolved grievances to arbitration. It may be broad enough to include "any dispute," or it may be confined by the parties to specific areas or issues.

ARBITRATION, GRIEVANCE—A method of resolving disputes that arise over the interpretation or application of the existing collective bargaining agreement. It is sometimes referred to as rights arbitration. The parties present their cases to an arbitrator who, acting like a judge, interprets and applies the contract. The award, which is usually final and binding, is based on this presentation.

ARBITRATION, INTEREST – A method of resolving disputes that arise during the course of contract negotiations where the arbitrator makes a decision on what will be contained in the agreement. It is usually employed after mediation and/or fact finding have failed to resolve the conflict. Some forms of interest arbitration require the arbitrator to accept the final offer of one party on an issue-by-issue or total package basis. The procedure is similar to fact finding but is usually final and binding.



ARBITRATION, VOLUNTARY – An agreement between two parties to submit unresolved disputes to a neutral third party for final and binding decision, without any legal mandate to do so.

ARBITRATOR – A neutral third party to whom disputing parties submit their differences for a decision. An ad hoc arbitrator is one selected to act in a specific case or a limited group of cases. A permanent arbitrator is one selected to serve for the life of the agreement or for a stipulated term, hearing all cases that arise during this period.

AUTOMATIC WAGE ADJUSTMENT – An increase or decrease in wage rates triggered by agreed upon economic events such as the increase or decrease of the Consumer Price Index (CPI), the price of a product, profits or other predetermined factors.

BARGAINING AGENT – An organization which is the exclusive representative of all workers in a bargaining unit, both union and nonunion. An employer may voluntarily recognize a particular union as a bargaining agent for the workers or the question of representation may be settled by a secret ballot election conducted by a state or federal administrative agency.

BARGAINING STRENGTH – The relative positions of power that management and labor hold during the negotiating process. The nature of the settlement is often the outcome of the relative bargaining power of the two parties.

BARGAINING UNIT – A group of employees which the employer has recognized and/or a state, federal or provincial administrative agency has certified as appropriate to be represented by a union for the purpose of collective bargaining. One way of judging the appropriateness of a bargaining unit is to determine a community of interest among the employees. Other typical criteria are bargaining history, employee desires and employer structure.

BIDDING – A procedure for enabling employees of an agency or company to make known their interest in a vacant position. After notice of the vacancy has been posted on bulletin boards and in other public places, persons may bid for the position by applying for the opening. The filling of the position may depend on seniority and other factors that the employer and bargaining agent have agreed upon.

BUREAU OF LABOR STATISTICS (BLS) – A Bureau within the U.S. Department of Labor which collects, analyzes and publishes information on cost of living changes, labor force participation rates, unemployment rates, industrial disputes and other economic data relevant to labor relations.

BUSINESS AGENT – A full-time elected or appointed officer of a local union who may negotiate agreements, handle grievances, help enforce agreements, and perform other tasks in the day-to-day operation of a union. Also known as a business manager.

CALL-BACK PAY – Compensation for workers called back on the job after completing their regular shifts, usually for a minimum number of hours at the appropriate premium rate regardless of the number of hours they actually work.

CALL-IN PAY – Compensation (ranging from two to eight hours pay) that is guaranteed to employees who report for work and find there is not a full day's work available. Provisions for call-in pay are usually spelled out in collective bargaining agreements.

CANADIAN LABOUR CONGRESS (CLC) – An organization of craft and industrial unions whose primary functions are education, lobbying and helping constituent unions in their organizing.

CAUCUS – A meeting of a small group of members of an organization to plan strategy or policy prior to a general meeting. It may also apply to collective bargaining negotiations when the union or employer team recesses to discuss a proposal or offer.

CENTRAL LABOR UNION – A geographical association of local unions established for political, legislative, and other purposes. The local unions are affiliated with different national and international unions of the same federation. May also be known as a central body or council, state, or local, and is the focal point for the common efforts of unions within its area.

CERTIFICATION – The formal determination by an appropriate administrative agency that a particular union has been selected by a majority of employees in a bargaining unit to be the exclusive bargaining agent of all employees in that unit. The determination usually follows a secret ballot election. Certification usually carries with it a certification bar for a set period of time prohibiting elections during that period.

CHARTER – The grant of jurisdiction by a federation to a national or international union or by the national or international to a local union. American unions, unlike European unions, are given a special grant of jurisdiction which gives them authority to organize employees within the special job, craft or occupational category or in a specific geographic territory.

CHECKOFF – A union security provision, usually stipulated in the collective bargaining agreement, that allows union dues, assessments and initiation fees to be deducted from the pay of union members of an employer. The employer makes the payments to the union on a scheduled basis.

CLOSED SHOP – A union security arrangement whereby the employer is required to hire union members only. Membership in the union is also a condition of continued employment. The closed shop is illegal under federal and state labor statutes.

COLLECTIVE BARGAINING – The continuing institutional relationship between an employer entity and a labor organization representing exclusively a defined group of employees of said employer (appropriate bargaining unit) concerned with the negotiation, administration, interpretation and enforcement of written agreements covering joint understandings as to wages, salaries, rates of pay, hours of work and other conditions of employment.

COLLECTIVE NEGOTIATIONS – Another term for collective bargaining.

COMMUNITY OF INTEREST – A criterion often used by an administrative agency to decide whether a group of employees who want to be represented by an employee organization constitute an appropriate bargaining unit. Considerations are similarity of skills and duties, common supervision and similar hours, wages and working conditions.

COMPANY UNION – An employee organization, usually of a single company or agency, that is dominated by management. Company unions were widespread in the private sector in the 1920's and early 1930's. The National Labor Relations Act (Wagner Act) of 1935 and nearly all public sector collective bargaining statutes declare that such employer domination is an unfair labor practice.

CONCILIATION – Attempts by a neutral party to reconcile opposing viewpoints in a labor dispute in order to help the negotiating parties come to a voluntary settlement. In current usage, the terms conciliation and mediation are used interchangeably, although traditionally “conciliation” was a less active process than “mediation” in a labor dispute.

CONSUMER PRICE INDEX (CPI) (COST OF LIVING INDEX) – Statistics issued monthly by the Bureau of Labor Statistics and Statistics Canada measuring the average change in prices of goods and services purchased by moderate income families and describing shifts in the purchasing power of the consumer's dollar. The Index is widely used in collective bargaining agreements to write “escalator” clauses which specify adjustments in wages based on fluctuations of the CPI.

CONTRACT – See Agreement, Collective Bargaining.

CONTRACT BAR – The provision of a collective bargaining statute which protects the exclusive representation from challenge to its status as exclusive bargaining representation during the life of an existing collective bargaining agreement, usually not to exceed three years.

CONTRACTING OUT – The use by employers of outside contractors whose employees are not covered by the same collective bargaining agreement to do work which has been or could be performed by unit employees.

COSTING OUT – The process of determining the actual cost of a contract proposal or agreement.

COST OF LIVING ADJUSTMENT – See Escalator Clause.

COUNTER PROPOSAL – An offer made by one party in collective bargaining negotiations in response to a proposal by the other party. Agreement is usually reached after a series of proposals and counter proposals have reduced the range of disagreement.

DECERTIFICATION – The withdrawal by the administrative agency of an employee organization's official designation as exclusive representative. A decertification election may result from a petition filed by the employer or by unit employees.

DEFERRED WAGE INCREASE – Negotiated wage increases which become effective later in the contract period. This reduces the cost to the employer while establishing a higher base rate. Contracts are said to be “front-end loaded” or “rear-end loaded” depending on the distribution of deferred increases.

DISAFFILIATION – The procedure whereby a local union separates from the national or international union of which it is a member. It is also the procedure which may be followed by a national or international union when it seeks to withdraw from a federation to which it belongs. The federation or national union may also initiate disaffiliation in which case it usually takes the form of suspension or expulsion.

DISCHARGE – Dismissal of an employee, usually for breaking the work rules or policies of management, incompetence or other sufficient good cause. Collective bargaining agreements usually protect employees from arbitrary or discriminatory discharge. A discharge means loss of seniority and other rights and affects the employee's chances for employment elsewhere.

DISCRIMINATORY DISCHARGE – Discharge for union activity or because of race, color, religion, sex or national origin.

DUES DEDUCTION — See Checkoff.

DUES, UNION — The monthly or yearly sum paid by union members to their local union. The amount of the dues is usually set by the local although sometimes it is determined by the international union constitution. Dues money is used to finance the labor relations and political functions of the union. A portion of the dues is distributed in the form of a per capita tax to other local, state, national and international organizations to which the local union belongs.

DUTY TO BARGAIN — The mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

ELECTION BAR — The provision of a collective bargaining statute which provides that a petition for election shall not be considered for a period, generally one year, from the completion of a valid election.

EMPLOYEE ORGANIZATION — Connoting “labor organization” but without the flavor of “unionism.” In the public sector there are many organizations which do not consider themselves “labor” organizations, although they may perform many of the functions of a labor organization.

EQUAL PAY FOR EQUAL WORK — The principle which seeks to establish pay rates that depend only on quantity or quality of work, not on such unrelated factors as race, sex or religion.

ESCALATOR CLAUSE — A clause in a labor agreement which ties wage rates to changes in the cost of living during the period of the agreement, thus allowing wages to fluctuate with changes in the cost of living. Escalator clauses are designed to keep real wages reasonably stable during the term of the contract.

ESCAPE PERIODS — A period of time, normally 15 days, during which employees may resign from a union and not be obliged to pay continued membership dues under a maintenance of membership clause.

EXCLUSIVE RECOGNITION — The type of recognition which provides that the recognized labor organization is the sole representative for all employees in the bargaining unit without regard to membership in that labor organization and which prohibits the employer from dealing with any other labor organization.

EXCLUSIVE REPRESENTATIVE — The employee organization which has been accorded exclusive recognition.

FACT-FINDING — A method of resolving contract negotiations disputes where an individual neutral or a neutral or tripartite panel hears the parties’ arguments supporting their positions and issues, findings of fact, and recommendations to resolve the dispute. The report is generally made public after a period of time if the parties have not yet reached agreement. Fact finding generally follows mediation.

FAIR SHARE — See Agency Shop.

FEATHERBEDDING — Work practices which tend to limit productivity and create an artificial demand for workers, such as demanding payment for work not performed, refusing to allow adoption of labor-saving equipment, and creating or maintaining nonessential jobs. Such practices are often motivated by fear of job loss (through automation, for example) and are justified by claims of enhanced safety and work quality. Section 8(b)(6) of the Labor Management Relations Act forbids a labor organization “to cause or attempt to cause an employer to pay... for services which are not performed...”

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS) — An independent federal agency created in 1947 under the Taft-Hartley Act to provide mediators for labor-management disputes in which interstate commerce is involved. In August 1978, the FMCS extended its jurisdiction to public sector disputes.

FREE RIDER—A person in the bargaining unit who does not join the labor organization but whom the labor organization must represent.

FRINGE BENEFITS—Compensation in addition to direct wages, such as paid vacations and holidays, overtime premiums, medical insurance and pensions.

FRONT-END LOAD—Increasing the cost of a multistage wage increase by putting the greater increases early in the contract. Example: increases of 15%-10%-5% instead of 10%-10%-10%.



GOOD FAITH BARGAINING—The requirement that the two parties to negotiations meet and confer at reasonable times with a willingness to reach an agreement on new contract terms. Good faith bargaining does not require that either party make a concession or agree to any proposal.

GRIEVANCE—An employee complaint; an allegation by an employee, union or employer that a collective bargaining agreement has been violated.

GRIEVANCE COMMITTEE—The group of union and/or management representatives which reviews grievances which remain unresolved at the lower levels of the grievance procedure.

GRIEVANCE PROCEDURE—A method of dealing with a complaint made by an individual or by union or management which allows the work place to continue operating without interruption. The procedure generally provides for efforts to resolve the grievance at progressively higher levels of management authority, with arbitration typically being the last step.

HUMAN RESOURCES DEVELOPMENT CANADA LABOUR BRANCH—An organization that collects, analyzes and publishes information on cost of living changes, labour force participation rates, unemployment rates, industrial disputes and other economic data relevant to labour relations.

IMPASSE—That point in collective bargaining negotiations where both the employer and union reach a good faith deadlock on an issue and both parties are warranted in assuming that further bargaining would be futile.

INDEPENDENT UNION—A union not affiliated with the AFL-CIO. The United Auto Workers, the United Mine Workers and the Teamsters are all examples of large independent unions in the private sector. There are also smaller independent unions confined to a single employer or plant. In the public sector, there are a great number of civil service employee associations of state, county and municipal employees which are not affiliated with the AFL-CIO.

INFORMATIONAL PICKETING—Picketing for the purpose of advising the public, including other union members, that the picketed employer does not have a union contract or is selling goods produced by a struck or nonunion employer. The purpose of such picketing is to induce the public to boycott the employer or a particular item the employer deals in. The 1959 amendment to the Taft-Hartley Act placed restriction on such picketing.

INITIATION FEE—A fee required by unions of new members or of employees who have left the union and wish to return. Initiation fees serve several purposes for the union besides being a source of revenue. New members pay for the benefits accrued through past struggles of the union. When initiation fees are very high, they serve to restrict membership in those unions wishing to remain small in order to protect job opportunities.

INJUNCTION—A court order that restrains individuals or groups from committing acts determined by the court to cause irreparable harm. Injunctions are issued frequently in public sector labor relations to stop illegal strike activities. There are two types of injunctions: temporary restraining orders, issued for a limited period of time and prior to a complete hearing; and permanent injunctions, issued after a full hearing and enforced until the conditions which gave rise to their issuance are changed.

INTERNATIONAL (OR NATIONAL) REPRESENTATIVE—A staff employee of an international (or national) union who usually comes up through the ranks of union members. The duties include aiding the negotiation of contracts, assisting local unions in the handling of grievances and other matters and organizing any unorganized employees within the union's jurisdiction or within a geographical region.

INTERNATIONAL (OR NATIONAL) UNION—The “national” or “international” organization of a labor union. (The term “international” is used because many unions have affiliates in Canada or, in rare cases, in other countries.) It is financially supported by a per capita tax on all of its members. Its functions include: extending union organization; chartering local unions; setting jurisdictional boundaries; conducting education and research; political lobbying; assisting in local collective bargaining efforts; and, if there are many employers or an association to deal with, it works directly with management representatives.

JOB ACTION—Any concerted effort by employees to exert pressure on management during negotiations by using tactics which affect the quality and/or the quantity of their work performance; used where strikes are prohibited.

JURISDICTION—The jobs, skills, industries or geographic area in which a union organizes and engages in collective bargaining. International unions often assert an exclusive claim on particular areas of employment.

LABOR-MANAGEMENT RELATIONS ACT (TAFT-HARTLEY ACT)—The federal statute, passed in 1947 amending the Wagner Act of 1935, which guarantees the right of workers to organize and to bargain collectively with their employers or to refrain from all such activity. To enable employees to exercise these rights and to prevent labor disputes which may impede interstate commerce, the Act places certain limits on activities of employers and labor organizations. The Act generally applies to all employers engaged in interstate commerce. It does not apply to railroads and airlines which are covered by the Railway Labor Act, nor does it apply to public sector employees such as the federal government or states and subdivisions thereof.



LABOR ORGANIZER – A person, generally employed by an international or national union, whose function is to enlist the employees of a particular employer or region into the union. The labor organizer is a specialist who often leaves the new organization to do its own bargaining, perhaps with help from an international representative.

LABOR RELATIONS BOARD – State, federal or provincial agency which primarily administer labor relations statutes. These boards usually handle unfair labor practices and supervise representation elections. At the State level these agencies are generally known as Public Employment Relations Boards (PERBs) and also provide mediation and fact-finding services.

LOCAL UNION – The local organization of union members who are part of a national or international union.

LOCKOUT – The shutting down of an operation or plant by an employer in order to withhold work and wages from a group of employees. The intent is to pressure the employees into accepting certain terms during negotiations.

MAINTENANCE OF MEMBERSHIP – A union security provision which states that no worker has to join the union as a condition of continued employment, but that all workers who voluntarily join must maintain their membership for the duration of the contract. Most maintenance of membership clauses provide for an escape period either annually or at the expiration of the agreement, when employees may withdraw from the union without penalty.

MANAGEMENT PREROGATIVES (MANAGEMENT RIGHTS) – Certain rights that management feels are intrinsic to its ability to manage and therefore are not subject to collective bargaining. These rights are often expressly reserved to management in the management rights clause of the agreement. They include the right to hire, promote, suspend or discharge employees; to direct the work of employees; and to establish policy.

MEDIATION – An attempt by an impartial third party, called a mediator, to bring the parties in a labor dispute together. The *mediator* has no power to force a settlement but rather operates primarily through persuasion to help the negotiating parties reach an agreement.

MEDIATOR – An individual - either conciliator or mediator - who acts as an impartial third party to help settle collective bargaining disputes. May be appointed by an administrative agency or be chosen by both parties. The mediator's role is to meet with the parties, act as a go-between and help the parties discover areas of agreement in order to reach a settlement in negotiations without a strike.

MODIFIED UNION SHOP – A variation of a union shop provision in which certain employees are exempted from joining the union, such as employees who at the time of signing the labor agreement were nonmembers. It requires all new employees to become union members.

NATIONAL LABOR RELATIONS ACT (NLRA) (WAGNER ACT) – The federal law, passed in 1935, which has served as a model for nearly every subsequent labor relations law in the United States, including many public sector labor laws. The law guarantees private sector employees the right to form, join and assist unions, to bargain collectively and to act together for the purpose of collective bargaining or other mutual aid. It provides for secret ballot elections to choose collective bargaining representatives and gives the union the right to be exclusive bargaining agents for all workers in the bargaining unit. The law declares certain acts to be unfair labor practices. The law created the National Labor Relations Board to administer the Act. It was significantly amended by the Taft-Hartley Act in 1947.

NATIONAL LABOR RELATIONS BOARD (NLRB) – A board created by the National Labor Relations Act (NLRA) in 1935 and continued by the Taft-Hartley Act. The Board is the administrative agency for the NLRA and its primary duties are to hold elections to determine union representation and to interpret and apply the law concerning unfair labor practices.

NEGOTIATION – The process by which representatives of employee and management try to reach agreement on conditions of employment, such as wages, hours, fringe benefits and the machinery for handling grievances.

NEGOTIATOR – The person who represents the employer or union in collective bargaining negotiations. Often committees or “teams” represent each party and one of the committee’s members acts as chief negotiator or spokesperson for the group.

NEUTRAL – An individual who acts as conciliator, mediator, fact-finder or arbitrator; a disinterested third party who intervenes into negotiation disputes in order to facilitate settlement.

NO-LOCKOUT CLAUSE – A provision in a collective bargaining contract in which the employer agrees that the operation will not be closed down in order to force the employees to accept certain terms for a collective bargaining agreement. See Lockout.

NO-STRIKE CLAUSE – A provision in a collective bargaining contract in which the union promises that during the life of the contract the employees will not engage in strikes, slowdowns or other job actions. A union often agrees to such a clause in exchange for a grievance arbitration clause.

OPEN SHOP – An unorganized establishment or one where there is a union but where union membership is not a condition of employment or of continued employment.

PACKAGE SETTLEMENT – The total money value of a negotiated change in salaries or wages and fringe benefits. Usually quoted as cents per hour or a percentage.

PAST PRACTICE CLAUSE – A clause in a contract stating that previous practices of the employer will continue except as modified by the contract. Such a clause is the opposite of a zipper clause.

PAST PRACTICES – A way of dealing with a grievance by considering the manner in which a similar issue was resolved before the present grievance was filed. Past practice is often used to resolve a grievance when contract language is ambiguous or contradictory or when the contract doesn’t address the matter in dispute.



PATTERN BARGAINING—The practice whereby employers and employee organizations reach collective bargaining agreements similar to those reached by the leading employers and employee organizations in the same geographic area or in the same product or service market.

PICKETING—The patrolling of the entrance to an establishment by union members. The goal of picketing may be to persuade other workers to stop work, to discourage customers from patronizing the establishment, to publicize the existence of a dispute or to prevent by force or persuasion the delivery of goods and services to the establishment. When large numbers of workers on strike assemble at an entrance to discourage nonstrikers from entering, this is called mass picketing. Organizational or recognitional picketing is an attempt on the part of the union to persuade the unorganized workers to join the union or to force the employer to recognize a union. Picketing may occur to pressure an employer to agree to certain contract terms, to settle a grievance or to cease and desist from alleged unfair labor practices.

PREMIUM PAY—Additional money which is paid to an employee for certain types of work; sometimes referred to as penalty pay. It is usually 10 to 50 percent of the base rate. Examples: night shifts, overtime, hazardous or unpleasant work. Premium pay is paid in addition to the regular pay to compensate employees for the special effort required, the unpleasantness of the work or for the inconvenience of the time during which the work takes place. It is offered to induce them to volunteer for such work.

PROBATIONARY PERIOD—A stipulated period of time, usually between thirty days and six months, during which a newly hired employee's work is monitored by the employer to see if the worker has the capacity to perform the job. During this probationary period an employee may be discharged without recourse to the grievance procedure, although the rest of the contract applies and there is still protection from being discharged because of union activity.

PROHIBITED PRACTICE—See Unfair Labor Practice.

RANK AND FILE—Regular union members who are not union officers or officials.

RATIFICATION—Formal approval of a newly negotiated agreement by vote of the union members.

RECOGNITION—The employer's acceptance of an employee organization as the bona fide and legitimate collective bargaining representative of a group of employees for the purposes of collective bargaining.

REFUSAL TO BARGAIN—Findings made by a labor relations board that either the employer or the union has failed to bargain "in good faith" according to the requirements of applicable law. The refusal to bargain may be indicated by specific actions or by the overall behavior of the union or management during negotiations.

RENEWAL CLAUSE—The section of a collective bargaining agreement which provides for the automatic continuance of the agreement, usually on a year-to-year basis, until either side notifies the other of its intent to modify or terminate the contract.

REOPENER CLAUSE—A provision in a collective bargaining agreement which states the times and circumstances under which certain parts of the agreement, usually wages, can be renegotiated before the agreement expires. A reopener clause usually provides for renegotiation either at the end of a time period, such as one year after signing a contract, or when the Consumer Price Index increases by a certain amount.

REPRESENTATION ELECTION—A vote conducted, usually under the authority of an independent labor relations board, among the employees of a bargaining unit to determine whether a majority wants to be represented by a given labor organization.

RIGHT TO BARGAIN — The collective bargaining rights of a labor organization as provided for by federal and state law. These rights result from recognition or certification as the sole collective bargaining agent for the employees in the bargaining unit. The right to bargain is retained by the organization as long as it is supported by a majority of the unit.

RIGHT TO STRIKE — The right to refuse to work for the purpose of gaining concessions from the employer. It is available to employees in the private sector under federal and state laws, except in some limited situations where certain procedural steps must be taken before a strike may occur. Public employment strikes are prohibited in all but nine states and public employee collective bargaining laws usually provide for alternative methods, called impasse procedures, for settling disputes.



RIGHT TO WORK LAWS – State laws which forbid collective bargaining agreements to contain union security clauses which require union membership. These laws are authorized by Section 14(b) of the Taft-Hartley Act. About 20 states, located mostly in the south and southwest, have right to work laws.

SCAB – A derisive term for a union members who refuses to strike or who returns to work before a strike has ended; a worker who accepts employment or replaces a union member during a strike. See Strikebreaker.

SCOPE OF BARGAINING – The range of issues that is made bargainable by the labor relations statute or by the agreement of the parties.

SECONDARY BOYCOTT – Concerted pressure exerted by employees and a union against a neutral party, usually an uninvolved employer, in order to bring pressure indirectly upon the real adversary, the actual employer. It may involve the refusal to handle, purchase, or work on products of a company with whom the union has a dispute.

SENIORITY – An employee's status in relation to other employees according to the years of employment. It may be continuous or noncontinuous employment. Employees with the greatest seniority are usually the last to be laid off and may be given preference for promotion.

SENIORITY CLAUSES – Provisions in collective bargaining agreements that relate seniority to an employee's job security and advancement. Seniority clauses make an individual's years of employment determine, for example, rights to layoffs, recalls, choice of vacation time, overtime and work shifts, transfer and promotion and other items.

SHIFT DIFFERENTIAL – Added pay for second or third shift expressed as a percentage of base pay or as extra cents per hour.

SLOWDOWN – A deliberate reduction of output by employees in order to bring economic pressure upon the employer without incurring the cost of a strike.

STEWARD – The union representative of a group of co-workers who carries out duties of the union within an operation, such as handling grievances, collecting dues or recruiting new members. Is either elected by other union members or appointed by higher union officials. The Steward remains an employee and handles union business on a part-time basis, usually on the employer's time.

SUBCONTRACTING – See Contracting Out.

SUPERSENIORITY – A position on the seniority list ahead of where the employee would be placed solely on the basis of years of service. Such favorable treatment is usually reserved for union stewards, in order to retain proper union representation for those employees who remain on the job in the event of a lay off. Superseniority would be provided for in a collective bargaining agreement.

SUPERVISOR – A person having the authority, in the interests of the employer, to hire, transfer, suspend, promote, lay off, recall, discharge, assign, reward or discipline other employees or to effectively recommend such action or to adjust employee grievances, where such authority is not of a routine or clerical nature, but requires the use of independent judgment.

TAFT-HARTLEY ACT – See Labor-Management Relations Act.

UNFAIR LABOR PRACTICE – A practice on the part of either union or management which violates provisions set forth by state or federal labor relation statues. Examples on the part of unions are: 1) controlling or interfering with unions, 2) discriminating against workers for their union support or activity, 3) retaliating against workers for complaining to an administrative agency, 4) refusing to bargain collectively with the exclusive representative.



UNION SECURITY—Negotiated contract clauses requiring the establishment and continuance of union shop, agency shop, maintenance of membership, dues checkoff or similar provisions which assures the union of its revenues during the life of a collective bargaining agreement.

UNION SHOP—A provision in which the employer may choose to hire anyone, but in which all workers must join the union within a specific period of time after being hired (typically 30 days) and must retain membership as a condition of continued employment. The courts have refined this obligation to mean only paying the normal dues and fees that a union member would pay.

UNIT DETERMINATION—The process by which certain employees are grouped into a unit to select a single bargaining agent to represent them in collective bargaining negotiations. Such determination is based upon several criteria, such as community of interest, employee desires, collective bargaining history and the administrative organization of the employer.

WHIPSAWING—The union tactic of negotiating with one employer at a time, using each negotiated gain as a pattern or base from which to negotiate equal or better terms of settlement with the next employer.

WORK RULES—Rules regulating on-the-job standards and conditions of work, often incorporated in the collective bargaining agreement when negotiations occur. Work rules are usually negotiated at the insistence of the union, to restrict management’s ability to unilaterally set production standards and assign employees as management wants. The union’s goals in establishing work rules are to maximize and protect the number of jobs available to its members, protect the health and safety of employees and to promote stable work assignments for employees.

ZIPPER CLAUSE—A provision in a collective bargaining agreement that specifically states that the written agreement is the complete agreement of the parties and that anything not contained therein is not agreed to unless put into writing and signed by both parties following the date of the agreement. The zipper clause is intended to stop either party from demanding renewed negotiations during the life of the contract. It also works to limit the freedom of a grievance arbitrator because the decision must be based only on the contents of the written agreement.



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