Collective Bargaining Primer

If there is a union in your workplace, you likely have been involved in collective bargaining in some capacity. Even where human resource managers are not directly at the bargaining table, they can play an important role in identifying issues to be addressed, assessing the workability of proposals, and costing monetary items.

How Negotiations Begin

Negotiations usually begin with the Union issuing a notice to bargain. This can be a one line email. It is normally accompanied or followed by a request for information. Section 66 of *The Labour Relations Act* entitles the Union to:

a. the job title or classification of *each employee*;
b. the rate of pay in *each classification* and any other benefits to which the employees in each classification are entitled; and
c. the cost to the employer of all the benefits to which the employees *in each classification* are entitled.

The information does not have to be provided more than once per year. Unions often request information in excess of this requirement, so requests should be carefully examined.

Mandatory Requirements

A collective agreement must be in writing and include provisions respecting rates of pay and hours of work. The *Act* requires certain other provisions to be included in collective agreements or will deem them to be included. Examples are:

- Duration of at least 1 year
- Compulsory dues check-off, and religious objection to check-off
- Provision for final settlement of disputes (usually by grievance and arbitration)
- Employees cannot be disciplined or dismissed without just cause
- The Employer, in administering the collective agreement, must act reasonably, fairly, in good faith, and in a manner consistent with the collective agreement as a whole.

Bargaining in Good Faith

The *Act* requires the parties to bargain in good faith. This means:

- negotiating with a view to concluding a collective agreement, which is subjective. You must actually want to reach an agreement; and
- making every reasonable effort to conclude an agreement, which is objective. You must act like you want to reach an agreement.

The most important component of bargaining in good faith is ***engaging in rational discussion***. Each party should state its position and justification for it, and listen to what the other has to say. Once a party presents its proposals, it can't add new unrelated ones, but counter proposals are fine. Parties are not required to make concessions. You can stick to a position, so long as you provide reasons, listen, explain, give information, and agree to meet.

"Bad faith bargaining" is conduct that aims to undermine the bargaining process, or is a "failure to try". Some examples are:

- refusing to meet or to meet with a particular person
- attempts to circumvent the Union
- refusing to discuss a relevant issue
- refusing to supply the necessary information
- supplying misinformation
- refusing to execute a finalized agreement
- making illegal proposals
- insisting on changing the scope of the bargaining unit

Preparing for Bargaining

Reading the Collective Agreement

Negotiations set the rules of the workplace for the next several years, and so thorough preparation is key. Reading the collective agreement from cover to cover may not be fun, but it is invaluable, as it often exposes problems, especially when separate articles do not work well together. A review also highlights the required updates. For example:

- Are there new job titles?
- Have there been changes to legislation? Leaves in *The Employment Standards Code* change fairly often and may require amendments to the agreement.
- Has new accounting or HR software been introduced? This may affect how scheduling is done, for example.
- Have problems been identified with the agreement? Perhaps through grievances? Are changes needed to improve operations?
- Are there proposals from the last negotiation that should be revisited?

This is a good opportunity to correct typographical errors and update gendered pronouns. References in articles to other parts of the agreement should be checked. If the agreement says "subject to Article 7.03", check to ensure there *is* an article 7.03, and that the reference still makes sense.

Other steps:

- Gather collective agreements from similar businesses. Many are available on Union websites or from the Manitoba Labour Board.
- Consider if there are any estoppels that you want to end. Are there past practices, or exceptions to the agreement language that have been allowed but should now be discontinued? If so, advise the Union in writing.
- Draft your proposals. Indicate desired additions to the collective agreement in **bold**, and desired deletions with a strikethrough. It is good to have a mix of

"must haves" and "nice to haves", so there is room for concessions.
- Decide on bargaining priorities and determine a budget.

Bargaining Strategy

Listen as the Union presents its proposals, and ask questions to clarify and understand. Good questions are: "What does this mean?", "How will this change the *status quo*?", "Has this been a problem?", "Are there examples?". Adopting a "help me understand" attitude can go a long way. Understanding the problem of concern to the Union will allow you to propose alternative solutions which work for both parties. Focus on the problem, not the position taken.

Make it easy for the other party to agree. If you understand the Union's objections, you can remove roadblocks to an agreement. Similarly, you can help the Union understand why you can't agree to its proposal.

It is customary to deal with non-monetary language issues first and with monetary items later. This is because there is only one pot of money to draw on. If money is spent early in negotiations, there is less to work with later. Also, agreeing to non-monetary items is easier and builds momentum for the more difficult monetary proposals. The closer the parties are to a deal, the more pressure there is to complete.

Be creative! Staggering wage increases can save money. Signing bonuses can reduce increases and keep end rates down. Timing of retro payments can incentivize agreement ("retro before Christmas" has particular appeal).

Language is important. Previous arbitration decisions may have interpreted the same language in a way that could be useful to you. Get inspiration from other collective agreements of similar employers, and use plain language. Jargon can lead to ambiguity and unintended consequences.

Conclusion

Collective bargaining can be a great relationship building exercise. Good communication, an openness to creative solutions, and joint problem solving can result in positive changes both in operations and in employee relations.

by Cynthia Lazar
Taylor McCaffrey