UNIONS AND THE LAW

Both in India and the United States, there were no special labor laws until about 1930. Employers were not required to engage in collective bargaining with employees and were virtually unrestrained in their behavior toward unions; the use of spies and firing of union agitators were widespread. "Yellow dog" contracts, whereby management could require nonunion membership as a condition for employment, were widely enforced. Most union weapons—even strikes—were illegal.

This one-sided situation lasted until the Great Depression (around 1930). Since then, in response to changing public attitudes, values, and economic conditions, labor law has gone through three clear periods: from "strong encouragement" of unions, to "modified encouragement coupled with regulation," and finally to "detailed regulation of internal union affairs."[24]

In India, the Trade Union Act was passed in 1926, where both employees and employers could join to register a union. Later, legislations like the Industrial Disputes (ID) Act, 1947; and the Factories Act, 1948, came into force. The ID Act, 1947, laid down the framework for resolving conflicts between employers and workers or unions.

THE COLLECTIVE BARGAINING PROCESS

What Is Collective Bargaining?

When and if the union becomes your employees' representative, a day is set for management and labor to meet and negotiate a labor agreement. This agreement will contain specific provisions covering wages, hours, and working conditions.

What exactly is **collective bargaining**? According to the National Labor Relations Act:

> For the purpose of [this act,] to bargain collectively is the performance of 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 terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

In plain language, this means that both management and labor are required by law to negotiate wage, hours, and terms and conditions of employment "in good faith."

What Is Good Faith?

Good faith bargaining is the cornerstone of effective labor–management relations. It means that both parties communicate and negotiate, that they match proposals with counterproposals, and that both make every reasonable effort to arrive at an agreement. It does not mean that one party compels another to agree to a proposal. Nor does it require that either party make any specific concessions (although as a practical matter, some may be necessary).[25]

How can you tell if bargaining is *not* in good faith? Here are 10 examples.

1. **Surface bargaining.** Going through the motions of bargaining without any real intention of completing an agreement.
2. **Inadequate concessions.** Unwillingness to compromise, even though no one is required to make a concession.
3. **Inadequate proposals and demands.** The NLRB considers the advancement of proposals to be a positive factor in determining overall good faith.
4. **Dilatory tactics.** The law requires that the parties meet and "confer at reasonable times and intervals." Obviously, refusal to meet with the union does not satisfy the positive duty imposed on the employer.
5. **Imposing conditions.** Attempts to impose conditions that are so onerous or unreasonable as to indicate bad faith.
6. **Making unilateral changes in conditions.** This is a strong indication that the employer is not bargaining with the required intent of reaching an agreement.
7. **Bypassing the representative.** The duty of management to bargain in good faith involves, at a minimum, recognition that the union representative is the one with whom the employer must deal in conducting negotiations.
8. **Committing unfair labor practices during negotiations.** Such practices may reflect poorly upon the good faith of the guilty party.
9. **Withholding information.** An employer must supply the union with information, upon request, to enable it to understand and intelligently discuss the issues raised in bargaining.
10. **Ignoring bargaining items.** Refusal to bargain on a mandatory item (one must bargain over these) or insistence on a permissive item (one may bargain over these).[26]

Of course, requiring good faith bargaining doesn't mean that negotiations can't grind to a halt. For example, Northwest Airlines wouldn't let its negotiators meet with mechanics' union representatives because, it said, the union didn't respond to company proposals the last three times they met.[27]

The Negotiating Team

Both union and management send a negotiating team to the bargaining table, and both teams usually go into the bargaining sessions having "done their homework." Union representatives will have sounded out union members on their desires and conferred with representatives of related unions.

Management uses several techniques to prepare for bargaining. First, it prepares the data on which to build its bargaining position.[28] It compiles data on pay and benefits that include comparisons with local pay rates and to rates paid for similar jobs within the industry. Data on the distribution of the workforce (in terms of age, sex, and seniority, for instance) are also important, because these factors determine what the company will actually pay out in benefits. Internal economic data regarding cost of benefits, overall earnings levels, and the amount and cost of overtime are important as well.

Management will also "cost" the current labor contract and determine the increased cost—total, per employee, and per hour—of the union's demands. It will use information from grievances and feedback from supervisors to determine what the union's demands might be, and prepare counteroffers and arguments.[29] Other popular tactics are attitude surveys to test employee reactions to various sections of the contract that management may feel require change, and informal conferences with local union leaders to discuss the operational effectiveness of the contract and to send up trial balloons on management ideas for change.

Collective bargaining experts emphasize the need to cost the union's demands carefully. One says,

> "The mistake I see most often is [HR professionals who] enter the negotiations without understanding the financial impact of things they put on the table. For example, the union wants three extra vacation days. That doesn't sound like a lot, except that in some states, if an employee leaves, you have to pay them for unused vacation time. [So] now your employer has to carry that liability on their books at all times."[30]

Bargaining Items

In practice, saying one must bargain over "wages, hours, and working conditions" is too broad. Labor law sets out categories of specific items that are subject to bargaining: These are mandatory, voluntary, and illegal items.

Voluntary (or permissible) bargaining items are neither mandatory nor illegal; they become a part of negotiations only through the joint agreement of both management and union. Neither party can compel the other to negotiate over voluntary items. You cannot hold up signing a contract because the other party refuses to bargain on a voluntary item. Benefits for retirees might be an example.

Illegal bargaining items are forbidden by law. A clause agreeing to hire union members exclusively would be illegal in a right-to-work state, for example.

Table 15-1 presents some of the 70 or so **mandatory bargaining items**, over which bargaining is mandatory under the law. They include wages, hours, rest periods, layoffs, transfers, benefits, and severance pay. Others, such as drug testing, are added as the law evolves.

Bargaining Stages

The actual bargaining typically goes through several stages.[31] First, each presents its demands. At this stage, both parties are usually quite far apart on s issues. Second, there is a reduction of demands. Here, each side trades off som its demands to gain others. Third come the subcommittee studies; the parties f joint subcommittees to try to work out reasonable alternatives. Fourth, the pa reach an informal settlement, and each group goes back to its sponsor. Un representatives check informally with their superiors and the union memb management representatives check with top management. Finally, once everyth is in order, the parties fine-tune and sign a formal agreement.

Bargaining Hints

Expert Reed Richardson has the following advice for bargainers:

1. Be sure to set clear objectives for every bargaining item, and be sure you und stand the reason for each.
2. Do not hurry.
3. When in doubt, caucus with your associates.
4. Be well prepared with firm data supporting your position.
5. Strive to keep some flexibility in your position.
6. Don't concern yourself just with what the other party says and does; find out why.
7. Respect the importance of face saving for the other party.
8. Be alert to the real intentions of the other party—not only for goals, but also for priorities.
9. Be a good listener.
10. Build a reputation for being fair but firm.

11. Learn to control your emotions and use them as a tool.
12. As you make each bargaining move, be sure you know its relationship to all other moves.
13. Measure each move against your objectives.
14. Remember that collective bargaining is a compromise process. There is no such thing as having all the pie.
15. Try to understand the people and their personalities.[32]

Impasses, Mediation, and Strikes

In collective bargaining, an **impasse** occurs when the parties are not able to move further toward settlement. An impasse usually occurs because one party is demanding more than the other will offer. Sometimes an impasse can be resolved through a third party—a disinterested person such as a mediator or arbitrator. If the impasse is not resolved in this way, the union may call a work stoppage, or strike, to put pressure on management.[33]

Third-Party Involvement

Negotiators use three types of third-party interventions to overcome an impasse: mediation, fact finding, and arbitration. With **mediation**, a neutral third party tries to assist the principals in reaching agreement. The mediator usually holds meetings with each party to determine where each stands regarding its position, and then uses this information to find common ground for further bargaining. The mediator is always a go-between, without authority to dictate terms or make concessions. He or she communicates assessments of the likelihood of a strike, the possible settlement packages available, and the like.

In certain situations, as in a national emergency dispute, a fact finder may be appointed. A **fact finder** is a neutral party who studies the issues in a dispute and makes a public recommendation for a reasonable settlement.[34] Presidential emergency fact-finding boards have successfully resolved impasses in certain critical transportation disputes.

Arbitration is the most definitive type of third-party intervention, because the arbitrator often has the power to determine and dictate the settlement terms. Unlike mediation and fact finding, arbitration can guarantee a solution to an impasse. With *binding arbitration*, both parties are committed to accepting the arbitrator's award. With *nonbinding arbitration*, they are not. Arbitration may also be voluntary or compulsory (in other words, imposed by a government agency). In the United States, voluntary binding arbitration is the most prevalent.

There are two main topics of arbitration. *Interest arbitration* centers on working out a labor agreement; the parties use it when such agreements do not yet exist or when one or both parties are seeking to change the agreement. *Rights arbitration* really means "contract interpretation arbitration." It usually involves interpreting existing contract terms, for instance, when an employee questions the employer's right to have taken some disciplinary action.[35]