



Bargaining with Your Employees' Labor Representative: The Dos and Don'ts of Union Negotiations

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Learning Objectives

- Understanding your obligations to bargain with employees' chosen bargaining representative
- What to say and what not to say during negotiations
- Tips for negotiating a strong agreement

Collective Bargaining 101

- Employers required to meet at reasonable times to confer in **good faith** with **employees' designated bargaining representative** on **mandatory subjects** of bargaining
- Must be more than a willingness to go through the motions of attending bargaining sessions. Parties must participate actively and indicate an intention to reach agreement.

When are Companies Obligated to Bargain?

- Employees hold a Board-certified election and vote to certify the union as their bargaining representative
- Employer voluntarily recognizes the union as employees' collective bargaining representative
- Collective bargaining agreement expires
 - Be mindful of exception here for certain construction contracts subject to pre-hire agreements
- Company performs as a successor in interest

What Topics Must Employers Bargain Over?

- **Mandatory Subjects of Bargaining:** Subjects that directly impact employees' terms and conditions of employment.

- Examples:
 - Wages
 - Working conditions
 - Holidays
 - Sick days
 - Pensions
 - Health insurance
 - Rest and meal breaks
 - Dues check-off
 - Non-discrimination
 - Etc.

What Topics May Employers Bargain Over?

- **Permissive subjects of Bargaining:** subjects that are not directly related to employees' terms of employment, but that parties can mutually agree to bargain over. You can refuse to bargain over these subjects without fear of a ULP charge.
 - Examples: Terms of negotiations, adding supervisors to a bargaining unit, settling unfair labor practice charges
- Distinguished from illegal subjects of bargaining, such as closed-shop provisions, hiring-hall provisions granting referral preference for union members, and provisions inconsistent with a union's duty of fair representation.

Examples Of Typical CBA Provisions:

- Union Recognition
- Union Security and Membership
- Discipline and Grievance / Arbitration Procedures
- Employee Benefits
 - Wages
 - Health and Welfare
 - Pension
 - Vacation
 - Holidays
 - Sick Leave
- No Strike/ No Lockout
- Management Rights
- Zipper Clause
- Government Requirements, Withdrawal Liability (Government Contractors)

Getting to Impasse: When Can Parties Stop Negotiating, Short of Reaching Agreement?

- Obligated to bargain in good faith until either reach agreement or reach a stand-off, or “**impasse.**”
- When impasse is reached, the duty to bargain is suspended
- Unlawful to reach impasses on a permissive (or illegal) subject of bargaining
- When impasse is reached, company permitted to make changes in working conditions, as long as changes are consistent with the last offer presented to the union

Add'l Considerations During Bargaining

- Parties' duty to furnish relevant information
 - Applies to unions and employers
 - If employer claims financial inability to pay, it will also be required to furnish financial information (distinguishable from inability to compete)
- Bargaining representatives must have adequate authority to negotiate
- **It is Unlawful to:**
 - Implement unilateral changes during bargaining
 - Bargain directly with employees
 - Withdraw from an agreed upon provision
 - Modify terms of a CBA without Union's prior consent

Final Tips for Productive Bargaining

- Know the Rules
- Take initiative by providing a proposal at the first meeting
- Take notes
- Do your homework
- Never engage in regressive bargaining! Be sure to condition tentative agreement on the final document.

Thank You.

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