

What to expect in the SECOND ROUND OF BARGAINING AND BEYOND

As an organization and its union approach the expiration of the first collective bargaining agreement, yet another phase in the cycle of collective bargaining begins. The parties have now operated under their CBA for an extended period, applying and testing its requirements day to day within an established relationship. Most organizations have a Labor-Management Committee, and that committee should meet regularly and serve as an important channel of communication between management and the union.

The Collective Bargaining Agreement

During the term of a contract, the parties will be interpreting, abiding by, and clarifying the meaning and application of their CBA on an ongoing basis. Ideally, the employer and the union will work together to maintain their mutual understanding and ownership of the contract provisions they jointly constructed. As the union and management work together, they document agreements about how the CBA provisions are understood and implemented.

Most CBAs include a formal grievance process for raising contractual disputes, culminating in binding arbitration for the rare situation where the parties themselves cannot resolve the appropriate interpretation or application of contract language. In that situation, the parties' mutually designated arbitrator becomes the last resort interpreter of the CBA provisions in dispute.

Treating the Union as a Partner

Once the relationship is established, the union is an important internal stakeholder group, and the Labor-Management Committee can serve as a primary forum for maintaining communications and enhancing the partnership. Many CBAs make it clear that the LMC is not a decision-making body, is not a forum for enforcing the CBA or resolving disputes covered by the CBA's grievance processes and is not a substitute for direct negotiations between the union and the employer—rather, the LMC provides an opportunity and forum for identifying and exploring a range of internal and external issues and matters of mutual interest affecting the organization and the workforce. Whether it is a staff retreat, the organization's response to

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external news events, or a crisis like the pandemic, management can engage through the LMC and/or reach out to the union's leaders directly to initiate dialogue.

Management should be clear in all engagements with the union about what is required by law or by the CBA, what is optional, and how decisions will be made. Beyond this, it is the spirit of mutual respect and collaboration that will have the greatest impact on the relationship.

Signs of a healthy partnership include regular collaboration, open communication, and the ability to problem-solve as partners. If the Labor-Management Committee is used primarily to process disagreements and conflict, the underlying relationships may need attention and repair.

Identifying Bargaining Priorities

Between ratification of a first CBA and opening of the next round of bargaining for contract renewal, management evaluates and records how the existing contract is working in practice. As contract expiration approaches, management should review their lessons and needs.

- Are there CBA provisions that are confusing, problematic, or out of sync with changes that have occurred?
- Have disagreements or grievances arisen because certain contract provisions are ambiguous or difficult to follow, or the contract failed to address something?
- Are there proposals from the last round of negotiations that management is now more open to?
- What are the topics that management would like to address in a second contract?

Preparing for the Next Round of Negotiations

Starting six months before the expiration of the contract, both management and the union should begin to identify priorities and prepare for negotiations. Both parties will independently reflect upon the CBA and priorities for the next contract, and it can also be helpful to discuss those reflections and priorities together as part of preparing for negotiations.

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- Consider different approaches or models of bargaining. Many organizations have had good experiences with interest-based bargaining (“IBB”) for successor contracts, especially when management and the union are eager to create solutions that advance mutual interests or address ongoing challenges.
- Select and train the management bargaining committee.
- Engage a lawyer or consultant, if needed, for planning. It is always a good idea to have a lawyer retained to review contract language and offer advice about potential new contract provisions.
- Update research on benchmarks and trends in compensation and benefits.
- Collect internal information and forecast their financial situation.

During the 90-day period before the existing CBA is set to expire, it is common for management and the union to begin meeting, discussing priorities, and scheduling contract negotiations. Many CBAs include specific requirements and timing in the duration/renewal provisions of the contract. At the same time, employers who are subject to the National Labor Relations Act will need to review and make sure they comply with their legal obligations under Section 8(d) of the NLRA, which include requirements for serving time-specific written bargaining notices to the union and to the Federal Mediation and Conciliation Service (as well as any relevant State or Territorial mediation agency).