

What to expect while BARGAINING THE FIRST CONTRACT

Few senior leaders in nonprofits have experience negotiating collective bargaining agreements. For that reason, being prepared and getting trained is very important. In addition, we encourage you to seek out support from your pro-union attorney, Beyond Neutrality consultant, FMCS, peer networks, and each other.

The Approach

There are many approaches to bargaining, with most of them being some version of either “positional” or “interest-based” bargaining. Positional bargaining is more traditional and underscores the adversarial – or “win-lose” – nature of negotiations. Interest-based bargaining [IBB] goes below surface disagreements to find where the parties can agree and to look for “win-win” solutions.

In traditional bargaining, negotiations begin with the union making written proposals. Sometimes the union will present an entire contract, although more often they present the “non-economic” sections first. This includes language addressing hiring, discipline, grievances, and other operational subjects. Then they present the “economics,” such as time off, benefits, salary scales and raises. Sometimes a mediator is brought in toward the end to help move toward a settlement.

[Interest-based bargaining](#) starts with both parties working together to identify their interests. The parties affirm each other’s interests and recognize what they have in common. They then explore the “story” behind their issues, share pertinent information, and brainstorm possible solutions. They reach agreement by determining together which solutions best meet the needs of all parties. This process is often helped by a neutral facilitator experienced with IBB.

The Process

Whichever method is used, the parties generally move past a topic once they initial their tentative agreement (also known as “TA”) on that article or section of the contract. If discussions of later topics make an earlier tentative agreement impracticable, then one party or another can reopen it for further discussion. However, the ability to move productively through negotiations is facilitated by both parties treating TA’s as final to the fullest extent practical.

It is important for both parties to take detailed notes, and thoroughly document key negotiation points, agreements, and actions. There is often a shared document with tracked changes that keeps a record of the contract itself. The parties can maintain other tracking tools jointly or each have their own.

Parties will pause negotiations to caucus, with the intent of coming back to the negotiations. Management caucuses are used to discuss proposals among the bargaining team or to consult the Executive Director and others who aren’t at the table. The more the bargaining team has the power to make decisions, the more caucusing can be used to move forward in the session.

Once the committees reach a complete tentative Collective Bargaining Agreement [CBA], the union committee will take it to the membership for a ratification vote. If members reject the agreement, the parties go back to the table to try again. If they reach an impasse, the union members can vote on whether to go on strike. Once ratified, the CBA is signed by both parties and goes into effect.

Expediting First Contract Negotiations

The length of time for bargaining a first contract in this sector is from six months to two years or more. During this time the status quo period is in still in effect. As time passes, there is turnover of bargaining team members on both sides and records can get lost. The longer it goes on, the more disagreements are prolonged and frustrations mount. All of this adds to the stress and toll on time and finances.

Both management and unions, therefore, have an interest in conducting deliberate and efficient negotiations. Some organizations are experimenting with ways to speed up the process. For example:

- Creating a regular bargaining schedule and holding to it.

- Designating alternates so that the parties can meet during vacations and intensive work periods.
- Scheduling intensive negotiating periods to make breakthroughs in reaching agreements, even pausing the work if necessary.
- Meeting in person rather than via videoconference for extended sessions.
- Bringing in a mediator to help facilitate discussions and push each party towards agreement.