INTRODUCTION

The enactment of the Federal Labor-Management Relations Statute as part (title 7) of the Civil Service Reform Act of 1978, and subsequent decisions of the Federal Labor Relations Authority, established that upon demand by the exclusive representative, or prior to changing a "condition of employment," the employer is obligated to give prior notice to the union and, upon demand, bargain with the union prior to implementation.

In October, 1993, President Bill Clinton signed executive order 12871 which established the National Partnership Council and mandated that all Executive agencies establish similar councils and partnership programs with unions representing agency employees. It also gave a presidential direct order to executive agency managers to elect to bargain on matters referred to in 5 USC 7106(b)(1), commonly known as "management rights" which are "permissive subjects" for bargaining.

While this manual addresses the traditional, so-called "adversarial," approach to bargaining, we will also mention non-adversarial approaches to various difficulties that might arise in traditional bargaining. This manual is also written in the belief that the union official who is aware of all the rights and responsibilities of both parties in adversarial bargaining can better appreciate the advantages of partnership relationships advocated by E.O. 12871.
One of the characteristics of partnership is that it requires a good deal of maturity and communication skills of the partners. It is a matter of definition that a partnership requires both parties to continuously work at the maintenance of the relationship. For this reason, not all parties to an exclusive recognition are able to readily achieve the level of maturity required. Therefore, upon the failure of one or both parties to be able to attain the sophistication of dealing required, it is necessary to understand the traditional labor-management process which already exists under law.

PREFACE

Conditions of employment are defined in section 7103 of the Statute as,

"Personnel policies, practices and matters, whether established by rule, regulation, or otherwise affecting working conditions..."

The right to bargain collectively is guaranteed by Section 7114 of the Statute. An employer is obligated to honor these rights unless the union negotiates away their rights by agreeing to a "waiver," sometimes called a "zipper" clause. Unions rarely agree to a zipper clause unless they secure substantial benefits in exchange to offset the loss of such an important right. In the absence of negotiations on economic issues, it is difficult to conceive of what management could offer the union that would induce it to agree to a zipper clause.

If the parties cannot agree to proposed changes, the union should request mediation assistance and if mediation fails, the impasse should be sent to the Federal Service Impasses Panel under current AFGE procedures. Impasses that arise during a term of a contract are processed in the same manner as negotiations.

The Obligation to Negotiate:

Section 7114 of the Statute comprehends an obligation to "negotiate" with respect to changes of the Statute and "Consultation" is required only with respect to those labor organizations accorded "national consultation rights" under the Section.

Section 7114 of the Statute requires that the parties meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions. The term "reasonable times" is not further defined in the Law. It is evident that at the very least the duty thus described requires that the parties avoid unnecessary delays in the process of negotiation. In addition, a party must meet its obligation to negotiate prior to making changes in established personnel policies and practices and matters affecting working conditions during the term of an agreement.

The Federal Labor Relations Authority concluded that the law requires adequate notice and
an opportunity to negotiate prior to changing established personnel policies and practices and matters affecting working conditions during the term of an existing agreement. This requirement continues in place throughout the term of the collective bargaining agreement unless the specific issues thus raised are controlled by current contractual commitments, or a full or partial waiver of bargaining rights is present.

If they are controlled by the contract already, then they may not be changed unless by mutual agreement. This means either party may simply say, "No," to a change which would conflict with the labor contract.

If a waiver has been agreed to, then the specific terms of that waiver must be followed. Waivers are not all the same. They can be very broad or very narrow—or anywhere in between. The clause containing a waiver may or may not describe itself as a waiver. The waiver usually describes itself, or it might be implied from the results of a combination of contract provisions. Waivers are discussed in much more detail later on in this manual. For now, you should understand that in its simplest form, it means that a party or person gives up a right to which they would be entitled to but for the waiver.

In some interpretations, a contract clause on a given procedure or requiring a certain act is considered a waiver of bargaining for the term of that agreement because the net effect of the clause is that no more bargaining may take place on that specific item. In other words, the matter covered by that clause fixes the conditions it describes and there is not further obligation to bargain on it, absent another clause that might allow otherwise.

Whatever it is called, an agreement on a specific matter is a contract term which both parties are obligated to respect and to comply.

PREPARING FOR NEGOTIATIONS

Introduction

The role of the union drastically changes when it is granted exclusive recognition. It then has the right and the responsibility to speak for all workers in the bargaining unit. More importantly, the union has the right to negotiate a written contract with respect to conditions of employment as defined in Section 7103 of the Statute as—

Personnel policies, practices and matters, whether established by rule, regulation or otherwise, affecting working conditions...

Building Support

Negotiation of an effective contract requires strength; the local should concentrate on strengthening its organizational structure prior to entering negotiations.
Appropriate committees should be established, an effective steward system formed, programs formulated, and most importantly, the views of the members must be secured on the issues which they wish to have included in their agreement.

The union's strength is frequently developed through local meetings to select members of the various committees, including those who will prepare for and conduct the contract negotiations. Management will know if the negotiating committee has the support of the members and is speaking for the majority of the bargaining-unit employees. Any weaknesses in this area will be quickly spotted by management and may make negotiations more difficult.

**Adversary Process**

Collective bargaining is an adversary procedure. That is, each party enters the process to advocate, champion, and advance the interests of its own constituency. The interests of other parties, while not to be disrespected, are secondary to the goals of its own side. Those who see it as a harmonious labor-management meeting will likely be disappointed; since the typical situation is that one side; i.e., management, has virtually all what employees; i.e., the union, wants, it is inevitable that there will be conflict. In nearly all cases, management controls what the union wants, and you can be assured that management will be reluctant to give up any past prerogatives which are now subject to the negotiating process.

Each negotiating session is different and there is no standard procedure that locals can follow that will always result in negotiating a successful agreement; nevertheless, there are some basic principles that locals should utilize in preparing for and conducting their negotiations. The techniques discussed hereafter are not all inclusive but are many that are recognized as bringing success in negotiations. It is always best to keep in mind that while the bargaining techniques discussed are those we have confidence in through many years of usage, they should also be applied as guides, not restrictions on creative approaches to achieving a successful labor agreement.

**Selecting a Negotiating Team**

Union members on a negotiating team sometimes differ from those who handle the day-to-day relationships for the local. The stewards are the most important representatives of the local on a day-to-day basis. They must enforce the contract in terms of who works overtime, safety on the job, proper assignment of personnel, promotion problems within their jurisdiction, and the resolution of complaints before they become formal grievances.

As issues are processed higher up the administrative ladder, the union's position must be expressed by someone with decisional authority within the local (the president or his/her designee). This is particularly important when issues reach the top. When a decision must be made on day-to-day operations that may affect the entire bargaining unit, the local president or the designee is the only person who can speak for all bargaining-unit workers. This does not necessarily mean that all such discussions should be made in person by the president. It is quite common for the president to
exercise quality leadership by wisely choosing his or her designees from time to time, depending on
the issue and timing of an event.

Who should represent the union at the negotiating sessions? The process of collective
bargaining calls for many skills which are seldom possessed by any one individual. Discuss who will
be the members of the negotiating team. The negotiating team can be elected, appointed, or a
combination of both, depending upon the desires of the local.

Lines of communication should be opened up through the steward system so that the negoti-
ators and the members can keep each other informed before and during the negotiations. With this
type of guidance, the members of the local's negotiating committee can handle the balance of the
advance preparations as well as the actual negotiations.

Negotiating Skills

It is usually desirable to have members of the negotiating team selected partly because of their
position in the local, and partly because of their personal communications skills. Sometimes, this is
referred to as "interpersonal relationship" skills. The persons selected for the negotiating committee
must be articulate leaders of the local, have the confidence of the members and the ability to secure
information concerning the desires of the workers.

It is a common occurrence, and usually recommended, that the president of the local be on
the negotiating team, but not necessarily always as the chief spokesperson. Save that important
position for the most skilled negotiator of the local. Although the position of chief spokesperson is
prestigious, the trappings of the position must not take away from the important and critical necessity
of having a competent chief negotiator. The critical nature of the job is manifest when you consider
that you are dealing with the work lives of many employees, dozens, hundreds, or even thousands.
What happens to workers on the job not only translates to the production and quality of their work,
but it also affects workers' careers, families, and the communities they live in.

What is done in bargaining the day-to-day working conditions of workers has a profound
affect far beyond the literal wording of the contract. It is far too important a matter than soothing an
individual's ego or personal sensitivities. But, the sensitivities of each individual on the bargaining
team is also critical to the teamwork needed for successful achievement of bargaining goals.

Training in
Communications
Techniques

There are now available various programs through both federal government agencies and
private consultants that can be beneficial to union negotiators.
The Federal Labor Relations Authority and the Federal Mediation and Conciliation Service have programs to facilitate communications and better understanding in cooperative labor-management dealings. While these approaches are not technically considered within the adversarial arena, there is nothing to dissuade the parties from a mutual endeavor, blended with traditional adversarial bargaining.

Even where the union may anticipate a difficult time in upcoming negotiations, training in alternative approaches is always helpful and just may be the key to defusing tense situations in the sometimes grueling negotiating sessions often encountered in protracted bargaining. These alternatives, commonly call "ADR," for alternative dispute resolution, are discussed in a separate section in this manual. We encourage you to browse through that section after familiarizing yourself with the basic adversarial process.

Size of the Committee

The negotiating committee should be no larger than can be controlled by the chief spokesperson. Broader participation will facilitate communication within the bargaining unit. However, official time under the Statute is only guaranteed for the number on the committee equal to the number on management's committee. Any additional official time will have to be negotiated in the groundrules or absorbed by the union.

It is now well established that the union may negotiate for more negotiators, paid for by the agency, than the number of management negotiators.

Members of the team should be knowledgeable in the problems that the local faces and should be representative of the composition of the work force, including second and third shifts in round-the-clock operations, special situations relating to employees with second languages, gender, racial or other types of discrimination, disabled employees, and any other areas needing special attention in the collective bargaining agreement.

Knowledgeable Negotiators

A knowledgeable negotiator should have a multifaceted awareness of the differing levels of expertise desirable in one who will be bargaining for the union. On the one hand, it is essential that all negotiators on the team be familiar with the boundaries of what is permissible (not to be confused with "permissive" under the law with respect to what is negotiable. At least some technical knowledge of laws, rules or regulations is necessary. This is so that an evaluation can be made quickly at the bargaining table when management responds with an assertion that a proposal violates something. While this does not mean that a negotiator has to be an expert in all fields, what you might call a working knowledge is important.

Each member should also have that essential knowledge of the work place. The member should be familiar with the problems causing grievances and the resolutions sought and won by the
union, therefore, he or she should know the grievance process. If your unit is made up of wage board, classified, and professional workers, the bargaining team should be represented by members who have first-hand knowledge of the problems these groups face and should be present at the table when those relevant issues are discussed.

It will also be important to have someone at the table who is knowledgeable in the equal employment opportunity program. The problems of minorities, women, and older workers must be represented by members with more than just general knowledge of these problems.

Consult Experts

It is also possible to have technical experts of the local attend the negotiations and speak on a particular issue when it is being negotiated - for example, promotions, classification, or health and safety. Thus, one position on the negotiating team can be rotated among a number of people although the majority of team members should participate in all sessions to preserve continuity.

Effectiveness

The effectiveness of every negotiating committee depends upon the power behind it. If the union is weak, has few members, or lacks determination, the negotiating team is not likely to secure a good contract.

It is most effective when it enters negotiations with the full support of membership. When management is reluctant to accept negotiations in good faith and to grant changes in present personnel policies, practices and working conditions, it is difficult to force them to make changes without a convincing mandate. The stronger the union, the more opportunity for success.

Impasse procedures help, public opinion assists, but it is a strong local with a high percentage of membership in the bargaining unit, and with accurate records which can tip the scales in favor of the union's proposal in a given situation. Some locals initiate a determined and sharply focused organizing drive in advance of contract negotiations.

A successful organizing drive that brings in a substantial number of new members accomplishes many good things which support the successful achievement of a new contract. For one, the local will have fresh new ideas and creativity, a rich resource from which to draw upon when considering areas of concern for contract proposals. Another positive is the basic increase in financial resources added by more dues paying members.

However, beyond those, perhaps the greatest benefit with particularly with respect to successful negotiations is the interest generated in current members as well as new members. With an influx of new members, morale is boosted, energy is created, and this, in turn, leads to more volunteers in the various areas needed to support the negotiating team.

As can be seen in the following discussions, preparing the union's proposals and supporting
the union’s case for each subject area is not as simple as sitting down and writing out a bunch of demands. No, preparation is the key and work is the vehicle.

Gathering the Information—
Start Early

There are a number of sources of information which must be utilized before the contract proposals are actually drafted. Foremost among these are the files of the union, including the grievance files. Discuss worksite problems with the stewards.

The stewards should be knowledgeable in day-to-day problems at the work site and active stewards are invaluable in providing information which will form the basis of specific contract proposals.

Among the most important sources of information are the rank and file members; it is important that they be contacted to solicit their views. This leads to support of the negotiating committee. This action aids the membership organizing efforts. The benefit of membership is having a say in a contract that sets the terms and conditions of employment.

The negotiating committee may rely on a "proposals" committee, which might be composed of different members, depending on various members' strengths. It is not uncommon for some or all members of the proposals committee to be placed on the union’s negotiating committee.

A proposals committee can play an important role before contacting the membership for their views. It should develop its own list of demands based on the collective past experiences in the work place. The proposals committee should ask the members to expand and comment on its tentative proposals, rather than asking them to start from scratch. In this way, much time can be saved by providing an outline of goals, and it also helps eliminate redundancy.

Feedback from the Members

The negotiating committee can use several methods to obtain responses from the membership. It can:

- Mail out or distribute a questionnaire asking for additions, comments and criticisms;
- Hold a special local union meeting or meetings to discuss contract demands;
- Hold separate worksite meetings during break periods, lunch or immediately after work where general comments are solicited from workers at their work site.
Work site meetings sometimes enable the committee to learn of special needs which have not been brought up at general membership meetings. Face-to-face contact in small groups is often the most effective method for getting people to express themselves freely. Also, it cannot be overstated as to the positive impression for the union this one-on-one style has on the "grassroots" level.

**REMEMBER:** It is only the union members who have the right to contribute to the union's contract proposals and vote on issues to be brought forward and to ratify the contract. This is a good time for the local's organizing committee to run an organizing drive around contract negotiations.

While it is the institution of the union that has the legal obligation to fulfill the critical function of bargaining a contract, no useful comments from non-members should be ignored. Consideration of non-members' views should be taken into account, but this does not mean union officials must always satisfy the desires of non-members.

The union must hold the overall welfare of the bargaining unit as a whole as its primary concern. This is not just a benevolent thought, it is a legal obligation of the union to represent the interests of all, despite the desires of some non-members.

Often, non-members threaten the union with some sort of action for not incorporating their own agendas. While the union should give due consideration of whatever these employees might offer, such suggestions should be placed in the overall context of the needs of the bargaining unit, particularly for the long run. While the union cannot reject non-members' views on the basis of union membership, it is under no obligation to give them any more weight than other workers.

**Other Contracts**

An important source of information is other contracts, especially those in the adjacent geographical area and those with the same agency. The danger in using other contracts is that they are final products of previously-drafted contract proposals which are usually unavailable.

Therefore, contract provisions in negotiated contracts must be strengthened rather than used verbatim if you expect to wind up with similar contract language. Copies of contracts can be obtained from other locals in the District, from your National Representative, District National Vice President. Please process all requests through the office of your National Vice President.

**Publications**

An excellent source of good contracts is the Government Employees Relations Report (GERR) which is a weekly publication of the Bureau of National Affairs, referred to as BNA. Although the subscription rate is expensive, the publication is excellent. Information on subscribing may be obtained from the Personnel Department in the National Office. If your local cannot afford to subscribe, possibly several locals can jointly underwrite the cost of a subscription, or you can read GERR at a nearby university which has a good library. The local should be cognizant of decisions affecting
bargaining issued by the Federal Labor Relations Authority and the Federal Service Impasses Panel.

In addition to contracts, GERR publishes all the decisions of the third parties under the Executive Order (which are also published in FPM Supp. 711-2) as well as all arbitration awards. The Field Services Department maintains copies of contract proposals on selected issues that should be in all contracts.

Arbitration decisions can be very important in alerting the negotiating committee to pitfalls in contract language as well as ascertaining contract language which successfully accomplishes the union's goals.

Other Homework

There is another very important source of information which is often ignored until it is too late. That source is the laws, executive orders, and regulations which pertain to personnel policies and practices and matters affecting working conditions. These must be studied prior to drafting the contract proposals, rather than at the bargaining table when a problem arises.

Besides, the Federal Labor Management Relations Statute and decision of the Federal Labor Relations Authority, and the Federal Personnel Manual, you must be familiar with published agency policies and regulations, including Agency subdivision regulation, regional, and lower level activity regulations.

You are much better equipped to draft contract proposals which will not conflict with existing regulations if you are knowledgeable of all pertinent regulations. Keep in mind that regulations, even agency-wide regulations, cannot be a bar to negotiations.

Local, Regional, and Agency subdivisions cannot issue any regulations that interfere with your bargaining rights. Only those few regulations at the Agency level that meet the "compelling need" test established by the Federal Labor Relations Authority can bar negotiations, and this test is difficult for agencies to meet.

Your contract is only subordinate to published government-wide (OPM) policies and regulations in existence at the time the agreement was approved. The only exceptions are those regulations that are mandated by a law passed after the contract was approved.

Renegotiating the Contract

If you are negotiating an existing contract, the negotiating committee should look at its past contract gains, as well as disappointments, and review the records of the previous negotiations.

It must be remembered that you do not lose all the benefits in the current contract. They
remain in effect as current terms and conditions of employment until they are changed by the negotiating process even if the contract has expired.

You should only propose to change those sections you want. On the rest of the contract, you should prepare a simple statement of "no change proposed" and write a specific proposal only for those parts you want to change.

During the last negotiation, what clauses did the union reluctantly give in order to secure other substantial benefits? These issues should be included in the new contract proposals if they are still important to the local.

For example, was safety a relatively easy subject to negotiate or are there improvements necessary in the article on health and safety? Which subjects have been difficult to negotiate that could be rewritten and negotiated in the health and safety article?

For example, electricians are repairing high voltage equipment alone in remote areas, and the union desires to always have two workers present when this work is being performed.

When the union attempts to negotiate a clause to correct this problem, management usually will say that it is their prerogative to decide the number of workers required to do a given task under (5 USC Sec. 7106).

However, you should argue the safety aspect of the issue and insist in those instances where dangerous work is being performed in remote sites that the safety of workers must be considered.

Analyze Old Contract

The entire contract should be carefully analyzed to see if it is resolving problems as intended; or are there built-in weaknesses? For example, is the negotiated grievance procedure so cumbersome that it takes forever to resolve grievances; or is it assisting in expeditiously resolving worker complaints?

Among the best sources of information as to the effectiveness of the contract is the steward system and the grievance and arbitration files, which should always be carefully maintained. Also, the negotiating committee should study the carefully kept records of labor-management meetings to see if problems have been resolved.

Drafting the Proposals

The actual drafting of the union’s proposals is a highly responsible task, and all the background information must be made available and carefully studied before the language is put on paper.
Adapt

Although model contract language is available on a number of important subjects, it is necessary that contract proposals be adapted to your own particular situation. It is a good practice to assign different articles for drafting to the various members of the negotiating committee according to their expertise. Contract language should be written in short, simple declarative sentences that clearly state what you want. These are easiest to interpret and prevent contract violation.

Vague clauses often lead to trouble. It is better to establish the clear meaning during negotiations than trying to defend your meaning of a vague contract clause at an arbitration.

That is not to say that the parties may choose general, or even intentionally vague language to bargain their way out of an impasse situation, but it should be done more as a deliberate decision that from simply not knowing the consequences of such wording. Many times, an informed decision to leave a clause open ended can mean agreement, even though the parties know full well what they are facing during the term of the contract.

Reconcile Proposals

As the contract proposals are being drafted, it is important that the interests of the different groups composing the local union be considered. To have the solid support of the membership, the negotiating committee must reconcile competing demands. The skill with which the leaders of the union can accomplish this task may have an important impact on the negotiations.

We strongly recommend the broadest possible coverage of the grievance and arbitration procedures. Only through the negotiated grievance procedure and an arbitrator's award can an aggrieved worker receive "make whole" remedies, such as retroactive pay for retroactive promotion.

In case B-180010, the Comptroller General established that labor contracts properly approved by an agency become nondiscretionary agency policy, and that contract violations are as much an "unwarranted and unjustified personnel action" as an illegal suspension or disciplinary action. Therefore, the Back Pay Act is applicable for contract violations.

The proposals should always ask for more than the union expects or needs to, so there is room for compromise. However, they should not be so extreme or obviously illegal that they cast doubt on the union's credibility.

Don't Confuse

Please keep in mind that the proposals should be written in simple English, avoiding complex legal language since proposals must be understood by management. The use of extensive "whereas's" only adds to the length of the proposals without contributing to their substance. Such appendages may even be damaging by leading union members to think they have something they do not.
Avoid repetitious language; it weakens the proposals by distracting the readers from the substantive provisions. Many readers will gain a sense of the repetition and then assume that the entire portion of the agreement is the same and start to skim over the language. This may lead to a lack of attentiveness than may cause an important point to be missed.

Draft the union's proposals best suited to the local's or council's individual needs. Make sure your proposals reflect your intentions. Clarity is important, as it speeds up negotiations and avoids unnecessary impasses. A good technique is to have a member who was not part of the proposal-drafting process review the proposals and have that person tell you the meaning derived from them. The reader's view should parallel your intentions.

REMEMBER:

• Keep the sentences short. Fifteen to twenty words, or less, are best.

• Don't use legalese.

• Use the easiest understood words. For example, use "contract" instead of "collective bargaining agreement." Use "seniority" instead of "length of service," or "service computation date." Use "workers" instead of "employees."

• Proposals should be easy to read and have correct spelling and grammar.

• Use large type and double spacing. If possible, number each line and each page. The appearance of the final document can be changed after the negotiating work is finished.

In drafting the proposals, write as comprehensively as possible. Once the initial proposals are drafted, the chief negotiator should have the responsibility of putting them in final form and carefully proofing them after they are typed. Some locals prefer to have the membership routinely approve the proposals after each one has been carefully explained, but this should not be necessary if the membership already made its input.

After the contract proposals have been completed, it is usually a good idea to have your National Representative check them out.

GROUND RULES

Ground rules have been used in the Federal Service since the issuance of Executive Order 10988. However, they have never been utilized on the same scale in the private sector since unions have the strike weapon to bring unwilling management to the bargaining table.

The main purpose of having written ground rules is to firmly establish the amount of official time for union negotiator and a fixed bargaining schedule for negotiations. Such formality might not be necessary if management had consistently shown a desire to expeditiously complete contract
negotiations.

There is little reason to spend a lot of time negotiating ground rules. Two days is all that should be needed. The Union should know its bottom line after the first day. If agreement is not quickly achieved, call for a Federal Mediator. If mediation is unsuccessful, proceed to the Federal Service Impasses Panel.

All that is needed in ground rules are the basics. Too often ground rules are cluttered up with procedural minutia. All that is needed are:

1. Definition of the parties to the ground rules;
2. Schedule for negotiations
   A. Date to exchange proposals
   B. Date negotiations to start
   C. Days each week
   D. Hours each day
3. Procedures for caucuses;
4. Procedures for recesses;
5. Number of Union negotiators on official time; and
6. Duration of negotiations.

Official Time

5 USC 7131 provides:

(a) Any worker representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the worker otherwise would be in duty status. The number of workers for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

This provision establishes a statutory right to a minimum number of union officials authorized official time under the FLMRS. (...The number...shall not exceed the number of individuals designated as representing the agency...). However, it is possible to negotiate for additional team members to
receive official time.

The term "negotiations" includes all aspects of bargaining, including preliminary meetings on ground rules, negotiating sessions, mediation, and other impasse resolution procedures. Therefore, it is important to conclude ground rules without spending an excessive amount of time.

The number of negotiators is for the Union to decide. The only issue to be bargained is the amount of official time in excess of that guaranteed by law. An example would be:

The union is permitted to bargain for a number of negotiators in excess of the number of management negotiators and for all of them to receive official time. Management does not have to agree to the proposal but it is a mandatory subject for bargaining.

Keep it Moving

Besides the amount of official time, another important item in the ground rules is the schedule of negotiations. It is necessary to stress the need to speed up the negotiations process.

It is important to have regularly scheduled meetings in order to maintain bargaining momentum. With long breaks between negotiating sessions, the more likely the parties are to retrench their positions which makes it difficult to achieve the acceptable compromises necessary to reach agreement.

Ideally, the parties should meet 8 hours a day, 5 days a week for a period of sixty days including one or two weeks of mediation. Caucuses can be used during this schedule to develop compromises. Also, the local should be prepared to spend additional time outside the negotiating schedule to develop alternate positions.

A schedule of 6 hours at the table and 2 hours of caucus per day is very reasonable. And, as negotiations progress, an additional 1 day per week can be used for caucus purposes. At the end of 60 or 90 days at the maximum, the parties should either have a contract or be at the final impassed position.

The ground rules should also provide for exchanging proposals prior to beginning negotiations. The Union should first submit its complete package to management after the ground rules are completed.

Management, in turn, should have no longer than 30 days to study the proposals and submit their counterproposals before negotiations begin. Sometimes, the proposals are exchanged simultaneously.

Exchanging overall proposals in advance will hasten the collective bargaining process and is much more preferable than exchanging proposals piecemeal.
Other Items

While there is no set pattern for the ground rules, other items commonly found include a procedure for "initialing off" a completed article in negotiations, access to the Federal Personnel Manual and agency regulations, and the place where negotiating sessions will take place.

Things to avoid spelling out in detail include:

- impasse procedures which are now entirely covered by law and FSIP regulations;
- negotiating procedures which should be worked out informally as bargaining progresses;
- limitations on publicity since each side is responsible for its own publicity; and
- limitations on who the negotiators will be. Each side has the right to name its own bargaining team including nonemployees such as a national representative or the local's or council's business agent.

Mediation

A local should file, with the FMCS, Form F-53 prior to meeting on ground rules in case it becomes necessary to obtain the assistance of the Federal Mediation and Conciliation Service.

Additional information on filling out and filing the form can be found in the appendix to this manual. Mediation is recommended as a method of resolving serious impasses over ground rules but if you are unsuccessful because the issue should be forwarded to the Federal Service Impasses Panel for resolution.

Ground rule negotiations should not take more than five days (one work week) to negotiate. If it takes longer, the local should move to mediation or the Federal Service Impasses Panel.

Most impasses over ground rules are decided by written submission of the parties rather than the more formal hearing or arbitration procedures the Panel utilizes for contract impasses.

Hopefully, as the collective bargaining relationship matures in the federal sector, ground rules can be reduced or eliminated when the parties come to trust each other's handshake. In the meantime, ground rules are a valuable procedural tool if not overused.

**SCOPE OF NEGOTIATIONS**
Goals

Unions seek to accomplish three basic goals through collective bargaining:

- The continuation, or "freezing," of current practices of which the union approves. Example: if the present work schedule is desirable, the union will seek to negotiate it into the contract, to freeze the schedule for the life of the agreement.

- To change or modify present policies or practices which the union does not approve. Example: some supervisors allocate overtime work solely on the basis of their own personal prejudices. The union will seek to establish a policy of equal allocation of overtime work.

- The establishment of a new policy where the policy is nonexistent or unclear. Example: some department heads authorize temporary promotions when workers are assigned to higher grade level work for 30 days or more while others merely authorize details. The union will seek to establish a uniform policy granting temporary promotion to all workers for work performed at a higher grade level.

What is Negotiable

The FSLMRS (section 7103) states that:

Consistent with the Statute, the parties must bargain over "conditions of employment" which are defined as personnel policies, practices and matters whether established by rule, regulation, or otherwise affecting working conditions except for matters relating to political activities, classification of any position or matters specifically covered by Federal Law.

The major difference between collective bargaining in Federal and private employment is that Congress decides wages, hours, and fringe benefits rather than through the collective bargaining process.

In addition to "mandatory" subjects for bargaining, there are "permissive" subjects for bargaining. There are issues the agency may bargain over but are not required to do so and do not commit an unfair labor practice if they refuse to do so.

5 USC 7106 provides that "nothing shall preclude" the parties from negotiating—

- at the election of the agency, on the numbers, types, and grades of workers or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

- procedures which management officials of the agency will observe in exercising authority over this section, or,
• appropriate arrangements for workers adversely affected by the exercise of any authority under this section by such management officials.

Exceptions to the bargaining obligations (Sections 7103 and 7117 of the Statute)—

• Management may not bargain over any of its statutory rights under Section 7106(a) of the Statute. (See Section IX.)

• The duty to bargain shall not extend to any matter which is inconsistent with any Federal law or Government-wide rule or regulation.

• The duty to bargain shall not extend to any matter which is the subject of any agency rule or regulation if the Authority has determined that a compelling need exists for the rule or regulation. A compelling need exists for any agency rule or regulation concerning any condition of employment when the agency demonstrates that the rule or regulation meets one or more of the following illustrative criteria:

  • The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishments of the mission or the execution of functions of the agency or primary national subdivision in a manner which is consistent with the requirements of an effective and efficient government.

  • The rule or regulation is necessary to insure the maintenance of basic merit principles.

  • The rule or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature.

  (This applies to any rule or regulation issued by an agency or issued by a primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the workers in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.)

Definitions

Mandatory Subjects - those subjects that the parties must bargain about if either party raises them in negotiations, although they are under no obligation to reach agreement. For example, hours of work, affirmative action plans, competitive area for RIF and promotions, methods of staffing shifts, and grievance procedures are mandatory subjects of bargaining.

Permissive Subjects - those subjects about which the parties may bargain if they choose but need not do so; in such cases, they will not be guilty of an unfair labor practice charge for refusal to bargain in good faith.

Examples of permissive subjects would be the methods used to fill all supervisory positions.
The number of workers assigned to a work project, shift or equipment, the composition of the bargaining unit, waivers of bargaining rights during the term of a contract and methods of doing work, steward structure, and ratification procedure.

**Prohibited Subjects** - illegal subjects about which the parties may not bargain. Examples are budget allocation, less than a 40-hour work week, rates of pay, performance standards, promotion by strict seniority, number of leave days, and retirement.

It should be noted that, in the private sector, over a period of time the scope of bargaining has increased, and these three divisions of the subject matter for bargaining have not been static.

However, the situation is much more complicated in the Federal Sector because of the management rights provided by the overly restrictive interpretation by the Federal Labor Relations Authority of the extensive management rights provided by section 7108 of the FSLMRS.

Illegal, or "prohibited" subjects are found in Section 7106(a) of the FSLMRS.

Statutory Contract Approval Procedure
(5 USC 7114):

- An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

- The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

- If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of the Statute and any other applicable law, rule, or regulation.

- A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

It has been established by FLRA decisions that the 30-day review period starts when the final signing takes place.

Also the union must be notified in writing or by service of a copy of rejection on or before the 30th day. If not, the contract goes into effect on the 31st day and any issues management wanted to reject must be argued in any grievance/arbitration matter on those subjects that would have been rejected if the review had been timely.
BARGAINING IN GOOD FAITH

Collective bargaining implies that both parties will bargain in "good faith." The definition of good faith bargaining is based on guidelines evolving out of experience in the private sector.

Certain factors are important in determining whether good faith bargaining is taking place. 5 USC 7102(12) requires the parties to:

meet at reasonable times and to consult and bargain in a good faith effort to reach agreement with respect to conditions of employment...and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

In General

Some important "rules of thumb" to follow to determine if management's bargaining is "in good faith" are:

- The primary purpose of all meetings is to reach agreement. If management states that it is meeting only because the law requires it to do so and it has no intention of reaching agreement, such action would be in violation of good faith bargaining.

- Bargaining meetings must be held at reasonable times and places. An effort to restrict negotiation sessions to inconvenient hours or inaccessible places would be evidence of failure to bargain in good faith.

- Although the primary purpose is to reach agreement, neither party is obligated to accept a given proposal. However, if a number of proposals have been introduced, it is assumed that some agreement will result if the parties engage in good faith bargaining.

- Either party may reject a proposal by the other or claim a proposal is not negotiable. Unions can challenge such a claim under Section 7117 of the Statute and Section 2424 of the Rules of the FLRA. Because of the severe time limits, AFGE locals and councils are encouraged to strictly follow AFGE's internal negotiability appeal procedures.

An agency cannot challenge a union's claim of nonnegotiability under Section 7117. Instead, they must use the Unfair Labor Practice procedure of Section 7118 of the Statute.

Merely stating "no" or "not negotiable" does not meet the test of good faith bargaining. "No" can be a counter proposal if serious consideration is given to a proposal.

- Neither party may refuse to negotiate over mandatory items for bargaining. For example, management cannot refuse to bargain over a grievance procedure or issue determined negoti-
tiable by the FLRA without committing a ULP.

- The FLRA, in 6 FLRA 24, established that management has an obligation to provide the union with information that is "relevant and necessary" to the performance of its representational duties including the negotiations and enforcement of a contract. In the decision, it was established that if the requested information was in connection with negotiations, including preparation, such information is considered "presumptively relevant" and the agency must prove that it is not relevant. For example, in negotiating a clause dealing with the assignment of overtime, the union has the right to request information concerning the total amount of overtime worked, as well as the overtime hours worked by each individual employee. (See 6 FLRA 24)

- Neither party may insist on including in the contract non-mandatory items as its price for agreement. Management may demand that the union ratify the contract by secret vote rather than by a show of hands. The union may negotiate on this matter if it chooses, but it is under no obligation to do so since it is the right of a union to determine its own ratification process.

- Management and the Union must delegate to its negotiators sufficient authority to bind management, subject to the ultimate approval by the agency head or his/her designee. The local activity head has no right to change the negotiated agreement made by his/her designated representative. An agency cannot deny a union the right to bargain on a negotiable matter by refusing to delegate authority to the local for bargaining. If they want to retain the authority at a higher agency head, they are required to send to the bargaining table someone from that higher level with authority. Management can no longer hide behind lack of authority.

- Neither party may refuse to put in writing any agreements that have been reached. A test of management's good faith is whether it will sign a written agreement.

- Management may not unilaterally change working conditions during negotiations without prior notice to the union and providing the union with an opportunity to negotiate over the change. Management may not change conditions while negotiations are taking place in an effort to weaken the influence of the union with its membership.

- Management may not refuse to bargain on demand by a union over a matter not covered by a contract unless the issue was bargained away as a compromise of the existing contract.

- The most difficult issue in "refusal to bargain" cases is whether a party is negotiating in good faith, since this requires a subjective evaluation of the party's attitude as reflected in its course of conduct during negotiations. The FLRA has ruled, however, that the "good faith" issue is irrelevant in certain situations.

Thus, the following conduct has been held to be a per se violation of the bargaining responsibility:

- A refusal to discuss a mandatory subject of bargaining.
The failure to meet a reasonable request for data necessary to prepare for and negotiate on a mandatory topic. This is viewed as removing the subject from the bargaining table just as effectively as an outright refusal to discuss the matter.

Insistence, to the point of impasse, on including in a contract a subject that is permissive or illegal.

Surface bargaining, i.e., merely going through the motions of bargaining.

Arbitrary scheduling of the days and times of bargaining meetings.

An employer's determined and inflexible position toward union proposals.

Dilatory tactics with an apparent intent to reach an impasse, unreasonable procrastination (in executing an agreement), or delay in scheduling meetings.

Lack of willingness to compromise on the great majority of the proposals.

Injection of numerous proposals after bargaining has progressed.

Insistence on unilateral control by management of working conditions.

Imposing onerous conditions upon either bargaining or the execution of the contract.

Commission of unfair labor practices during negotiations.

Some of the above items will be very difficult to prove in ULP proceedings especially where the agency raises as a defense that they did not commit an unfair labor practice, they were merely engaging in "hard" bargaining. For these reasons, it is important that you detail the facts to support the proceedings.

BASIC PRINCIPLES AND PROCEDURES OF CONTRACT NEGOTIATIONS

Negotiating Committees

The chief negotiator of the union negotiating committee and the chief negotiator of the management committee should act as spokesperson for their committee. Both have equal rights.
The management chief negotiator may attempt to act as chairperson for the entire group and decide who shall speak and when. The union negotiating committee must not allow this to happen. Even though yesterday the members of the union committee were taking work orders from management, today as negotiators, they meet as equals.

The essence of collective bargaining is that representatives of equal status mutually reach agreement. If the two parties do not have equal status, then the stronger is tempted to make unilateral decisions.

A management or a union official who recognizes the importance of the issues involved in collective bargaining will select a chief negotiator who has prestige and credibility in the eyes of both management and union representatives.

The chief negotiator should be a person who carries enough weight within the union to have frank discussions with the head of the activity concerning any problems which arise in negotiations.

The use of a representative committee permits workers from various departments to participate in the negotiations.

In addition, committee members with specialties in particular fields (i.e., merit promotion and equal employment opportunity) can assist the chief negotiator in areas with which he/she is not completely familiar. They, in turn, can keep the membership informed which strengthens the negotiating committee support for their position.

Chief Negotiator

The role of the chief spokesperson of the bargaining committee is of crucial importance.

While in many negotiations no member of the committee is allowed to speak unless he/she is asked specifically to do so, or unless he/she requests permission of the chief negotiator, other negotiations are less formal and committee members are allowed to speak up in an organized manner following the lead set by the chief spokesperson.

There is no hard and fast rule to the preferable method, and each local should follow a model which suits its own needs and works satisfactorily. In any event, the union committee should be structured so that the negotiations do not turn into a free-for-all.

Positions on the committee may be rotated to provide expertise on particular subjects as negotiations progress. However, this process should be used sparingly. Continuity of participation is very important in negotiations. This does not preclude the use of alternates when a committee member is ill or otherwise is unable to attend negotiations. In difficult negotiations, it is best to formalize the negotiations. Use any one spokesperson who will call on others when needed and be supported by accurate records.
National Representative's Role

The role of the National Representative should be clarified if he/she is to be utilized. In some instances, he/she sits as chief negotiator while in others he/she serves as a resource expert while the local union members actually conduct the negotiations.

In some Districts, because of the National Representatives' busy schedules, they only participate in difficult negotiations or where bargaining breaks down. Regardless, the National Representative should be contacted well in advance of the beginning of negotiations to determine what role, if any, he/she will play.

Caucus

A caucus is a brief, private meeting among one bargaining team. Caucuses are an integral part of the negotiation process.

A caucus can be called for any number of reasons and should be at the sole discretion of either party. That is, it should be a unilateral right as it is a part of the method and strategy of a party's technique of bargaining.

Be sure that there is a private room available for the union committee to hold caucuses. The caucus is the place for the negotiating committee to discuss and explain to each other matters which should not be discussed in front of the other party and settle any differences of opinion which may exist. Disagreement between committee members or the chief spokesperson should never be displayed at the bargaining table.

If any of the committee members believe that the chief negotiator is not operating properly, they should call for a caucus.

A caucus may be used for any legitimate purpose upon request by the chief negotiator for either side without agreement from the other side. For example, a caucus may be used to discuss a counterproposal made by management when the union believes it needs an opportunity to study the matter more thoroughly.

It is important to keep caucuses as short as possible. Overly long caucuses interfere with bargaining momentum which is necessary in situations where compromise is possible. In the early stages of negotiations, caucuses should be few while toward the end, they will be more frequent and longer as the union is developing its final offer on difficult issues.

Role of the Secretary
The secretary of the negotiating committee plays a very important role in keeping track of what transpires. There are three areas in which the secretary has responsibility. He or she must:

- keep track of all proposals and counterproposals of both labor and management on all issues;
- keep track of all agreements and understandings that have been reached;
- summarize the positions taken by the union, especially those management had difficulty in rebutting; and
- summarize the positions taken by management, especially those the union had difficulty in rebutting.

Accurate records are a must. They are vital when an issue is unresolvable by the parties and is impassed to the Federal Service Impasses Panel. They are also very useful in any arbitration over the terms of the contract where the Union needs to convince an arbitrator on the intent of the parties when agreement was reached on the disputed contract provision.

**Procedural Guidelines**

Probably the most important rule of procedure is to keep the negotiation process flexible rather than being stifled by procedural mechanics.

Both parties should clearly understand the kind of procedure to be followed to indicate acceptance. If the specific language is agreeable, the parties should initial off on the entire section or preferably the entire article rather than line by line or paragraph by paragraph. Initialed copies should be distributed to each team member as negotiations progress.

Agreement to sections is tentative because agreement an a subsequent item may require a modification of the original item to make the two conform. Neither party, however, should be able to revoke its approval at will.

**First Session**

At the first negotiating session, members of the negotiating committee should be introduced. Never underestimate the importance of the common courtesies and preliminary moves which set the emotional tone for the negotiations.

If procedural matters such as session schedules has not been firmed up or there are last minute proposals to be exchanged, these things should be accomplished first.

A question sometimes arises as to whether the negotiating sessions should be recorded. AFGE policy prohibits the use of tape recorders or verbatim transcript, leaving it up to each side to take its
A verbatim record inhibits the dialogue necessary to reach agreement. Joint detailed minutes are not necessary. Each side keeps its own accurate record of negotiations.

Normally, the union first outlines in general terms for management each of its proposals. The details are left to be discussed when the specific item is being negotiated. The union should answer any questions of clarification during the contract sessions.

Likewise, any management proposals should be reviewed in general terms and any ambiguities clarified. Then an informal agenda for discussing the issues should be developed.

The best practice is to group the union and management proposals according to subject matter and to discuss each subject concentrating upon the differences between the respective proposals, rather than taking each party's list of proposals separately and haggling whose language will be discussed first.

During the early stages of collective bargaining, both parties tend to be somewhat fearful of the new process. Therefore, an effort should be made to create a climate that makes agreement possible. Non-controversial issues should be discussed first and agreed on if possible. This starts bargaining momentum, avoids early impasses, and reduces the possibility of hostility developing.

Disputed items should be set aside so agreement can be reached on easier issues. The union will soon realize the benefit of thorough preparation. Its list of priorities in descending order of priority will now aid them in developing the bargaining strategy to counter the agency's positions.

The union should be careful not to fall into a trap where management will concede the first few issues which are non-controversial, and when a more difficult issue comes up, they will accuse the union of being unreasonable for not agreeing with management. The union must be prepared to hold its ground and not fall victim to the "numbers" game.

As the various proposals are discussed in detail, any problems which arise from the proposal or the intent and scope of the language, should be explored so counterproposals may be drafted. It is obvious that the union negotiators must have the facts to support their position if they are to be successful.

Just as background preparation is crucial to success in any hearing, it is also the case in negotiations, although the actual bargaining is more exciting.

The major distinction between the experienced and inexperienced negotiator is in the matter of timing—that includes knowing when to compromise. Please keep in mind that negotiation is still an art, not a science, and experience is the best teacher. More so in art than science, the quality of personal judgement is probably the single most important asset in achieving success in negotiations.

The experienced negotiator may have the urge to make an important point or a new proposal,
but the negotiator controls that urge and selects the most appropriate and effective time. For example, occasionally management committees have a "loud-mouth" who wants to dominate negotiations.

Sometimes, it is better to wait until the other members of the management committee grow tired of "mouth" before jumping on making an issue of the conduct. Your remarks may then be more effective and there is usually no sympathy for the offender.

Another tactic that may be used as an alternative, or in addition to others, is to simply direct all your discussion to the "mouth," as though he or she were the management chief spokesperson, and then ignore the designated management chief.

When management's chief objects or calls your attention to your treating the "mouth" as the spokesperson, complain about not knowing who is the real chief spokesperson. This will usually cause management to rein in the "mouth."

When agreement is reached on an issue, do not rush to the next item. Take the time to write the final language. It should clearly reflect the intent of the parties. Remember, don't use legalisms. Use short sentences.

Make sure all on the committee agree that the language is clear and reflects settlement. Time spent wisely at this point may well avoid arbitration later. Don't haggle over style. Content and clarity is what's important.

**Wrap it Up**

At some point in the sessions, the number of issues should narrow to the point where the negotiator feels the timing is right to "wrap it up." The final status of the negotiating sessions may occur fairly early in the progress or perhaps not until much later with the assistance of a Federal mediator.

Thus, patience is an essential ingredient for the negotiator, and he/she must also encourage patience on the part of the balance of the committee. Never let management insist on a "package deal" when there are outstanding issues which haven't been fully explored.

On the other hand, the most difficult task for a negotiator is to recognize a good offer when negotiations are drawing to a close, this is true after hard bargaining.

**Final Position**

When the negotiations begin to bog down, it is time to call for a mediator from the FMCS. The mediator should use skill to help the parties reach agreement. If this is not possible, a time will come when the Union has no movement to make.

At this point, take a caucus long enough to draft your final offer. Remember, never say it's
your "final offer" unless you mean it. Those who casually claim a position is "final" and later compromise, lose their credibility. Management will never know when the end is at hand. This makes settlement impossible.

NEGOTIATION TACTICS AND TECHNIQUES

The basic objective in collective bargaining is to reach agreement. Of course, a negotiator wants to obtain an agreement with the most favorable terms for his or her side.

Unfortunately, there are representatives to be found on both sides of the bargaining table who approach collective bargaining as if it were some kind of trial by combat or a debating society.

Such an approach raises serious obstacle to the development of a constructive labor-management relationship.

The following suggestions are designed to facilitate the reaching of sound agreements in negotiations.

Being Yourself

The first rule the successful negotiator must follow is to be yourself. Use an approach which is consistent with your own personality, experience, and background. Some highly successful negotiators are "table thumpers" while others are quite reserved. Each is effective if they use their personality to advantage.

No negotiator should try to copy the technique that he/she has observed in another when their personalities are completely different.

Ethics

It is vital that the negotiator be ethical. The negotiator is dealing with a long-range, highly personal relationship which has all the daily frictions of the typical marriage, but without much likelihood of divorce. Thus, a temporary gain made through deception or distortion of facts will surely, in the long run, hurt the union.

The "Yes Habit"

Start discussions from areas of common agreement rather than from an obviously controversial matter. Secure a basis of agreement in which to build and you will find that subsequent favorable accommodations are more easily reached on disputed issues.
Assume Acceptance and Have a Positive Attitude

Do not indicate that you lack confidence in the reasonableness or acceptability of any major proposal. If you indicate in any way that your proposal might be turned down, it probably will be.

The Forced Choice

It is often difficult to reach a decision. The more that rides on a given decision, generally, the more difficult it is to reach. The "forced choice" is an attempt to ease the burden of a weighty decision by offering a choice between alternatives.

There are many situations where two alternatives may be of relatively equal value to one side or the other. What you need to avoid as much as possible is offering a choice between something and nothing.

Allow for Face-Saving

It never hurts to be gracious. If you win a point, credit the other party for sincerity and fair-mindedness. To gloat over minor "victories" may make it impossible for the other side to offer reasonable compromises without resentment and embarrassment.

Be Prepared to Prove Your Point

In the nature of collective bargaining, the union is usually the moving party, submitting proposals to change conditions of employment. Because it is the moving party, the union assumes the burden of proving its case.

Keep in mind, however, that management should be prepared to explain in detail its reasons for rejecting any demand or proposal. Furthermore, there are many times when the burden of proof shifts to management—particularly in management initiated proposals or where management has information that is unavailable to the union.

Not a Debating Society

Some people make the mistake of treating negotiations as a marathon college debate. While it is important to make your points, after they have been made and management has responded, don't continue to "beat a dead horse." If you can't agree, set the item aside and move on to something else.
First, go through all issues where agreement can be reached, then return to the items set aside.

Explain, Discuss,
Persuade—
Don't Plead!

Remember that you are engaged in collective bargaining, not begging. Be quick to demonstrate respect and courtesy; be equally quick to demand the same consideration.

Cite the Advantages
of Your Proposal to
the Other Party

While this approach can be easily overdone, it happens with some frequency that the union proposal carries important advantages for management. Where these benefits are significant, they serve as a proper additional factor in support of your case.

Keep Discussions
Problem-Oriented
Not Personality-
Centered

By far, the most fruitful atmosphere for reaching sound agreements is the recognition by both parties of a mutual interest in solving problems of common concern. The greater the degree of objectivity that can be developed, the more constructive the relationship.

It takes considerable time to overcome personality-centered clashes which mar the relationship. Collective bargaining at its best is a systematic, conscientious search for answers that work; answers which minimize frustrations.

The collective bargaining process certainly has shortcomings as a means of resolving conflicting interests in employment. However, it is superior to any known alternative for adjusting differences in a free society. It is worth the continuing effort by persons of honorable intent to improve its functioning.

In addition to constant improvement of your knowledge and skills, successful bargaining requires hard work, through research, and preparation, including prioritizing issues and the development of strategy. It also requires patience, goodwill, and flexibility since compromise is an essential component.
Dealing with
Proposals

Both parties have the responsibility of giving realistic consideration to proposals offered by each other; it should be assumed that there are reasons for each proposal, however odd they may appear. But do not waste a lot of time with proposals that are obviously meant to sidetrack negotiations or are "pie in the sky."

Avoid "Pride of Authorship"

Sometimes negotiations get bogged down because each side is more concerned over whose draftsmanship will appear in the contract rather than the meaning of the language. Don't be afraid to work from management's language, if necessary, after it has been analyzed and required changes have been made to reflect the union's needs.

Avoid Public Disagreements by the Union Committee

All disputes should be resolved in private caucus since the union committee must be united at the bargaining table.

Stick to the Subject

Do not allow management to filibuster and delay negotiations. At times, it may be necessary to insist that management state its final position or say "yes" or "no" to the union's final proposal.

Arguing Your Position

Proof

Assertion is not conviction. No matter how loudly you voice your proposals, they must be backed by evidence composed of facts, opinion, and reasoning.

Facts

Carefully distinguish between fact and opinion. That your unit is composed of 60% classified, 30% wage grade, and 10% non-appropriated fund personnel is fact and can be verified. That your bargaining unit needs an improved training program is opinion until you support it with fact.
• Check the accuracy of your facts. Don't use hearsay. Quote from reputable sources; other contracts, decisions of the Federal Labor Relations Authority, factual data in statistical reports, and other publications that do not have a special interest.

• Use only pertinent facts. There is better proof of your unit's need for a good training or promotion program than the size of your local and its honorable goals.

• Are your facts up-to-date? The rate of worker turnover from a statistical report published ten years ago will be of little use today, but what the personnel officer said last month on the difficulty of locating qualified workers to fill positions is important to support your proposal for new and improved formal and informal training programs.

Opinions

Opinions are worthless or valuable, depending on their source. What the "locker room lawyer" or "office expert" says about the needs or procedures of the employer is probably worthless, but what the safety officer says about the increase in disabling accidents is important evidence.

• **Quote Authorities.** Cite persons who are well-known as individuals, members of professions or holders of offices and titles which add credibility to their remarks, for example, a member of Congress, the Director of the Federal Mediation and Conciliation Service, or the arbitrator in a favorable case.

• Quote authorities only in their pertinent fields. An expert on worker testing is not, as such, qualified to speak with authority on promotion, training, or career development.

• Use competent but disinterested authorities if possible. A wide knowledge of the private sector labor relations does not necessarily make a person a reliable authority on federal labor-management relations in which he may have some interest.

Reasoning

What is sometimes called "circumstantial" evidence is obtained by various types of reasoning from basic data and will occupy the major portion of your argument. Such reasoning incorporates the soundest of negotiation procedures if handled properly. However, if carelessly or intentionally misused, you may lose the confidence of your team members and supply management with material which they may use to destroy your proposals even though the reasons for them are basically sound.

• **Cause and Effect.** Your arguments may be based on known causal relationships. Curtailment of promotions and training is sufficient reason to expect a marked drop in worker morale. An abnormal use of sick leave or emergency leave may reasonably indicate an improper or unfair method of rescheduling tours of duty.

Do not automatically assume a causal relationship from events that follow in time sequence. The appointment of a new hospital director may be followed by a reduction in the hospital's
budget.

The installation of new equipment or a new process in one section may be followed by an in-
creased workload in another section, but these events are probably coincidental, not a cause and effect relationship.

- **Induction.** Induction is the establishment of a general truth by an examination of various instances which support it. A sufficient number of workers having been promoted after receiving certain training establishes the fact that training programs in these areas are successful and beneficial to both the workers and management.

However, don't use broad generalizations. Just because a certain carpenter uses sick leave on Monday every time he works overtime on the previous Saturday, does not establish that all carpenters abuse their sick leave.

- **Deduction.** Deduction is the opposite of induction. It is used to arrive at a conclusion through reference to a general statement which is assumed or has already been proven inductively.

Although it is probably true that Government workers like two consecutive weeks for vacations, you can't assume two consecutive weeks of annual leave will please a particular employee.

Arranged according to the formal pattern called logic, such reasoning would appear as follows:

1. **Major Premise** - Government workers like two consecutive weeks of annual leave.
2. **Minor Premise** - John Does is a Government worker.
3. **Conclusion** - John Does likes to have two consecutive weeks of annual leave.

This type of deduction is the most relentless of logical processes, but the conclusion is never any sounder than the major premise on which it is based. If it is said that wage board workers make poor supervisors and Paul is a wage board employee, he too, inescapably, will make a poor supervisor. As you see, the original assumption is a false generalization. The conclusion to improper deductive reasoning is useless.

- **Comparison.** Successful argument can invalidate the argument.

- **Analogy.** Analogy as a form of argument is a comparison where there is no identity between the things or situations being compared, but there is a certain point of similarity that the negotiator believes justifies the assumption of others.

To show the need for an enlarged government work force as opposed to the use of "contract" personnel, the negotiator may show how handicapped an army would be if it had to depend
on mercenaries to muster a battalion at a time of crisis.

**Persuasion**

It would be less difficult if management were able to change its opinion or policy by intellectual evidence alone. However, in changing opinions not only is reason involved, but also our emotions. This is a fact a good negotiator must always remember. Evidence alone will not suffice; it must be accompanied by measures designed to persuade as well as convince.

- **Attitude** - Be agreeable whenever possible. Your presentation often gets results that the virtues of your proposals cannot alone produce. Be friendly, tactful, amusing, firm, conciliatory, or feisty as best suits the occasion. Few management officials can be badgered into doing what you think is right, although on rare occasions, the negotiator may be successful in doing it. Present yourself as one who wishes to find out rather than one who knows all the answers.

- **Fairness** - Be just. Those who already agree with you may be biased, but your arguments are not aimed at them. To win over the opposition, you must appear to be governed by the inescapable facts rather than personal opinion.

- **Concession** - Agree with the opposition but only as far as you can. Such an approach will establish your reputation for fairness and allow you to concentrate on the main objective instead of scattering it over the entire package. Such concessions leave the opposition little opportunity for counter arguments.

- **Rebuttal** - The points you cannot concede to management's team should be attacked. Anticipate management's arguments.

- **Negative**. When management's rebuttal is a simple "No," insist that their spokesperson give their reasons; then refute them with stronger points of your own or show them to be insufficient.

- **Positive**. When management agrees with your position but proves a conflict with government-wide regulations, ask them to join with you to get an exception to the regulations or draft in contract language that ends the conflict but addresses the underlying problem.

- **Appeal** - You can strengthen your case by appealing to management's sense of justice and fair play. Remember you must not only explain, you must also convince. Be humorous, surprised, or offended as best suits the situation and let your persuasion be a pleasant combination rather than two separate attacks.

**SUMMARY OF DO'S AND DON'TS IN NEGOTIATING THE CONTRACT**
There is no pat formula to follow in bargaining. However, here is a summary of do's and don'ts that could determine its success or failure.

The various elements making up successful negotiations include:

**DO**

Do gather information prior to negotiations;

Do evaluate past experiences;

Do select the negotiating team whose members have skill in negotiating techniques;

Do understand the total work situation;

Do examine every detail in the formulation of the contract proposals;

Do analyze every proposal to determine what it will mean now and in the future and avoid hidden pitfalls;

Do ask for an offer of revisions or modifications of management proposals to make them acceptable;

Do remember that collective bargaining is a two way street - that parties will often "trade" to get what they want;

Do make effective use of the technique of counterproposal;

Do stick by your position with courage when you know you are fair and right;

Do make sure you have not relinquished critical rights;

Do remember that you have a duty to bargain, but that you are free to disagree and reject any proposal;

Do write contract language in clear, easily understood language that accurately reflects the agreement;

Do check the final contract draft to make certain that the language is the same as originally agreed; and

Do keep the membership informed.

**DON'T**
Don't relinquish at least equal control of the meeting;

Don't permit management to take the ball away from you by constant referral to its own proposals;

Don't interrupt a reasonable management presentation of a proposal, no matter what you think of it personally;

Don't bargain solely on management demands;

Don't be misled on "mutual consent" clauses. (Remember, mutual consent clauses can give management a veto over union actions.);

Don't use "may" or "should" when you really mean "shall" or "will";

Don't agree to phrases like "if possible" or "when practicable"; use more precise terms, unless it is absolutely necessary;

Don't make commitments without deliberation with your team;

Don't offer to make major concessions unless the offer is contingent upon the reaching of a complete agreement;

Don't give away in one clause of the agreement what you have carefully obtained or preserved in another;

Don't overlook the need to keep abreast of what workers themselves are thinking and how they are reacting;

Don't neglect to consider what your agreement will mean to other locals in your geographical area and in your agency; and

Don't negotiate solely on procedures; concentrate more on substance.

Don't forget to keep a steady stream of information to your membership about the general progress of negotiations.

KEEPING THE MEMBERS INFORMED: RATIFICATION
AND APPROVAL

The negotiating committee cannot expect the full support of the membership unless they understand the bargaining demands before the negotiations begin.

Role of the Membership

During the course of the negotiations, the members should be kept informed of the general trends. They have the right to determine the basic issues that will be pursued, but the negotiating committee is responsible for determining the strategy and tactics.

Strategy and tactics should not be discussed publicly because such action is the equivalent of a poker player displaying his hand to his opponent. The disclosure of the union's tactics will limit the committee's maneuverability in relation to management.

Although the AFGE Constitution is silent on ratification, the procedure is generally recommended because it gives the membership an opportunity to vote on the completed agreement and also serves as an important educational activity. If ratification is customary in the local, the negotiating committee's plans and procedures should be brought to management's attention at the beginning of negotiations.

Normally, ratification is held at a special meeting and copies of the contract should be available to the membership in advance. If advance distribution cannot be made, the contract should be reviewed section by section at the time of the meeting allowing for questions and discussion. Negotiating team members should be present at this meeting to "sell" the contract.

Remember, any ratification procedure is based on approval of the entire contract rather than voting "yes" or "no" on each article or section.

If the contract is not ratified, the negotiating committee must return to the bargaining table and try to satisfy the membership's needs. If agreement is not possible, the issues should be submitted to the Federal Service Impasses Panel for resolution. Issues which the union originally agreed to will require substantial evidence and argument to present before the FSIP. Decisions of the Panel are final and binding.

Routing Copies

After the contract is ratified by the membership, it should be signed off locally by representatives of both parties, including the local president and the installation head. Copies are then submitted for approval, through agency channels to headquarters by management, for the 30 day review period set out in Section 7114 of the Statute.

The Local should retain several copies for its own files and send two copies to its National
Agency Approval

Section 7114 of the Federal Service Labor Management Relations Statute sets a time limit for agency approval of agreements. If the agency head or his/her designee does not approve or disapprove the agreement, and notify the union in writing or by service of a copy of the review within 30 days from the execution date, it will automatically go into effect and "be binding on the parties subject to the provisions of the law, and decisions of the Federal Labor Relations Authority."

However, the agency headquarters may reject items which they didn't approve, citing alleged violations of management rights provisions of Section 7106 of the Statute.

If an employer agrees at the local level to negotiate on the non-mandatory subjects for bargaining found in Section 7106(b) of the Statute, it must be approved by the agency head. If he or she chooses to challenge the propriety of a contract provision, they must raise the issue as a threshold issue of arbitrability in the process of any subsequent related grievance.

If the contract is returned by management for changes, review them carefully to make sure that they are required by law or regulations. If the union disagrees with the changes, they have only 15 days from service of the changes to file a negotiability appeal to the FLRA. If they wish to challenge the changes, they must immediately contact the Field Services Department of the National Office of AFGE for advice on how to proceed.

FACTORS AFFECTING BARGAINING STRENGTH

The ability of the union to bargain effectively is determined by a number of factors.

The number of union members is important. A local with only 30 percent of the bargaining unit as members will usually have more difficulty dealing with management than a local having 90 percent of the unit as members. There is a direct relationship between bargaining strength and union membership.

- Leadership also plays an important role.

Well-informed, trained negotiators are vital since unions in Federal employment cannot legally use economic power as unions in private employment do. A skilled negotiator should have knowledge of contract settlements in the surrounding area as well as within his or her agency in the AFGE District.

- Local and national economic conditions will have some impact on negotiations.
When there is full employment in the private sector, management may be more responsive to the union's demands if it is feared that workers can easily get jobs elsewhere.

On the other hand, when economic conditions and budgets are tight, management may take a harder line since workers are conscious of job security. In any event, economic conditions are probably not as important as the overall attitude of agency management toward collective bargaining for Federal workers or the attitude of your individual activity head.

- The community environment and the political situation will also affect bargaining strength.

It is important for locals to participate actively in their AFL-CIO state and local central labor bodies which can assist in bringing pressure to bear upon management. In many areas, Federal installations are among the largest employers, and management is sensitive to its reputation in the community.

Adverse publicity, informational picketing, or the threat of it can sometimes make the difference in a crucial situation.

THIRD PARTY PROCEDURES

Impasses in Negotiations

Impasses in negotiations arise frequently in Federal employment, just as they do in the private sector.

There are a number of reasons for impasses in negotiations:

- There may be a deep-seated fundamental difference of opinion over a key issue on which the parties are unwilling to compromise.

- The attitude of management may be hostile to the basic concept of collective bargaining which is joint decision-making and thereby may make settlements impossible. This attitude is characteristic of agencies which believe that the unions are trying to take away their prerogatives.

- There is a wide variation in bargaining strength between the two parties, and management, feeling no pressure to negotiate in good faith, adopts a take-it-or-leave-it attitude. This attitude is not uncommon in the Federal sector since unions do not have the right to strike and their membership is small or uninformed, so the local cannot exert public or political pressure on management.

- Both parties are inexperienced in collective bargaining and do not always employ all of the techniques and procedures available to resolve negotiation impasses.
The union insists on holding on to unrealistic proposals, primarily because of a lack of expertise.

Resolving an Impasse

At least 30 days prior to negotiations, locals must submit FMCS Form F-53 to the appropriate Regional Office of the Federal Mediation and Conciliation Service (listing of regional offices on page).

When filling out the form, most of the self-explanatory items on the notice should be relatively routine.

The reasons for filing the form is to conform to the regulations of the Federal Mediation and Conciliation Service published in 29 CFR 1425.3. Once the notice has been filed, you will likely be contacted by a Federal mediator about 30 days prior to the expiration date of an existing agreement.

The mere filing of this notice in accordance with the above instructions will not automatically constitute a request for the services of a Federal mediator.

If negotiations between the parties are unsuccessful, the local should request assistance from the nearest FMCS office. It should be remembered that this mediation will be the last opportunity to restructure contract proposals for submission to the Impasses Panel.

The record keeping cited previously is doubly important during the final days of negotiations, especially during mediation. At this time, the union should carefully review the factual data they have to support their position on the disputed items.

It is wise to advise the National Vice President prior to entering mediation on disputed issues so he/she may determine that the issues in dispute are significant and he/she may assign a National Representative to assist in these final important sessions of negotiation.

Federal Mediation and Conciliation Service

The Federal Mediation and Conciliation Service (FMCS) is an independent Federal agency created under Title II of the Taft-Hartley Act in 1947.

The Director of the FMCS is appointed by the President with the advice and consent of the Senate. The FMCS has a staff of Federal mediators located throughout the country. Most mediators have had extensive experience in labor relations, previously representing either labor or management at the bargaining table.

The FMCS provides services and assistance to Federal agencies and labor organizations in the resolution of negotiation impasses in accordance with Section 7119 of the Statute.
Please note that unlike the Federal Service Impasses Panel or an arbitrator, the mediator has no authority to render a decision on the merits of a dispute. His/her task is to determine a common basis for settlement of the impasse and to persuade the parties to reach agreement. Of course, the mediator can also make suggestions and recommendations to the parties to lead them toward settlement.

The mediator does not issue any formal reports and mediation is a confidential process as no public records are kept.

One of the key ingredients in the mediation process is the attempt to determine actual needs of each of the parties. Through the interchange of ideas and concepts and the clarification of the issues of prime concern, the mediator is able to bring the parties to a point where a solution is reached either by the mediator or by the parties themselves.

The mediators rarely act to publicly pressure either party to accept a solution which they place on the table for discussion and rarely take part in debate concerning the merits of a particular issue, except where it comes to a matter of fact.

Often the mediator will be most effective in separate sessions with each party where he or she can explore alternatives in confidence without committing either party.

The Union Role in Mediation

Union negotiators should be prepared to have frank discussions with the mediator who will respect any information given in confidence. This does not mean that the union should reach its final position on all issues prior to mediation when it is clear that settlement will not be possible. This will not provide any basis for further compromise.

On the other hand, where the union believes it is right and management is unreasonable, it should stick to its guns despite any pressure from the mediator.

Experienced negotiators know how to get the maximum utilization of the mediation process. For example, it is possible to "try out" new proposals in mediation by having the mediator put the ideas before management without revealing the source. This avoids unnecessary concessions. If management is unresponsive, the union still hasn't conceded its position as it would if the proposal was made directly.

Mediation is not a Monday through Friday, nine-to-five operation. In the private sector, mediation sometimes continues around the clock and on weekends. It is important when a local is involved in mediation that the negotiating committee be prepared to spend as much time as necessary in meetings which are called by the mediator.

Sometimes it is necessary to insist that the mediator continue to meet after regular working hours and on weekends. This can be extremely effective in wearing down a negotiating team which
doesn't take bargaining seriously.

Please keep in mind that once mediation is invoked, the mediator is in charge of all meetings called, and it is the duty of the parties to participate fully and promptly in any meetings arranged by the FMCS.

It is also possible under Section 7119 of the Statute to use third party mediation other than a mediator from the Federal Mediation and Conciliation Service.

However, this is not practical since a private mediator will probably charge as much as is charged for arbitration, and it is questionable how much Federal experience private mediators possess. There is no charge for any service rendered by the FMCS.

If mediation is unsuccessful, the local should gather all the material necessary to support the impassed issues. This information should include:

- The contract clause(s) in dispute. This would include the initial proposals and the final positions of both parties.
- The position of the parties on the impasse; a summary statement of each issue is sufficient. The fully documented argument may be later presented at the impasse proceedings.
- A chronological list of the negotiations, including when negotiations began, the number and length of negotiating sessions, the number of issues resolved, and the number and length of mediation sessions.
- A copy of the existing agreement.
- A copy of all the signed-off articles to date.
- A brief description of the bargaining unit, which would include the number of employees in the unit, the number of workers in the activity, the date of exclusive recognition, and the number of labor agreements negotiated to date.
- A list of other matters pending before third parties under the Order, such as unit determinations, unfair labor practices, elections, arbitrations, and negotiability appeals. (If there are any, please submit a brief description of them.)
- The name, address, and phone number of management's chief negotiator.
- The name, address, and phone number of the union's chief negotiator.
- The name, address, and telephone number of the mediator.

If the above information is submitted with the initial impasse, there should not be any delay in the
Panel accepting jurisdiction.

Federal Service Impasses Panel

The Federal Service Impasses Panel (FSIP) is composed of a chairman and at least six other members appointed by the president for a term of 5 years. However, a president may remove any panel member.

Currently, there are seven members on the Panel including college professors, lawyers and full-time arbitrators.

Under Section 7119(c) of the Statute, it is the responsibility of the Panel to consider negotiation impasses and to take such action as it considers necessary to settle the impasse.

When a negotiation impasse remains unresolved despite the efforts of the FMCS, the issue(s) may be referred to the FSIP by the labor organization and/or the agency.

Impasses Procedure

If a local negotiating committee after mediation determines that further negotiations would not be fruitful, they will submit the issue to the FSIP on form Request for Assistance (Attachment No. 1). Be sure to serve a copy of the Request on the employer and the mediator.

The submission to the Panel will include all the information listed on FSIP's form Request for Assistance.

After receipt by the Panel, the Panel will contact the person filing the request to make an initial inquiry to determine whether the Panel will accept jurisdiction in the matter.

If the Panel accepts jurisdiction, it can take one of many options to resolve impasses. They could be:

- A factfinding hearing followed by a decision.
- Mediation/arbitration by the Panel.

IMPROVING PRESENTATIONS BEFORE THE PANEL

Following are key points that are important in presenting cases to the Federal Service Impasses Panel:
Effective advocacy in factfinding.

Effective advocacy in written submissions.

Evidence found persuasive by the Panel.

Effective advocacy in factfinding

The Panel Associate should have a "complete picture" during initial investigation (prompt and thorough responses).

Prehearing: the key to an effective presentation is preparation. Prior to the prehearing conference (PHC) both sides should:

- Clearly define issues—who is and is not in dispute.
- Outline their cases.
- Identify and prepare witnesses.
- Prepare exhibits.

The Prehearing Conference

- All background exhibits should be prepared and copied.
- Responsibility is usually established during a conference call.
- Agreed-upon language—parties should know what is and is not in dispute by this time.
- A final, clearly written proposal on each issue in dispute is essential—biggest impediment yet easiest to correct.
- A stipulated issue is ideal.
- Unnecessary disputes over the order of issues, which party goes first, etc., only wastes time and diverts energy from real issues.
- Often the Employer's advantage to go first.
- Lay sound foundation—especially where law and regulations are involved.
• Both parties should be able to discuss their proposals and evidence so that there are no "surprises" at the hearing.

• It is not necessary for entire bargaining team or witnesses to attend the PHC.

• Prehearing briefs can be most helpful.

• Narrow issues.

The Hearing

• Opening statements on each issue are very important.

• They should detail what the party intends to establish.

• Enables the factfinder to establish relevance and rule on objections.

• Technical rules of evidence do not apply (i.e., hearsay).

• Unnecessary objections only delay the hearing and polarize the parties' tendency to object whenever evidence is "damaging."

• Relevancy and undue repetition are primary grounds for objections.

• There should be only one representative on each side (at least per issue).

• Requisite copies of all exhibits.

• Copying exhibits during the hearing wastes time.

• All regulations, contracts, etc., relied upon should be introduced as exhibits—make sure regulations (especially FPM) are current—point out relevant portions (highlighting helpful).

• With few exceptions, parties overuse cross examination.

• Usually gives witness the opportunity to repeat direct testimony.

• Extensive use of redirect and recross is usually unnecessary (if the witness has been adequately prepared) and delays the hearing.

• An FSIP hearing is no time to play "Perry Mason"—Do not use "cross" to make case-in-chief.

• Again, it is essential to have a carefully drafted proposal and a witness who can testify as to what it means.
• Good English.
• Should speak for itself.
• Would the Panel want to be associated with it?
• This is especially important in final-offer context—but result may be F/O away.
• When negotiability problems are raised at the hearing stage, the parties should be prepared to address both jurisdictional and substantive issues. Do not wait until this stage to assert non-negotiability.
• It is not enough to merely assert nonnegotiability, you need to know why.
• The Panel is bound by Authority rulings.
• At times, it is preferable for the representative to be sworn and to "testify" in a narrative fashion, used successfully in at least one long, complicated hearing.
• Closing statement(s) are not required but are often preferable to post-hearing briefs.
• The factfinder has the right to ask questions—and an obligation to do so if the record is unclear.
• There is no burden of proof.

Effective Advocacy in Written Submissions

Often there is no evidence to support statements of positions—there is no opportunity for face-to-face clarification by Panel Associate.

Parties should submit signed statements from employees (as necessary), relevant documents, and comparability data.
• They should also summarize arguments in the beginning of their submissions.
• Attachments should be explained.

Proposals must be clearly worded and should be typed.
• Poorly drafted proposals really limit the Panel's flexibility in final-offer selection cases.
• Each side should spend more time carefully considering the language it places before the Panel.

Although parties are given the option to incorporate previous submissions in their briefs, the previous submissions should not be relied upon if they are unclear.
• Timely service on other party; special arrangements may be necessary.

• Extensions of time should be avoided.

• The timing of submissions is often set to enable the impasse to be heard at the next Panel meeting, even a few days can mean a significant delay (3-day extension can lead to 5-week delay).

Persuasive Evidence

The Primary Areas are Comparability, Demonstrated Need, Bargaining History, and Past Practice.

Comparability

• There is often little or no data offered in this area.

• LAIRS and other private and public sector data are relevant, but rarely used.

• If statistics are offered in cumulative form, the number of documents reviewed is important.

• If copies of language in other contracts are offered as exhibits, the: (1) full article, (2) title page, and (3) effective date should be included.

• When comparability is asserted, the size of bargaining units and work performed are important.

Demonstrated need: often misunderstood.

• An assertion that a party "needs" its proposal is not sufficient.

• Also must state why the other party's proposal is unworkable.

• If economic data are used, charts and/or graphs may be appropriate.

• Should have a witness who can testify as to how figures were arrived at—or explain in writing.

Past practice - self-explanatory.

• Copies of old contracts, memoranda of understanding, etc., with dates, should be offered as exhibits.

• A party seeking to change a past practice should explain why.

Bargaining History
Usually less important than other factors.

It is unnecessary to enter into the record all proposals, counter proposals, etc., for all issues—helpful for issues in dispute.

Testimony concerning conversations with mediators are inadmissible.

ENFORCING THE CONTRACT

After the contract has been approved and is in effect, it is still only "words on paper" until management abides by its provisions. Often it is necessary to utilize the negotiated grievance and arbitration procedure to enforce the contract. Management must realize that the union will not tolerate contractual violations that impact on either workers or the union. All contract violations must be vigorously pursued if the local is going to have the respect of the membership as well as management.

Arbitration

An arbitrator is an impartial third party selected by the parties under procedures spelled out in the contract. He or she listens to both sides present their cases at a hearing and then hands down a decision which the arbitrator believes to be the proper resolution of the matter.

Arbitrators are usually college professors, law school professors, lawyers, full-time umpires, or occasionally qualified members of the clergy who perform arbitration services for a daily fee plus expenses.

Under Section 7121 of the Statute, negotiated grievance procedures will automatically extend to all matters, except those excluded by law, that are covered by the statutory definition of grievance set forth in Section 7103(a)(9) of the Statute, unless parties mutually and specifically agree to exclude any of these matters from their negotiated grievance procedure.

Thus, even matters for which a statutory appeal procedure exists will be subject to the negotiated grievance procedure unless the parties mutually exclude any such matter from coverage.

In the great majority of contracts, the arbitrator's fee is shared by the parties.

Therefore, it is important that your local have sufficient funds in its treasury to be able to go to arbitration. The ideal situation is to have a separate "arbitration fund" which will not require the approval of the entire membership when it becomes necessary to authorize an expenditure for arbitration. Also, management is bound to quickly learn of the existence of such a fund, and this should encourage them to live by the contract.

While sometimes it may be possible to file an unfair labor practice charge in regard to a blatant contract violation, this is a much more time-consuming and complex process and should generally be avoided in deference to the negotiated grievance and arbitration procedure.
WAGE NEGOTIATIONS

Introduction

For those employees who negotiate wages and fringe benefits, special consideration must be given to these important sections of the contract. It is the contract which indicates not only how much the employees will be paid but also tells when they will be paid.

The negotiation of wages is probably one of the most complex areas of collective bargaining. Careful preparation must be done before the union sits down at the bargaining table. The union negotiators should find out from the membership:

1. what they want in the way of wage and benefit improvements;
2. whether or not management can pay what the employees are asking;
3. what the company is paying its employees at other worksites;
4. what other employees are making in their community;
5. what type of wage guidelines have been recommended by the government; and
6. the average wage increases being negotiated around the United States.

How to do Back Research for Wage Negotiations

Any Local Union that negotiates wages should build a library of relevant text, articles, reports and union contracts which are useful tools of the trade. The negotiator should also know books are available to him/her from the library, U.S. Government, AFGE, and other International Unions.

The union must evaluate the jobs at their worksite against similar jobs in the community and also similar jobs at other locations within the industry. The main purpose of such a survey is to make sure the union's proposals are at least within the prevailing wages inside the community and the industry. The union should then be in a position to refute management's exaggerated claims that the union's demands are beyond reason.

When conducting local surveys, it is not necessary to survey all jobs. Usually, it is sufficient to limit the number of jobs surveyed to an area where there is a heavy population of workers. Jobs are usually divided into low paying, medium paying, and high paying job categories.
For example, in manufacturing, you would find such job categories as the sweeper, hand trucker, job setter, electrician, simple assembler, toolmaker, and the most common production machine job.

If you are comparing your wages to those in public employment, it is much easier to secure data on all applicable jobs from nearby parallel units of government.

Industry wages can be secured from various sources. The most available source that can be found in any library is the Monthly Labor Review published by the U.S. Department of Labor's Bureau of Labor Statistics. There are other periodicals available from the Department of Labor that can be secured from your area DoL Office and the public library. Current Wage Trends and Employment and Earnings are both periodicals which give an annual wage picture by industry.

An important feature of Current Wage Trends is the magazines. They explain periodically the trends in collective bargaining in various industries and the public and Federal sector.

There are other sources of information on wage negotiations from various news services that are available to Local Unions for a minimum cost such as the Union Labor Reporter. The price for this weekly periodical is 50 cents a copy.

A very good and free additional source of information on wages are other union contracts. These can be obtained directly from the Local Union or from the Bureau of Labor Statistics. This is a good way to learn what your company is paying other employees in comparable positions at other worksites.

How to Obtain Financial Information on Your Employer

After you have completed an accurate survey of the rates in your industry, it is also advisable to research the company's financial background with whom you are negotiating. A company's financial condition does not always play a decisive role in negotiations. However, it may be wise for the union to have a general idea of the company's financial condition and to be aware of the trend of sales, profits, and other indicators such as their profit margin for the past 3 years.

This type of information can be obtained from such sources as the company's Annual Report, Moody's Industrial Manual, The Securities and Exchange Commission filings, and the Stock Holders Report.

The Annual Report is the company's profile of itself containing a very partial perspective profile of the corporate history, management, financial condition, subsidiaries, and sometime Labor conditions. It offers up-to-date information on plant locations and gives shallow analyses of over-all and division performance.
This document is available from the Securities and Exchange Commission at $.10 per page or if you are a shareholder, from the company itself.

To become a shareholder, one only needs to purchase one share of stock. Many private sector unions use this procedure to obtain not only the annual report of a company but a proxy statement, additional stock information, and admission to the annual meeting. This is probably the most valuable and direct approach to gaining information.

There are various directories which can be found in the reference section of your public library which also provides financial and structural background on private companies. One of the most popular is Moody's Industrial Manual. This gives an annual financial and historical report on corporations traded on the major stock exchanges.

It also shows a record of acquisitions and mergers and a 20 year record of sales, profits, assets, dividends, equity, and other financial essentials. Moody's also has comparable manuals for the trucking, shipping, and airline companies.

After completing surveys and researching the company, you are now ready to tap another source in preparation for negotiations. Now is the time to talk to the membership. Each group of workers will have their own ideas as to what improvements they would like to obtain. Just as the older worker may want a better pension plan, the younger worker will want a higher wage increase.

**Going for the Wage Increase**

There are various types of wage increases that are being agreed upon today by both labor and management. You and your Local should decide on which type or types of wage adjustment is best for your Local. Such types exist as the merit increase, deferred increase, cost of living increases, and individual wage adjustments.

When a contract only specifies a minimum wage rate, then management is free to grant individual increases. In this instance, the employer can be required to consult or negotiate with the union on individual increases. This is probably one of the most unpopular types of wage provisions where unions actually have negotiated agreements.

The most popular of wage increase is the deferred increase which is most commonly known as "front loading." This type of provision is found in contracts of more than one year's duration. In this instance, the agreements state that certain increases will be paid at certain intervals over the life of the agreement.

Contracts covering white collar employees provide for merit increases. This type of increase takes place at certain specified intervals and in some instances evaluation standards are spelled out.

In most contracts, evaluation of an employee is a company's prerogative even though notification to the union of increases granted is often required.
Also, at times, the union has the right to submit to management a list of employees requesting review for increases. Also if an increase is denied, the employee should have the opportunity for a follow-up review or even file a grievance.

Presently, the Department of Labor reports that around forty-eight percent of all major negotiated contracts provided some type of wage adjustment which is tied directly into changes in the cost of living. These adjustments are based upon movement within the Consumer Price Index.

The intervals when the adjustments are made are negotiated. Such intervals can take place quarterly, semi-annually, or even annually. These types of adjustments are designated to help employees recover purchasing power lost through price increases.

Understanding the Consumer Price Index

As wage adjustments are being tied into the Consumer Price Index, a union negotiator should have a general idea as to how the consumer index functions.

The Consumer Price Index is a compilation of certain consumer items, such as food stuffs and household items, that are considered to be what most Americans will buy from week to week.

The CPI measures changes over time in the process of a fixed market basket of goods and services bought by consumers to meet personal living needs.

Each item in the market basket is weighted according to the average annual expenditures made for it by the index population as a whole. The amounts paid are determined from comprehensive surveys of consumer expenditures conducted by the Bureau of Labor Statistics.

All items are weighed according to the full expenditures made by the fraction of the population actually incurring the particular expense in the base period. Not everyone in the index population buys everything in the market basket, either in the base period or in subsequent periods.

That is, not everyone buys a house every month. The expenditures for each of these items by those who purchase them in the base period is averaged out over the entire index population and combined with average expenditures for all other items of purchases, whether for food, gasoline, clothing, newspapers, movies, or what have you.

The expenditures in the index market basket and their periodic repricing will not and cannot represent the experience of any single individual family in the index, nor the specific impact of inflation on any particular family outlays. What the index does represent is the average experience of the index population as a whole.

Since 1978, the BLS has been publishing two consumer price indexes. One is the CPI for Urban Wage Earners and Clerical Workers and the other is the CPI for All Urban Consumers.
For collective bargaining purposes, at least for most groups, the index on which the parties will focus will be the CPI-W. This is, after all, the index whose market basket is constructed to reflect the buying habits of wage earner families.

When they go to the bargaining table, the concern of those with respect to consumer prices of the goods and services on which they and their families spend their incomes. The index that comes close to measuring these changes as they impact on wage earner groups is the CPI-W.

How to Calculate CPI

Measurements of the indexes from one month to another are usually expressed as pertinent changes rather than changes in index points because index point changes are affected by the level of the index in relation to its base period while pertinent changes are not.

The formula used to compute either a pertinent increase or a pertinent decrease in the CPI is:

1. Divide

A. The amount of the change by

B. The figure from which the change occurred

and then

C. Multiply by 100.

An example of the computation of index point and present changes is:

<table>
<thead>
<tr>
<th>Index Point Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPI</td>
</tr>
<tr>
<td>Less Previous Index</td>
</tr>
<tr>
<td>Equals Index Point Change</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index Point Difference</td>
</tr>
<tr>
<td>Divided by previous index</td>
</tr>
<tr>
<td>Equals</td>
</tr>
</tbody>
</table>

Results multiplied by 100 (0.003 X 100)

Equals percent change . 0.3

In negotiating a formula for wage increases for movement in the CPI, the management and union
determine what percent of an increase in wages will be given certain amount of increase in the CPI.

For example, if you negotiate a one percent wage increase for a one percent CPI increase, you would increase the wage rate by the percentage amount that the CPI increases over the reference point (usually the CPI for the month the union contract became effective).

Thus, if the CPI rose from a base month of 180.0 to 182.5, the next month this represents an increase of 1.4% (182.5 points minus 180.0 or 2.5 points divided by the base of 180.0). This 1.4 percent increase would then be applied to all rates.

There are other provisions affecting wages that the union negotiator should be familiar with. These are such provisions as overtime pay, report pay, call in pay, severance pay and pay differentials.

From time to time, employees are requested to or even required to report for work at times other than their regular hours of work. These employees usually receive "call in pay."

Call in pay provisions established a guaranteed minimum number of hours of pay which the employee receives for the inconvenience of reporting for work outside of their regular scheduled hours.

It is usually established at the bargaining table the number of hours and the amount of minimum pay that will be guaranteed to employees called in to work.

Provisions are included into contracts to guarantee payment of a minimum number of hours for employees who report to work but who are not given the opportunity to perform work through no fault of their own. This provision is known as a report pay provision.

Sometimes when the union proposes report pay, management will counter with a provision to set up a procedure to notify employees not to report to work.

Employees who work in addition to a given number of hours per day or week or even on Saturdays or Sundays are usually compensated by a type of premium called overtime pay. This premium time is compensated at a premium rate of pay of usually time and a half or double or even triple pay. There are Federal and State regulations which govern overtime pay such as the Federal Labor Standards Act and Welsh-Healy Act.

Workers who work in undesirable hours of work or working conditions are compensated by the negotiations of pay differential clauses. Included in this category are night shift differential for split shift, night rates, and differential for difficult, hazardous, and/or unpleasant work.

Night shift differentials are common at worksites where production is a continuous operation. There may be as many as four shifts in a plant which operates over seven days a week. When more than one shift is scheduled a night, differential is usually paid to employees who work on shifts other than the first or the day shift.

Negotiations
Determine Differentials

It is determined during negotiations the differential paid for each shift. This differential could be a certain percentage of the night shift pay earned. Usually those employees who work the third or fourth shift are paid the highest differential.

In addition to differentials, some contracts provide special concessions for employees on the night shift. This may include longer rest periods, paid meal periods, free meals, or coffee and doughnuts.

Employees who work under an undesirable, unpleasant, or hazardous condition are compensated by a premium wage. The type of work considered hazardous at a certain work site is usually defined and described in the contract.

With the fluctuating economy, most contracts now contain wage reopening provisions. These clauses permit either party (although in some cases the union) to reopen the wage question for any reason at any time during the term of the agreement after due notice. Such clauses provide the greatest flexibility in wage renegotiation since they don't tie the reopening to any specific economic factor.

The Result of Job Classification is Wages, or Rate of Pay

Another factor to be considered in the wages that an individual receives is job classification. If there has already been an evaluation system implemented before there was a union contract, management will try to continue the established procedures of job rating classification and evaluation procedures. Management will also try to have complete control over this procedure even though the union has the right to request a copy of the evaluation plan.

Where no plan exists, and the employer or the union wishes to incorporate one into the contract, both sides must decide who must determine the procedure for rating, classifying, and evaluating jobs. Of course, in most instances, the employer will claim to have the sole responsibility for determining this method.

Usually, however, the employer and the union, through a joint committee, determine the method to be used. As job classification does determine wages and as the process is rather complex, this may be an area where the union negotiator may want to request assistance from the National Office.

There are a few laws in existence that the union negotiator should at least be aware of before going into negotiations for wages. They are the Walsh-Healy, the Fair Labor Standards, and Equal
Pay Acts. The Walsh-Healy Act prohibits the employment of youths under 16 years of age. The Fair Labor Standards Act requires the payment of overtime to be at least one and one half times the regular rate of pay in excess of forty hours a week.

The Act also requires that compensation for overtime be paid no later than the regular pay during which the overtime was worked. Finally, the Equal Pay Act of 1963 provides equal pay for equal work regardless of sex.

GAINSHARING

Since the 1980's, the federal government has experimented more and more with forms of gainsharing. Among the best known of these projects was project "Pacer Share" conducted by the Air Force. Although by most employee and union reports, and by some managers, this program was highly successful, it was discontinued and cancelled when the Defense Logistics Agency took over a major portion of the facilities where it was tested. The reasons for DLA's lack of interest are not clear but there is no dispute about the success of Pacer Share with respect to quality of the work, productivity, and worker morale.

Although there are a few gainsharing programs dating from the early 1990's, and with more gradually coming into existence, the federal experience has generally been a mixed bag, generally poor.

Due to the lack of experience in gainsharing programs and, even more importantly, the lack of experience in negotiating gainsharing programs in federal bargaining units, we have turned to the private sector for guidance. The following is an article by John Zaluzky, Economist for the AFL-CIO Department of Economic Research. It is included here to inform the reader in an overall sense of what has taken place and the union reaction to it. Later on, following this article, we will include materials from the School for Workers and the University of Wisconsin in an effort to provide more information to the negotiator who must, or is considering, collective bargaining on gainsharing.

LABOR'S COLLECTIVE BARGAINING EXPERIENCE WITH GAINSHARING AND PROFIT SHARING

In recent years American labor has negotiated many new agreements with profit-sharing or gainsharing plans. But, after nearly a century of practical experience with these plans labor has few illusions about their value as incentives, as a source of income, as means of employment security, or as a vehicle to labor and management cooperation. Labor's experience with these plans has been mixed on all points.

Yet, many observers treat these plans as freestanding abstract concepts newly discovered and divorced from the practical work environment. They see these plans as elements in dealing with the nation's productivity problems, as a way of joining the interests of labor and management and recently as an element in national employment policy. Labor sees little prospect of achieving these goals
through these plans, yet, has found them useful on other ways.

Workers and their unions know and deal on the practical side of profit-sharing and gainsharing plans. Among the negatives they have seen these plans used in union busting; as a management only assured bonus in prosperous times; as wage alternatives in poor times; and workers have traded wages for long term bonuses only to see the plans terminated in the short term. On the positive side, these plans have been used in achieving other goals and benefits not otherwise available to workers.

In short, although these plans remain a small portion of all collective bargaining agreements, they have been around for a long time. Despite their relative small number they are a part of labor's workplace reality and considerable pragmatic experience. The term "gainsharing" has been used to describe a wide range of direct and indirect incentive plans and is now being used to describe a wide range of direct and indirect incentive plans and is now being used to describe some forms of profit-sharing plans. This paper will deal first with labor's perception of gainsharing and then profit-sharing plans.

GAINSHARING

In 1896 Henry Towne apparently coined the term "gainsharing" in describing the indirect incentive plan used in his firm and differentiating it from profit-sharing plan. The plan he described was similar to modern Scanlon, Rucker, Improshare and other broad based indirect incentive plans.

However, a good deal of confusion developed. That was not because of the way gainsharing worked, but because the term was used to describe some direct incentives, and because of its association with "scientific" management. Frederick Taylor developed an incentive plan in connection with his "scientific" management concept which deskilled work, displaced workers and moved workplace control to management specialists. His incentive plan paid a higher piece rate for all pieces after a worker went over a certain threshold. In the late 1890's the Halsey plan, and later the Bedeaux and other plans, were developed as direct incentive systems and marketed as "gainsharing" plans. These plans gave gainsharing a perverse meaning.

Variations of the Halsey plans diverted between one-third and one-half of the worker's productivity to pay for supervision, indirect workers and plant overhead. The Bedeaux plan diverted an increasing share as production increased. These plans were called "gainsharing plans," and were considered unfair by most workers.

Yet, organized labor did not oppose fair incentive plans. Unions in the needle trades were negotiating market-wide piece-work rates and "one-for-one" wage payment plans. These plans became goals of the new industrial unions of the 1930's. Against this backdrop, the union literature of the 1920's and 1930's raised strong objections to management controlled wage incentive plans and to "gainsharing" plans. "One-on-one" wage incentives became a standard demand in wage incentive negotiations and union organizing drives.

Early negotiated incentive plans were based on existing wage incentive plans. For example, the Steelworkers and the steel companies early on negotiated direct one-for-one group incentives plans, in the steel industry. Later, these plans were adapted to gainsharing plans.
During the 1930's the Steelworkers had a number of contracts with firms which had profit-sharing plans, and there were a few strikes over profit-shares during the period. It was during the same period that the beginnings of the Scanlon plans developed in the steel industry and by the steel union.

Joe Scanlon's work for the Steelworkers had a goal that is not unlike the union's current use of profit-sharing and employee ownership plans. In the 1930's and 1940's the union's goal was a basic industry-wide wage and benefit package. However, some firms were marginal and could not meet the basic package. In fact, Scanlon worked a firm that was reorganizing in bankruptcy. Scanlon's cost saving ideas not only helped it survive, but the firm eventually paid the industry pattern.

Near the end of World War II money benefits were attached to the Scanlon productivity improvements, and it, and the Rucker plans became "gainsharing" plans - the same concept that Towne described in 1896.

However, the Steelworkers' use of gainsharing as an industry-wide bargaining tool was not appropriate in many other bargaining relationships.

Other unions in other industries were negotiating a few gainsharing plans as negotiated wage bargains or as an alternative to direct wage incentives. In the 1950's the Rubber Workers had Rucker Plans in four small midwestern firms, and a Scanlon plan at Parker Pen; the Auto Workers had a number of Scanlon plans in auto parts forms; and the Machinists had a number of agreements. The latest proprietary gainsharing plan, Improshare, was developed in the early 1970's and by 1980 about 75 had been negotiated.

Most union members view these gainsharing plans as basic, although complex, wage bargains. They are an exchange of worker short cuts, ideas and higher levels of production for money. The bargainers weigh extra money against the downside factors of peer group pressure, potentially greater safety risks, and lost personal time protections in exchange for extra money. The parties design these plans to produce stable earnings related to worker performance rather than to factors beyond their control. In short, rational economic behavior shapes these plans to meet the real needs of those involved.

For example, workers and their unions also realize that gainsharing plans have led to job losses when productivity increases and market shares don't. Thus, unions have negotiated guarantees against layoffs due to gainsharing or worker participation committees. Some plans provide that gainsharing funds be set aside for training, and almost all stabilize income through banking a share of earnings. Other agreements limit the number of new hires or how long they must be on the payroll before sharing in the bonuses. A careful look at gainsharing plans and related contract clauses indicates that workers and their unions seek to stabilize income and employment while improving productivity, and that a good deal of money is involved.

These plans are expensive, so unions are finding less interest among employers. In the last few years Parker Pen, Gould Battery, and Ingersol Rand have all terminated gainsharing plans. Parenthetically, if economic and organizational theory held, one would expect rather profound employment and productivity results in these firms, but none have been noted. Nevertheless, workers
and their unions feel they have been cheated because implicit in the gainsharing concept is a share of productivity gains as bonuses in exchange for the workers' short cuts, creative ideas and greater levels of effort. This understanding is supposed to outlive the typical collective bargaining agreement that is renegotiable every three years. When management moves to close out or buy out, the gainsharing plan management is keeping and using the productivity gains, but not making the installment payments, and workers cannot repossess their short cuts and ideas.

Thus, the catchy and well used term "gainsharing" may be on its way to acquiring a bad name all over again.

**PROFIT-SHARING**

Profit-sharing was debated in the AFoF's magazine, the American Federationist in 1910. It was the basic issue in the 1916 Stetson (hat) Company strike and to this day is used as a showpiece by anti-union and union busting employers. Yet, the AFoF, the CIO or the AFL-CIO has never opposed profit-sharing. And, only few individual unions have ever taken policy positions opposing profit-sharing. As with gainsharing plans, unions have approached these bargains carefully, trained their staff, and negotiated profit-sharing plans on labor's agenda - an agenda that has been changing.

Early profit-sharing plans were generally exclusively controlled by management and coupled with the "yellow dog contracts" that forbade union activity in that era. The practice with profit-sharing was to pay below market wages and have profit-sharing make up 20 to 30 percent of wages at the end of the accounting year. Thus, in the era of company spies and agent provocateurs, workers being suspected of any association with a union not only risked their job, and being blacklisted, but they stood to lose a good share of last year's earnings. The passage of the Norris-La Guardia Act in 1932 outlawed the "yellow dog contract," but profit-sharing remained a part of the anti-union tool kit.

Profit-sharing was also used in connection with employer dominated unions of the 1930's. The "company union" agreement generally contained a profit-sharing plan. It was made clear to the worker that it would be lost if an independent or "outside" union were selected by the employees. Of course this was understood to mean an end to a large share of earnings that were described as a discretionary benefit. The "company union" gambit, was outlawed when the National Labor Relations Act became effective in 1937.

However, in the 1980's some employers still use profit-sharing as an element in their effort to deny workers their right to union representation.

Yet, not all employers behaved this way and unions did not reject profit-sharing while fighting union busting. In the 1880's the Knights of Labor and later the Plumbers represented N.O. Nelson Company's profit-sharing workers well into the 1920's when a corporate raider sent the company into bankruptcy. In the 1930's the Steelworkers and other unions organized a number of firms with profit-sharing plans and retained those plans. In 1938 the AFoF President William Green and two other labor leaders told a Senate committee what organized labor wanted to see in negotiated profit-sharing plans. In 1958 profit-sharing became a national UAW bargaining goal, ending the union's previous opposition. In 1967 the UAW reported 21 agreements with profit-sharing plans, the United Steelworkers had 22 in 1968, and IAM had 28 in 1968. The Amalgamated Clothing and Textile
Workers, Molders, and Electrical Workers are among the union with extensive experience with profit-sharing plans.

Most of the negotiated profit-sharing plans of the 1930's were cash plans. Deferred plans (pension related) grew during the late 1940's through 1950's as a means of introducing pensions in firms that were unable to commit to defined benefit plans. When able the unions negotiated defined benefit plans. For example, the Amalgamated Clothing Workers' profit-sharing plan negotiated with Xerox in 1947 was first a deferred benefit plan that was replaced by a defined benefit pension plan. Later profit-sharing was renegotiated and a combined plan of the 1960's has been modified many times since.

Four unions at Michigan Wheel, a manufacturer of marine propellers, have negotiated both a gainsharing and a profit-sharing plan for more than 35 years. These plans predate the firms acquisition by Dana Corporation in 1970. In 1986 the two bonus plans made up 50 percent of earnings which average well over $30,000 per year. The workers participate in a variety of decisions that are usually considered management prerogatives. In addition the workers through their unions have agreed to use a share of their earnings to buy new electric furnaces for the firm, to improve the quality of their product, and to enhance their competitive position.

A leader of the local told a 1986 AFL-CIO conference on profit-sharing that a large portion of family members make up the workforce, and even so "layoffs are quick and deep, while recalls are slow." In doing so the workers and management at Michigan Wheel are demonstrating rational economic behavior.

Other union representatives at the same conference noted similar behavior - maximizing and stabilizing earnings through use of the manageable elements of the profit-sharing plans. Thus, it is unlikely that profit sharing systems will lead to a shared work any more than the prevailing fixed wage systems.

The early 1960's effort by Auto Workers to obtain profit-sharing in the basic auto agreements paralleled the goal of the Steelworkers with Scanlon plans - to stabilize the negotiated industry wage and benefit pattern. A fundamental goal of organized labor continues to be taking basic wages and benefits out of competition so that management must compete on management's ability and innovation. The UAW objective, after achieving a sound stable income level for its members, was to share in the wealth of the more profitable firms while securing employment opportunities in the marginal firms. This approach fit the traditional goal of the union, but management of the big three auto makers resisted for 20 years.

American Motors, without profits, agreed to profit-sharing in 1961, the Chrysler loan guarantee package contained profit-sharing in exchange for wage concessions in 1981 and Ford and GM - with prospects of poor to no profits - agreed to profit-sharing in 1982.

However, the formulas of the auto plans differ, obscuring their leveling potential. The Ford plan formula yields higher returns to workers than the GM plan. The UAW has stated that in future negotiations it wants to see the GM plan formula revised so that it produces results similar to those at Ford for similar profit levels - a signal that the union is returning to its goal of using profit-sharing to
stabilize the basic industry wage/benefit package.

In other negotiations in the 1980's profit-sharing has been taking on a new and different role - a part of whole package with little significance as a separate concept. For example, the Steelworkers and the LTV Steel used profit-sharing in the following way: Cuts in wages were treated as worker loans to the firm to be repaid from profits. If profits are insufficient to pay the debt, the agreement obligates the parent LTV firm to issue convertible preferred stock paying 5% interest to make up the difference. The stock is distributed to workers who can convert it to voting stock. Key in this agreement is the potential for worker participation through their union - as potential voting stockholders and as debtors in the current bankruptcy reorganization of the firm. Other steel industry settlements use a variety of other creative plans.

Airline negotiations have also used profit-sharing to meet the basic collective bargaining goal of stabilizing employment in the individual firms. Before deregulation disrupted the industry, the airline industry made wide use of profit-sharing as an additional benefit. Some firms even had two or three profit-sharing plans building benefits on top of one another.

Organized labor's view of these plans - as simply a benefit providing additional income - changed in the early 1980's. Profit-sharing became part of a trade - an investment of current wages for a promise of a share of future returns. As the impact of deregulation hardened in 1985, profit-sharing was packaged with stock ownership and levered ESOP's to take on a broader role. Workers, through their unions, began to use these concepts as a part of a whole package to gain greater control of their employment and income security and as a means of influencing management decisions.

In the TWA and Eastern negotiations the package were described as investments - wages and benefits for profits and stock ownership and a real voice in the decision making process.

**SUMMARY**

Although still a small part of all negotiated settlements, new lessons are being learned by workers and their unions about gainsharing and profit-sharing, and these lessons are likely to be a part of future labor practices.

Looking back over years of experience the following observations are in order:

- **Firms with profit-sharing are no more likely to provide employment or income security than those without.** An impressive number of profit-sharing firms which paid a large share of worker income as bonuses are no longer operating. GM's 1986 layoffs and those in the airline industry were not deterred by profit-sharing, nor were there any cases of a flexible pay plan that handles layoffs any differently than any other firm. Workers have found no job security in profit-sharing theory.

- **Workers prefer stable income to flexible income and will act accordingly.** The Chrysler profit-sharing plan was discontinued in favor of an assured 75 cent per hour wage increase and a return to an industry wage benefit pattern in 1984. The Clothing Workers' negotiated out profit-sharing during the 1950's for assured pensions and then returned to it as an additional benefit in the
Rational economic behavior leads workers to maximize their income under profit-sharing, gainsharing and other flexible income plans. Nearly all profit-sharing and gainsharing plans have carefully drawn rules regarding participation in benefits.

In short, for most workers, their debts and cash flow allow little to no room for risk taking. Thus, gainsharing and profit-sharing are useful to workers only when they contribute to basic income security goals. To meet these basic goals these plans must be designed to recover wages lost or used to avoid risks workers cannot afford.

By John Zaluzky
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NEGOTIATIONS DURING THE TERM OF A CONTRACT

A labor contract does not cover all conditions of employment. When there is an exclusive representative, those conditions cannot be changed until the bargaining agent is notified and provided an opportunity to negotiate over the change. This process is usually referred to as mid-term negotiations - less often as impact and implementation bargaining.

In the private sector, the obligation to conduct midterm bargaining has long been recognized. The courts and the National Labor Relations Board have established that collective bargaining is a continuous process and the parties must meet and negotiate upon demand. However, either party may refuse to bargain over negotiable matters specifically covered by the contract or where agreement on a new subject would require change in an existing contract.

Where an issue was raised during negotiations and compromised in exchange for other benefits, that issue cannot be raised during the life of an agreement unless it can be shown that the issue was withdrawn without prejudice to mid-term bargaining.

Within the bounds of the above restrictions, either party may demand to bargain at any time on any matter not covered by an existing contract unless the parties had agreed to a clear and unmistakable waiver of the right to bargain during the term of the contract.

These same principals were not fully established in federal bargaining until 1982. In a series of cases, the Federal Labor Relations Authority established that:

- Either the union or management may initiate bargaining on subjects not covered by an existing contract. The restriction on the scope is similar to that in the private sector as discussed above (9 FLRA 51).
- Before making a change in conditions of employment, the bargaining agent must be notified and provided an opportunity to negotiate (4 FLRA 10).
- The employer must give the union sufficient "relevant and necessary" information to permit the
Union to decide if bargaining will be required and to draft proper proposals (3 CA 94).

- The union must make a timely request to bargain to exercise their bargaining rights (5 FLRA 22).
- It is possible for a union to "waive" its right to bargain by inaction (2 FLRA 76).
- The employer must send to the bargaining table representatives with authority to bargain even if authority is retained at a higher level (4 FLRA 92).
- The union is not required to submit written proposals to protect their right to bargain (3 CA 2767, 2803, 2825).
- The employer must negotiate with the union even if the subject is nonnegotiable. Even where a management right is involved, the employer is obligated to bargain on the procedures used to implement the right. Examples would be RIF procedures, promotion procedures, performance appraisal procedures, and disciplinary procedures (3 FLRA 55).
- The union must promptly (5 days) seek FSIP assistance or notification of the employer's intent to implement if the union wants to maintain the "status quo" (5 CA 185).
- The employer must maintain the "status quo" while resolution of impassed items are pending before the Federal Service Impasses Panel (5 CA 331).

It must be remembered that all the employer has to do is inform the union of a proposed change in a condition of employment. The union must make a prompt demand to bargain and request pertinent information.

If the parties meet and fully discuss each others position on the issue, the responsibility to bargain has been met --even though written proposals were not exchanged. However, any agreements that are reached must, upon request, be reduced to writing and should be incorporated in the existing contract as a supplement.

After meeting and discussing the positions of the parties, the employer is free to set a date for implementation even though agreement has not been reached. At this point, the union should immediately request the assistance of the FSIP; within 24 hours if possible.

This is the only way the union can prevent the employer from implementing the change prior to a decision by the Panel. Usually, mediation is required prior to an impasse being submitted to the FSIP.

However, if management notifies you that they intend to implement without agreement, do not waste time. Submit the issue immediately to the FSIP. Notify the Panel that you proceeded directly to the Panel because of management's notice of implementation. While the Panel is considering jurisdiction, call for mediation assistance for one last try at settlement.

REMEMBER: Do not waive your bargaining rights by inactivity. It is the wise Union that has a cadre of trained staff to promptly engage in mid-term bargaining when the need arises. The wiser union has detailed procedures on mid-term bargaining in their contract.
The local has to be fully prepared for this aspect of Federal bargaining. Mid-term bargaining occurs far more often than it does in the private sector where strikes can be called if the employer implements without agreement. In the Federal Service, the FSIP is utilized to settle mid-term bargaining impasses.