

Contract negotiation is, in short, no more susceptible to sweeping statements than are the unions and managements that participate in the process.

The foregoing *has* indicated, however, that the negotiation of the labor contract in the contemporary economy is a complex and difficult job. The negotiators are required to possess a working knowledge of trade union principles, operations, economics, psychology, statistics, and labor law. They must have the research ability to gather the data necessary for effective negotiations. Negotiators must be shrewd judges of human nature. Often, effective speaking ability is an additional prerequisite. Indeed, the position of the negotiator of the modern contract demands the best efforts of people possessing superior ability. Today's collective bargaining sessions have no place for the uninformed, the inept, or the unskilled.

Discussion Questions

1. Assume that a large, nationwide company is negotiating a contract at the present time. What economic, political, legal, and social factors might be likely to exert some influence on these negotiations?
2. It has been argued by a union research director that "a fact is as welcome at a collective bargaining table as a skunk at a cocktail party." Do you agree?
3. Evaluate the statement that "in the absence of a strike deadline, there can be no true collective bargaining."
4. What might explain the frequently heard management observation that "highly democratic unions are extremely difficult to negotiate with?"
5. How do you account for the fact that the joint study approach still remains confined to a relative handful of industries?
6. From the viewpoint of society, is there anything to be said in favor of strikes?
7. Of all the personal attributes that this chapter has indicated are important for labor relations negotiators to have, which single one do you consider to be the most important, and why?
8. "Successful labor contract bargaining should no longer be viewed as an 'art.' It is far more appropriate today to refer to it as a 'science.'" Discuss.
9. "No manager who is prone to either ulcers or accepting verbal statements at face value belongs at the labor-relations bargaining table." Discuss, after explaining what this means.
10. "From the viewpoint of management, there is a great deal to be said for the policy of Boulwarism." Do you agree or disagree with this statement?
11. "From the viewpoint of the national interest, work stoppages in baseball, our national pastime, should be made illegal." Comment fully.

Minicases

1. Trying to Strike a Balance

In order to bargain for the health and safety of employees, the Oil, Chemical and Atomic Workers Union demanded that several employers disclose the generic names of chemical substances used or produced, as well as the medical records of employees. The employers refused, claiming that disclosure would both invade the privacy of employees and compromise trade secrets. With some limitations, the NLRB in 1982 held that the employers did not bargain in good faith when they refused to divulge such information.* While upholding the union's request, the board asserted that few matters could be of greater concern to employees "than exposure

to working conditions potentially threatening their health, well-being or their very lives."

However, the board also ruled that the employers could conceal individual employee identities before turning over the medical records and also that the managements did not have to disclose the generic names of chemicals that constituted proprietary trade secrets. Thus, the NLRB attempted to strike a balance between conflicting interests: the employer's desire to protect both worker privacy and trade secrets and the union's need for material information about potentially life-threatening work conditions.

How do you feel about this NLRB decision? ■

**Minnesota Mining & Manufacturing Co.*, 261 NLRB 27 (1982).

2. An Embarrassing Incident for the Arbitrator

Professor Grover Harrison has been jointly selected as impartial ad hoc arbitrator by a union and management, none of whose principals he has ever met. Eating his breakfast alone in a booth in the dining room of the hotel in which the hearing will shortly be held, he overhears the following words emanating from the next booth:

Well, of course, it's not the truth, but if we're to have any chance of winning this thing, we'd damned

well better consistently stick to our claim that the supervisor on at least one occasion made lewd and suggestive remarks to Mary. She can be counted on to testify this way at the hearing, and she's a good enough liar so that there's no chance of her being shaken in the cross-examination.

If you were Harrison, what (if anything) would you now do? ■

Notes

1. *Textile Workers v. Lincoln Mills*, 353 U.S. 488 (1957).
2. *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).
3. *AT&T Technologies v. Communications Workers*, 106 S. Ct. 1415 (1986).
4. *Alexander v. Gardner-Denver Co.*, 94 S. Ct. 1011 (1974).
5. *Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976).
6. *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728 (1981).
7. *McDonald v. City of West Branch, Michigan*, 104 S. Ct. 1794 (1984).
8. *Nabisco, Inc. v. NLRB*, 479 F (2d) 770 (CA 2, 1973).
9. 192 NLRB 837 (1971).
10. *United Paperworkers International Union v. Misco*, 108 S. Ct. 364 (1987).
11. *Gilmer v. Interstate Johnson Lane Corp.*, 500 U.S. 20 (1991).
12. *Wall Street Journal*, November 29, 2000, p. B11.
13. *Grievance Guide*, 11th ed. (Washington, DC: Bureau of National Affairs, 2003), pp. 219–221.
14. *Ibid.*, pp. 94–95.
15. Bureau of National Affairs, *2004 Source Book on Collective Bargaining* (Washington, DC: Bureau of National Affairs, 2004), p. 255.
16. *Wall Street Journal*, April 25, 2002, p. D5.

Selected References

- Bales, Richard A. *Compulsory Arbitration*. Ithaca, NY: ILR Press, Cornell University, 1997.
- Bognanno, Mario J. and Charles J. Coleman, Eds. *Labor Arbitration in America: The Profession and the Practice*. New York: Praeger, 1992.
- Brand, Norman. *How ADR Works*. Washington, DC: Bureau of National Affairs, 2002.
- Bureau of National Affairs, Inc. *Grievance Guide*, 12th ed. Washington, DC: Bureau of National Affairs, 2007.
- Dolson, William F., Christopher A. Barreca, and Max Zimny, Eds. *Labor Arbitration: Cases and Materials for Advocates*. Washington, DC: Bureau of National Affairs, 1997.
- Duane, Michael J. *The Grievance Process in Labor-Management Cooperation*. Westport, CT: Quorum, 1993.
- Dunlop, John T. and Arnold M. Zack. *The Mediation and Arbitration of Employment Disputes*. San Francisco: Jossey-Bass, 1997.
- Eaton, Adrienne E. and Jeffrey H. Keefe, Eds. *Employment Dispute Resolution and Worker Rights in the Changing Workplace*. Ithaca, NY: Cornell University Press, 2000.
- Elkouri, Frank and Edna Elkouri. *How Arbitration Works*, 6th ed. Alan Miles Ruben, Editor-in-Chief. Washington, DC: Bureau of National Affairs, 2003.
- Gleason, Sandra E., Ed. *Workplace Dispute Resolution: Directions for the Twenty-First Century*. East Lansing: Michigan State University Press, 1997.
- Goodman, Allan H. *Basic Skills for the New Arbitrator*, 2nd ed. Rockville, MD: Solomon Publications, 2004.
- Guerin, Lisa and Amy Delpo. *Dealing with Problem Employees: A Legal Guide*. Berkeley, CA: Nolo, 2001.
- Hauck, Vern E. *Arbitrating Race, Religion, and National Origin Discrimination Grievances*. Westport, CT: Quorum, 1997.
- _____. *Arbitrating Sex Discrimination Grievances*. Westport, CT: Quorum, 1998.
- Hill, Marvin, Jr. and Anthony V. Sinicropi. *Evidence in Arbitration*, 2nd ed. Washington, DC: Bureau of National Affairs, 1987.
- _____. *Remedies in Arbitration*, 2nd ed. Washington, DC: Bureau of National Affairs, 1991.
- Hotchkiss, Julie L. *The Labor Market Experience of Workers with Disabilities*. Kalamazoo, MI: Upjohn Institute, 2003.
- Lewin, David and Richard B. Peterson. *The Modern Grievance Procedure in the United States*. Westport, CT: Quorum, 1988.
- Loughran, Charles S. *How to Prepare and Present a Labor Arbitration Case*, 2nd ed. Washington, DC: Bureau of National Affairs, 2006.

6. What possible problems might confront management and unions in the negotiation and administration of contractual language dealing with overtime?
7. "Governmental wage and price controls should never be tried again. They have invariably been abysmal failures." Comment.
8. "Whatever might be said in favor of the two-tier wage system, nothing can counter the fact that it is intrinsically unfair and two-tier systems should be universally eliminated on this ground alone." Discuss.
9. "The Consumer Price Index is anything but scientific." Comment, indicating your agreement or disagreement.

Minicases

1. Dispensation

The Marsh Company, a 90-year-old Akron clothing maker best known for its golf shirts and men's underwear, is genuinely convinced that unless it can cut its labor costs appreciably, it will soon be on the brink of extinction. Although the union with which it has dealt for many years has prided itself on enforcing uniform industrywide contractual terms (in separate contracts for each company), relations between the parties have been good in recent years. Accordingly, Personnel Vice President Lillian Rosenblatt believes that the union could be amenable to some holding of the line on employee benefits for the first 2 years of the new 3-year contract for which bargaining is scheduled to begin in 4 weeks, and perhaps even a temporary wage freeze.

If such dispensation is not achieved in the bargaining, Rosenblatt personally has no doubts that Marsh will have to close its doors within a year, thereby terminating the employment of its 295 workers. All but 44 of these employees are union members and most of them are relative old-timers because the workforce has an average age of 43. She also recognizes, however, that if the union grants concessions to Marsh, other companies in this currently depressed industry would immediately pursue the labor organization for similar downward revisions in their own contracts. The latter consequence is something that the union clearly would not welcome and might not be politically able to sustain in any event.

If you were Vice President Rosenblatt, how would you deal with this subject of contractual dispensation? ■

2. An Employee Refusal to Work Overtime

The labor agreement stipulates that "changes in the work schedule" must be "mutually agreeable to both the company and the union." Gryzmisk, who has refused to work 6 hours of overtime as he was requested to do by his supervisor, is given a 1-day suspension for his action.

The union supports Gryzmisk all the way to arbitration on the grounds that the relevant overtime constituted

a "change in the work schedule" that it had not approved. The management argues before the arbitrator that the 6 hours in no way could be considered a change that needed union acceptance since it was for a "limited and specified" duration.

As the arbitrator in this case, what would you have decided? ■

Notes

1. Recognition of the difference between firms and industries should also be taken into account when the *nonmoney* items of collective bargaining are negotiated. A seniority system, for example, that is suitable for one employer–union relationship may not fit the needs of the employer and employees of another plant. Union security formulas, checkoff arrangements, managerial prerogative systems, grievance procedures, discharge and disciplinary arrangements, and the character of the union obligations should be geared fundamentally to the particular collective bargaining relationship. Management and union representatives are at times astonished to learn of the contractual arrangement of another employer–union relationship. The fact is, however, that such a formula can frequently be explained logically in terms of the environment of that firm.
2. Bureau of National Affairs, *2002 Source Book of Collective Bargaining* (Washington, DC: Bureau of National Affairs, 2002), p. 39.
3. Bureau of Labor Statistics, U.S. Department of Labor, *CPI Detailed Report*, July 2007, p. 122.
4. *Wall Street Journal*, May 25, 1995, p. B4.
5. Bureau of National Affairs, *2007 Source Book of Collective Bargaining* (Washington, DC: Bureau of National Affairs, 2007), p. 190.