At the Bargaining Table 7

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Learning Objectives

After completing this chapter, you should be able to:

- Describe procedures for and types of bargaining.
- Summarize the collective bargaining process.
- Evaluate the various results of an impasse.
- Analyze the role that the Federal Mediation & Conciliation Service plays in bargaining.

Introduction

In previous chapters we saw how workers in the public and private sectors formed unions in order to have a stronger voice at work. That strength comes from the requirement that management sit down with labor to work out an acceptable agreement pertaining to the conditions of employment or face the possibility of committing an unfair labor practice. The bargaining that constitutes collective bargaining is one of the mainstays of the National Labor Relations Act (NLRA) and was a prize not easily won by labor. In this chapter we will learn some of the intricacies of that act, including what exclusive representation means; what constitutes good faith bargaining; what items must be bargained for and which are prohibited; as well as sound strategies to bring to the negotiating table.

As we begin the study of collective bargaining, it is important to first place these materials into a broader legal and social context. Remember that when the NLRA, or Wagner Act, was passed in 1935, few laws protected employees. For instance, there were no minimum wage or maximum hour laws; the **Occupational Safety and Health Administration (OSHA)**, the federal administrative agency that oversees safety, did not yet exist; and the Civil Rights Act prohibiting discrimination on the basis of race was not passed until 1964. The First Amendment right to engage in union activity was also not determined until later case law.

Imagine the issues that would be addressed in a 1935 negotiation compared to one today. Workers in 1935 would be seeking a decent wage, a limit in the hours worked per week, vacation time, and perhaps improved safety. Today a separate federal law covers each of these issues. Federal law dictates a minimum wage, the maximum number of hours one can work per week, and overtime pay guidelines, and safety has been highly regulated by OSHA since that agency's creation in 1971.

Although it is true that contemporary labor issues are not the same as they were in 1935, there are still many points that need to be negotiated. For example, there is currently great concern about pensions and how contributions are split between workers and management. In certain industries such as coal mining, safety and the enforcement of safety rules still dominate labor negotiations. Other workers are most concerned about health care for themselves and their families, given the rising costs associated with coverage. Nurses' unions have prioritized bargaining for decreased work hours and more patient coverage, arguing that such work environments support their patients' health. Private unions are concerned with membership, making closed shop issues important. In short, although time has passed and the issues have changed, the process of collective bargaining remains essential and purposeful.

7.1 Collective Bargaining

What is collective bargaining, and why is it such an essential right of organized labor? The theory behind collective bargaining is that it reduces the power differential between management and workers, making the relationship more equal; by compelling management to come to the table and meet with workers, there is a significant shift in power. This section sets the stage for the process of bargaining. It explores what it means that unions are the exclusive representatives of their bargaining unit and reviews the three classifications of bargaining subjects: mandatory, permissive, and illegal.

The Principle of Exclusive Representation

In **Chapter 4** (http://content.thuzelearning.com/books/AUBUS372.15.1/sections/ch04sec4.1#ch04sec4.1) we saw that a first step of unionization was for workers to identify who should be a member of the bargaining unit. Once that was established, workers in the designated bargaining unit signed authorization cards, and if at least 30% of the workers voted to unionize, the process of moving toward an election could begin. If the prerequisites were met and an election took place, the National Labor Relations Board (NLRB) certified the union, which meant it then became the exclusive representative of that bargaining unit.

Exclusive representation is an important concept that is found in Sections 8(b) and 9(a) of the Labor Management Relations Act of 1947. Those sections explicitly empower a union that represents a majority of the employees in a bargaining unit to act as all employees' exclusive representation in collective bargaining.

Exclusive representation has a number of meanings. One is that the employer may not bargain with any other employees, no matter how well intentioned the conversation. Nor may the employer engage in discussions with another union purporting to represent some of the workers. The certified union is the only one with whom the employer may deal.

Exclusive representation obligates all workers in the bargaining unit to participate in union activities, though individuals may choose not to be a member of the union if they have that option. In many states, by law, workers cannot be mandated to join a union or pay dues as a condition of employment. These are referred to as right-to-work states. Despite the fact that the bargaining unit may include workers who do not agree with the union or its philosophy, the union has the duty to represent each worker equally and without bias, no matter their status (union or nonunion; dues paying or not).

In the News: Challenging the Right to Exclusive Representation

Twenty-seven thousand home care workers are part of a union that represents workers who are paid by the state to care for disabled or elderly patients. The National Right to Work Legal Defense Foundation filed a lawsuit in 2014, however, challenging the union's right to exclusively represent these workers. The foundation argues that those home care workers who oppose the union are being forced to have the union represent them because under the concept of exclusive representation, all workers in the bargaining unit are represented by the union. The foundation opposes the exclusive representation concept that has been a fundamental part of belonging to a bargaining unit and argues that employees' First Amendment right to free association is infringed on when a union employees do not support calls itself their representative.

According to an editorial in the *New York Times* (**http://www.nytimes.com/2014/10/02 /opinion/more-hurdles-for-home-care-unions.html?_r=0** (http://www.nytimes.com/2014/10/02/opinion/more-hurdles-for-home-care-unions.html?_r=0)), if the National Right to Work Legal Defense Foundation successfully makes this argument in court, the union will be undermined, allowing employers to pay lower wages as collective representation goes by the wayside.

Discussion Questions

1. Suppose the employees in a bargaining unit who oppose a union are allowed to *not* be represented by it. What impact would this have when it comes time to enter into negotiations for a new collective bargaining agreement?
2. Does the fact that home care workers are among the lowest paid professionals impact how the court should rule on representation? Why?

According to Title 29 of the U.S. Code, **exclusive bargaining** stipulates that the union may not discriminate against any of its members. "Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct" (29 U.S.C. § 158, 1982). Similarly, **Title VII of the Civil Rights Act of 1964** makes it unlawful for a labor union to discriminate against any of its members on the basis of race, religion, sex, or national origin.

Exclusive bargaining imposes different rights and duties on employers and workers. Employers have the duty to bargain only with the chosen labor organization, and unions have the duty to represent all of the workers in the bargaining unit equally and fairly.

Procedures for Bargaining

Once a union is certified, the employer has a legal obligation to bargain with the representatives of that union. Collective bargaining is the act of management and union representatives meeting to discuss and negotiate an agreement. This simple-sounding process, however, may involve many players and take years to complete. The National Labor Relations Act does not require the parties to arrive at an agreement, nor does it require either side to make concessions, but merely to meet, discuss, and attempt to arrive at an agreement.

Although the law does not stipulate the parties must agree, it does set forth procedures for bargaining in good faith, which means that management and workers must come to the bargaining table with the intent to enter into a final agreement that will outline the terms and conditions of employment. Indeed, the law prohibits going through the motions of bargaining without intending to complete a deal; it imposes a duty on the parties to bargain with good and productive intentions. The law states:

> To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. (29 U.S.C. §158 [d])

Whether a party is truly acting in good faith is not easy to determine, but as a general rule, the NLRB will consider the totality of the circumstances should there be a question of a party's intention. Certain characteristics of good faith have emerged over the years from decisions of the NLRB and the courts (National Labor Relations Board, n.d.d.). These include being "willing to meet at reasonable times and intervals and whether the party is represented by someone who has the authority to make decisions at the table" (National Labor Relations Board, n.d.d, para. 11). Other indications of good faith include attending the bargaining sessions, arriving on time, being prepared, supplying requested information, addressing concerns, and engaging in a candid and reasonably tempered discussion. Requesting and providing information is essential to the process (National Labor Relations Board, n.d.d.).

Examples of bad faith during collective bargaining include canceling meetings, ending meetings early, wasting bargaining session time on irrelevant matters, questioning the union's legitimacy, and proposing patently unacceptable terms of employment (*Radisson Plaza Minneapolis v. NLRB*, 1993). An employer's proposals that were deemed "unusually harsh and unreasonable were also signs of bad faith; the employer must at least propose alternatives that are reasonable" (*NLRB v. A-1 King Size Sandwiches*, 1984).

A union's use of stalling tactics (*FAA Concord H*, 2013), withdrawing from tentative agreements (*Whitesell Corporation and Glass, Molders, Pottery et al.,* 2011), and entering the negotiations with no intention of coming to an agreement (*Triple A Fire Protection, Inc. and United Association of Journeymen*, 2010) are additional examples of bargaining in bad faith.

Even actions of negotiators themselves might result in a finding of bad faith. For example, when a company's negotiator was not prepared for the negotiations, offered unrealistic proposals, and declared an impasse prematurely, the company was found to be acting in bad faith. Likewise, it is unacceptable for either party to adopt a "take it or leave it approach" or an inflexible attitude (*NLRB v. General Electric*, 1969).

Subjects of Bargaining

The NLRA divides subjects discussed during bargaining into three types: mandatory, permissive, and illegal. **Mandatory subjects** are topics that the parties *must* negotiate or waive, whereas **permissive subjects** are those that parties *may* negotiate or waive. **Illegal subjects** are any that are prohibited from being negotiated. Examples of each subject are included in Table 7.1.

Table 7.1: Examples of mandatory, permissive, and illegal subjects of negotiation

Mandatory subjects	Permissive subjects	Illegal subjects

• Arbitration • Overtime premiums • Bargaining unit work • Pay for time spent on union business • Bereavement leave • Pay for training • Bonuses • Pension for current employees • Clothing and tool allowances • Premium pay for Sundays and holidays • Cost-of-living adjustments • Profit sharing • Dental and vision plans • Promotions • Discharge and discipline	• Ground rule negotiations • Internal union matters such as how and when a tentative agreement is ratified • The price of meals furnished or sold to employees by an independent caterer • Granting the employer the right to use the union label • Demanding that a union settle all grievances that are arbitrable that arose under the previous contract • Settlement of unfair labor practice charges • Pension benefits for retired members	• Closed shop provisions (requires an employee be a union member in order to be hired for a job) • Provisions that discriminate against employees because of race, creed, sex, etc. • Hot cargo clauses (language that prohibits an employer from dealing with any others)

Source: National Labor Relations Board, n.d.d.

Mandatory Subjects

Note that under the mandatory subjects category in Table 7.1, the actual terms and conditions of employment appear. These include the fundamental work issues of pay; overtime; paid leaves such as bereavement time; pension contribution amounts; and cost of living increases. Inclusion on the list does not mean there is any guarantee that the union will receive what it asks for, just that management cannot refuse to discuss and negotiate these subjects.

Sometimes, mandatory subjects encompass topics that are not explicitly included on the list. For example, in the case *Brewers and Maltsters Local Union No. 6*, the court considered whether hidden cameras installed by management to film employees were subjects of mandatory bargaining and should therefore have been disclosed to the union. Note that cameras and such are not mentioned in the list of mandatory subjects in Table 7.1. Nevertheless, the court considered whether such surveillance constituted a form of misconduct that is included on that list.

Anheuser-Busch was expecting a strike of its employees and as such, management became more vigilant about watching employee behavior that indicated the start of the strike. To this end, the company increased its surveillance of employees. During one of its inspections, management found a room, dubbed the "penthouse," with several 6-foot foam pads hidden in the panel doors that housed the elevators' electrical system, cardboard mats of a corresponding size, and a table and four chairs. The company claimed that this suggested "persons were using the room for reasons inconsistent with any work assignment and possibly illegal drug activity might be ongoing" (*Brewers and Maltsters Local Union No. 6,* 2005). Thereafter, a decision was made to install a camera on the roof in order to determine who was entering and exiting the penthouse, and in this way the employer recorded the comings and goings of employees.

When the union discovered that employees were being recorded, it objected, claiming that this activity should have been a mandatory subject of bargaining. The NLRB agreed, because such recording is a matter appropriate "to the working environment and not among those managerial decisions that lie at the core of entrepreneurial control. The Board further found that the installation of surveillance cameras is analogous to physical exams, drug/alcohol testing requirements, and polygraph testing, all of which" (*Brewers and Maltsters Local Union No. 6,* 2005) are employer investigatory tools or methods to determine whether any employees engaged in misconduct, and all are mandatory subjects of bargaining. As a result, the board held that the installation and use of cameras has the potential to affect employees' continued employment. This is because the surveillance included cameras in areas where employees generally have an expectation of privacy and thus were not guarded about their behavior. Employees who misbehaved in such a context risked being fired or reprimanded when in fact they thought their acts were unobserved. This raises privacy concerns that impact employees' working conditions as well as issues pertaining to discharge and discipline, all topics included under mandatory subjects. As a result, the employer was ordered to cease the behavior.

This case teaches an important lesson about what parties should negotiate at the bargaining table: All of the mandated topics on the list as well as those actions that could be interpreted as mandated topics. Employers need to think through items that are not explicitly spelled out as mandated topics, such as observing employees, but nevertheless result in being mandated topics when implemented. Since it is impossible to imagine every scenario, obtaining waivers for grey areas will protect the employer from an unfair labor practice charge.

Permissive Subjects

Whereas parties are required to negotiate mandatory subjects, they may choose to negotiate permissive subjects. Permissive subjects have different rules than mandatory ones. For example, parties may not reach an impasse over permissive subjects, only mandatory ones. Suppose a union insisted on a 1% increase to all retirees' pensions, and management refused an increase, and an impasse was declared. This impasse would be invalidated, because the issue of retirees' pensions is on the permissive list and thus is not subject to an impasse. The parties would be required to continue bargaining and could not stop the proceedings.

Illegal Subjects

Contrast the mandatory subjects in Table 7.1 with those topics the law has determined are illegal to negotiate over, such as a closed shop. Negotiations that would discriminate against certain workers are also not allowed, along with hot cargo agreements, which were outlawed in the Taft-Hartley Act. Should parties negotiate an illegal subject and reach an agreement, the agreement would be void because the topic is illegal.

Waiver of Subjects

The employees' bargaining agent may **waive** or give up the right to negotiate any of the mandatory subject items from the list. For this to happen, however, there must be clear and unmistakable proof that the union has relinquished the right. The clearest way to do this is in a piece of signed writing called a waiver. The waiver is a written document that both parties sign that states they are waiving, or giving up, the right to negotiate a particular subject.

In lieu of signing a waiver, a shop's past practices may allow the court to infer that the parties have nevertheless waived the subject. The inference of a waiver means that the parties have acted a certain way in the past that indicates a waiver of a certain subject. For example, in one case an employer unilaterally added shifts to a contracted schedule based on a consistent, long-standing practice of adding and removing shifts. The employer did this without collecting bids from the union or employees about the work, a mandatory subject. Since the employer's unilateral decisions went on for so many years and was a long-standing practice, the union was deemed to have waived its right to negotiate this, even though there was no written waiver (*The Courier-Journal*, 2004).

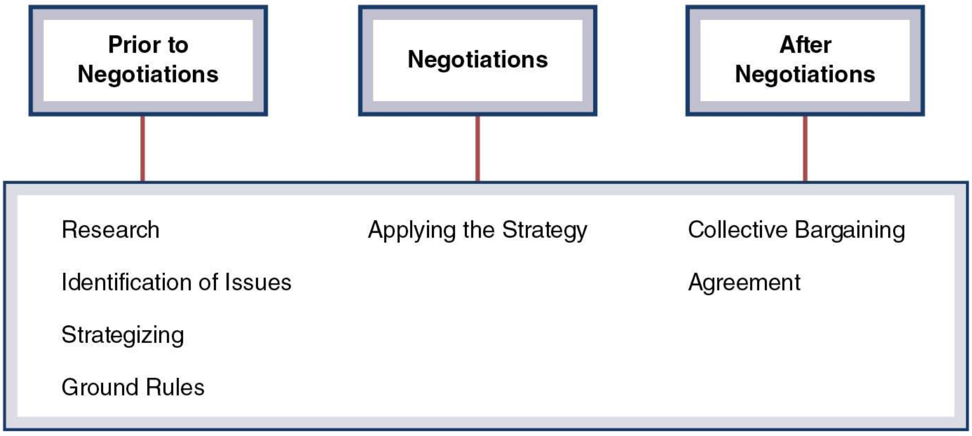
7.2 The Collective Bargaining Process

Collective bargaining is essentially a **negotiation**. Therefore, strategies for effective negotiating also apply to collective bargaining. This section covers the stages of negotiating, the first of which is the preparation stage. Preparation involves four parts: identifying the issues, researching, strategizing, and setting the **ground rules**. This type of preparation may involve months of work, depending on the complexity of the issue. The next step is the actual negotiation. There is much that can be learned to become an effective negotiator, and a great deal of it involves preparing for the actual bargaining experience. Finally, preparations and negotiation should lead to an agreement, which is discussed in the last part of this section.

Figure 7.1 provides an overview of the negotiation process, from the prenegotiation period that involves gathering information, to the actual negotiation, followed by the actual collective bargaining agreement. Each of these components will be explained in detail in the following section.

Figure 7.1: The negotiation process

The same principles applied to negotiations can be applied to collective bargaining.



Prior to Negotiations

Prior to entering negotiations, the union should identify issues it feels are most important and then research these issues, strategize its approach to them, and establish ground rules for the negotiation. Effective negotiations are the result of expertise in negotiating processes and research. All of the parties to a negotiation must be experts on the issues that will arise during the discussions. Additionally, parties need to prepare extensive information to pre-sent at the negotiations. For example, if the union is seeking a wage increase of 3%, it must be able to show management what that increase will actually cost the company and how the company will be able to pay for it. This involves a detailed investigation into the company's finances and economic forecast over the life of the proposed contract, as explained in more detail in step 2.

Step 1: Identify the Issues

Since the end product of collective bargaining is the actual agreement, it is essential to first identify what collective bargaining should accomplish. This is referred to as identifying the issues. For example, does labor want a pay increase or more vacation time?

In general, the size and makeup of the bargaining unit determine the bargaining team's composition. However, since many types of bargaining may take place, there is no single way to describe the process. For example, bargaining may involve a single employer with offices in numerous locations. As a result, the bargaining team may be composed of only head office staff, or it may include some local representatives. In the case of multilocation employers who bargain separately for each location, the team may be confined to local management, or it may include a representative from the firm's head office. In single-employer, single-location bargaining, the team may consist of the company's top management.

Likewise, union bargaining teams come in various sizes. The team could range from a lone business agent to a full bargaining committee of as many as 100 people. Union teams also require the assistance of experts in various fields, such as economists, benefit specialists, actuaries, and attorneys. In local bargaining the negotiating committee is relatively small. If the bargaining committee is elected by the local, it typically includes union officers, a business agent, and some shop stewards. In some instances a representative of a national union may assist the local union. It is usually the responsibility of the national representative to prevent local concessions from falling below the minimum industry norm established by the national union (Wagoner, 2008). For example, wages, benefits, and pension contributions may all have minimum standards acceptable to the union.

It is essential that the union representative understands what his or her constituency wants. Many unions hold town hall meetings or online campaigns in which they seek input from members about what issues are most important to them. When many locals provide input, there may be layers of meetings, from statewide to national, to which unions will send representatives. Coming to a consensus about the most important issues to achieve and which may be conceded at the table can be a painstaking and time-consuming process, depending on the size of the union. Some unions use committees for this task; others go directly to the membership for approval; and still others empower their leadership to manage the whole process.

Once the issues are identified, union representatives need to decide what they want to achieve in the negotiation. In other words, they must set objectives for the bargaining process and rank them in order of importance. Do they want to increase their pay raises or increase pension contributions by the employer? There is a general sense that for every request one side makes, it must concede something to the other. For example, if management is willing to give a pay raise, then what is the union willing to give in return?

Each team of negotiators must have a clear ranking of the very top issues with a corresponding list of concessions it is willing to make. Again, the membership can decide the priority of its wants and concessions. This can be accomplished by vote or by committee; it is up to the bargaining unit how it wishes to handle this part of the process.

Let us use a simple hypothetical example to walk through the collective bargaining process. Suppose that a contract renewal for Local 111 is looming. This local represents bus drivers who deliver emotionally disturbed elementary children to the county's private schools each morning and return them home in the afternoons. Local 111 has 162 members and holds a monthly meeting. The previous contract lasted for 6 years and was a relative success, but two important events have taken place in the interval: (a) there have been a number of disturbances on the buses in which drivers were injured, and (b) the drivers feel that their hourly pay is falling far behind the rest of the country.

All of the drivers were well aware of the disturbance on the buses. The attacks on drivers made the local news and were the talk of the union hall for many months. A poll conducted by leadership indicated that drivers were relatively happy with their current health benefits as negotiated in the last go-round. Therefore, the union negotiating team knows it can use this item as a concession.

Step 2: Research the Issues

What research must be done? In our case with the bus drivers, negotiators will need the most current materials about how other communities deal with the issue of bus driver safety, and if improvements are to be made, what they should be and how much they will cost. Second, the drivers will also need to come to the table prepared to persuasively argue that their hourly wages are too low. Third, the negotiators should always be aware of who and what they are up against. Thorough research into the people representing the opposing side of the table is essential. Likewise, it is also important to understand what constraints they are under, where they will most likely be able to give, and what issues will be impossible to achieve. Constraints could include a known budget amount or legislation limiting the amount of the cost of living increase.

Where can we find information for each of the issues described previously? Some of the more helpful websites for gathering these types of information are provided. This is not meant to be an exhaustive list, but rather an overview of some of the places to find quality information.

1. **Google and other search engines**

   General search engines tend to produce excellent articles. Most issues can be simply researched by typing in phrases and reading the resulting articles. For example, on the issue of the safety of the school bus drivers, typing "How school districts protect their drivers" into Google brought up articles from *Bus Fleet* magazine about strategies employed at five different school districts across New York State. Asking what the costs would be to protect drivers also indicated that bus drivers have gone on strike to demand more protection. These materials can be assimilated to make a convincing case for anything ranging from a study paid for by the school district to requesting more security on the buses. An especially helpful search engine tool is Google Scholar, which yields information that someone has already researched and that can be used as a reliable source.

2. **The Bureau of Labor Statistics** (http://www.bls.gov (http://www.bls.gov))

   The issue of pay across the nation is well covered by the Bureau of Labor Statistics, which keeps running numbers on what workers are paid each year. For example, entering the phrase "bus drivers" in the search box on this website directs users to the information shown in Table 7.2.

   Table 7.2: Quick facts: Bus drivers

2012 Median Pay	$29,550 per year

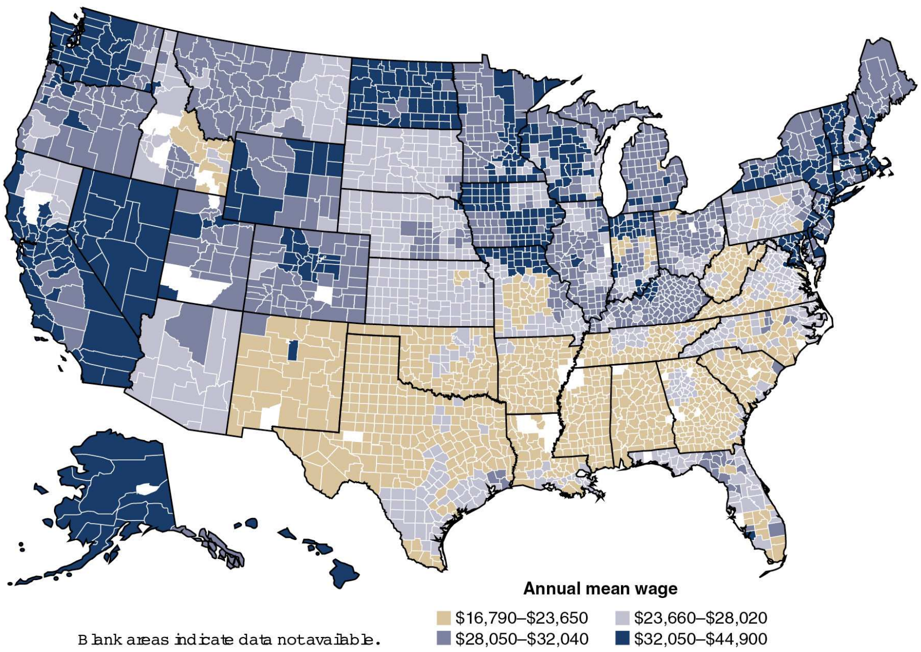
	$14.21 per hour
Entry-Level Education	High school diploma or equivalent
Work Experience in a Related Occupation	None
On-the-job Training	*See How to Become One*
Number of Jobs, 2012	654,300
Job Outlook, 2012–22	9% (As fast as average)
Employment Change, 2012–22	57,900

Source: Bureau of Labor Statistics, 2014d.

The website also provides graphs and charts, such as the map that appears in Figure 7.2 showing the annual mean wages of school bus drivers in the United States. Furthermore, the website provides information about how dangerous the occupation is compared to other types of work (see Figure 7.3).

Figure 7.2: Annual mean wage of bus drivers across the United States, May 2013

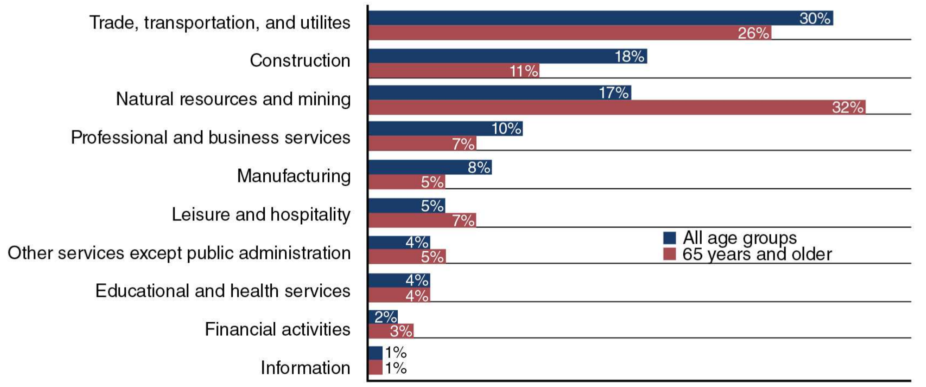
The Bureau of Labor Statistics provides useful information about occupation salaries. For example, bus drivers in Alaska have an annual mean wage of $32,050 to $44,900, but most bus drivers in New Mexico have an annual mean wage of $16,790 to $23,650.



Bureau of Labor Statistics. (2014c). Occupational employment statistics. Retrieved from **http://www.bls.gov/oes/current /oes533022.htm** (http://www.bls.gov/oes/current/oes533022.htm) *(See figure titled* Annual mean wage of bus drivers, school or specialist client by area, May 2013*)*

Figure 7.3: Risk of injury in the transportation industry compared to others, 2011

The Bureau of Labor Statistics is a good resource for research. For example, information on its website indicates that 30% of work-related injuries occur in the trade, transportation, and utilities industries. Such information could be used to put together a presentation or argument at the negotiating table.



Bureau of Labor Statistics. (2012). Does the risk of fatal injury vary by industry? Retrieved from **https://www.census.gov /newsroom/cspan/safety** (https://www.census.gov/newsroom/cspan/safety) *(see slide 6)*

Other relevant information can be found about the particular occupation and how easy it is to hire in this field. The Bureau of Labor Statistics keeps extensive data on occupations, including required education and work experience. Again, if the term "bus drivers" is searched, the site will direct users to information that provides the number of overall people employed in this field, their hourly wage, and annual wages, as shown in Table 7.3 from the bureau's website.

Table 7.3: Occupational data for bus drivers

Employment	Mean hourly wage	Mean annual wage
496,110	$14.12	$29,380

Source: Bureau of Labor Statistics, 2014c.

3. **The U.S. Census Bureau** (**http://www.census.gov/main** (http://www.census.gov/main))

   What if the bus drivers wanted a cost of living raise? How much of an increase should employees ask for, and what is realistic to expect? The Census Bureau's website is a good source for this information. It keeps detailed data about occupations and raises in relationship to the cost of living. The bureau's website has a search box in which you can type "cost of living index," for example, to figure out the rate of inflation and its impact on the bus drivers' hourly wages.

4. **The U.S. Department of Labor** (**http://www.dol.gov** (http://www.dol.gov))

   The Department of Labor offers a wealth of information, including answers to the following questions and issues:

   a. What is the financial strength of the union and what is its structure? Information about union finances can be found at the Department of Labor site, **http://kcerds .dol-esa.gov/query/getOrgQry.do** (http://kcerds.dol-esa.gov/query/getOrgQry.do) .
   b. Who are the union officers and personnel? This can be found at the Department of Labor site Online Public Disclosure Room, at **https://www.dol.gov/olms/regs /compliance/rrlo/lmrda.htm** (https://www.dol.gov/olms/regs/compliance/rrlo/lmrda.htm) .
   c. Previous collective bargaining agreements are available at **https://www.dol.gov /olms/regs/compliance/cba/index.htm** (https://www.dol.gov/olms/regs/compliance/cba/index.htm) .

5. **CorpWatch** (**http://www.corpwatch.org** (http://www.corpwatch.org))

   What about gathering information about the people on the other side of the bargaining table? If the bargaining team for management is from a corporation, CorpWatch provides information that can be of use during a negotiation, such as the salaries of executives. The tab at the top of the page called "Hands-On Corporate Research Guide" will take you to lists of websites with information about employer bargaining teams. CorpWatch also suggests going directly to the company's website for further research. View some of the information provided at this site at **http://www.corpwatch.org /article.php?id=945** (http://www.corpwatch.org/article.php?id=945) .

6. **Marquis Who's Who** (**http://www.marquiswhoswho.com** (http://www.marquiswhoswho.com))

This site is a good starting point for locating the names, addresses, and background information of corporate leaders. Once this information is obtained, running that data through Google or other websites such as LexisNexis (available in public libraries) and Pipl (**http://www.pipl.com (http://www.pipl.com)**) may uncover even more data about the disparity between worker and management pay. For our bus driver example, First Student (**http://www.firststudentinc.com (http://www.firststudentinc.com)**) is the leading student transportation company. The website provides much information about the leaders of the company, who can then be researched on all of these sites.

7. **Bloomberg Businessweek** (**http://www.businessweek.com (http://www.businessweek.com)**)

   Information about corporations is available on this website. For example, if the company First Student is searched, the website provides information about the officers by name. This information is available at **http://investing.businessweek.com /research/stocks/private/people.asp?privcapId=4180443 (http://investing.businessweek.com/research/stocks/private/people.asp?privcapId=4180443)** . In addition to names, the website provides pay information and can be used as a springboard for comparisons, such as comparing a particular CEO's pay to others in the industry.

8. **The Office of Labor-Management Standards** (**http://www.dol.gov/olms (http://www.dol.gov/olms)**)

   The Office of Labor-Management Standards' website contains union reports and collective bargaining agreements. For example, if in preparation for negotiations, the bus drivers wanted to see what other bus drivers in the country had successfully negotiated in their contracts, this website could be used to examine other agreements and also provide language to use when formulating their requests.

Step 3: Strategizing

Strategizing refers to planning the tactics that will be used at the bargaining table. Of utmost concern is whether the relationship is cooperative or not. If management and labor have an open and cordial relationship with a history of cooperation, then they may choose to agree on the issues at hand and also to seek objective information. For example, they might both refer to Department of Labor statistics.

However, if the relationship is contentious, then preparing for the negotiations takes on a completely different tone. In that case each side will attempt to investigate the other as much as possible, since any information could help bolster arguments. Parties may obtain their information from different sources and disagree about the reliability of the other's source. Information in these contexts becomes a weapon for strengthening partisan arguments and coercing concessions. For more information about collective bargaining, the AFL-CIO provides an interesting fact sheet located at **http://www.aflcio.org/Learn-About-Unions/Collective-Bargaining /Collective-Bargaining-Fact-Sheet (http://www.aflcio.org/Learn-About-Unions/Collective-Bargaining/Collective-Bargaining-Fact-Sheet)**

Watch This

***This video* (http://www.youtube.com/watch?v=gYcIY1QY1NU&list=PLasNW7Z98IpGslM9iy1Vl** *is a good example of what happens when a union bargaining team does not meet and confer ahead of time or discuss its strategy.*

Step 4: Setting Ground Rules

After a strategic route has been established, union members must designate and approve which representatives will negotiate on their behalf. Usually a team, rather than an individual, is designated, and the number of people on the team depends on the size of the bargaining unit it will represent. For example, if a union local is negotiating a contract for its unit, the team might be composed of three members who will do the bargaining, with support from the national in terms of attorneys or experts such as economists. However, if a large multinational, multistate agreement will be bargained, in which many locals are represented by a national union, then the team may consist of many members. In this case one person should be the spokesperson for the team, in order to present a united front.

The parties will draw up ground rules, which dictate how the negotiation will take place. These may include who will represent each side; where the meetings will take place; what the time frame will be (for example, 3 hours); how proposals and counterproposals will be handled; whether meetings will be filmed; standards for confidentiality; and so on. Figure 7.4 shows an example of ground rules for negotiations between the Association of Professional Flight Attendants and American Airlines.

Figure 7.4: Excerpt from ground rules for negotiations between the Association of Professional Flight Attendants and American Airlines

6. **No Prejudice**

   Where the parties use non-traditional problem-solving approaches to collective bargaining, nothing stated by the parties in their discussion reflecting the parties' discussions of interests, options, and criteria for solutions occurring prior to the writing of tentative agreement bullet points will be used by either party in any future proceeding concerning the meaning or intent of contract language agreed upon in these negotiations, or the meaning or intent of language contained in the current collective bargaining agreement. Tentative agreement bullet points and all subsequent statements, notes, and other records made incident to the drafting of final contract language in these negotiations may be used for the purpose of resolving ambiguity or other questions relating to the intent of the parties in such language, if otherwise appropriate and admissible.

7. **Facilitator**

   The parties will utilize a facilitator provided by the National Mediation Board (NMB) to conduct an initial training program for the parties' participants, to facilitate negotiations on September 16, 17, and 18, and, thereafter upon mutual agreement, the parties may elect to use the same or different facilitator(s) to assist in the resolution of issues, as needed.

9. **General Conditions**

   a. Dress during negotiations is an individual decision, but it is the present intent that attire will be business casual.

   b. All parties will treat each other with respect, and personal attacks will not be considered acceptable or productive.

   c. The focus of discussions will be on issues, not individuals. (APFA, 2000)

APFA (2000). Ground rules for negotiations between APFA and American Airlines.

Note the importance of paragraph 6 in Figure 7.4. This text gives parties license to speak freely and discuss possible outcomes without fear that the other side will interpret the discussion as an agreement to do anything. Such agreements are only effective when they are put in writing and signed. Therefore, the parties acknowledge that anything they say is just that—talk. This is important to facilitate the negotiation process and allow for open discussions without the fear of misinterpretation.

In paragraph 7 the parties agree to undergo training before the negotiation, as provided by the National Mediation Board. This organization provides seminars and online courses in mediation, arbitration, and negotiation. Its course offerings can be viewed at **http://www .nmb.gov/services/nmb-lyceum-center** (http://www.nmb.gov/services/nmb-lyceum-center) . Finally, paragraph 9 demonstrates how detailed agreements can be, down to the dress code for the negotiations.

Negotiations

On the designated day and at the appointed time, the teams or agents will begin the collective bargaining process. With their research in hand and a strategy decided, they are ready for talks to begin. The parties usually address one issue at a time; when that issue is resolved, they move on to the next. For example, the first issue might be whether a pay increase will take place, and if so, how much it will be.

In more complex negotiations, many experienced bargainers keep a book that is composed of separate files for each issue. Within each file they will have all of the research and history of the issue. The negotiators can pull out a file on each topic and become acquainted with the issues and its history. The book also helps the parties write the final agreement, point by point, since there will be tentative language on each one already drafted.

Watch This

This video clip (https://www.youtube.com/watch?v=MOH3QarNpp0) *offers a good idea of what a negotiation entails and how the parties behave. The clip shows an actual negotiation between Florida's Hamilton County School Board and the teachers' union. In this excerpt, the teachers are considering a pay raise that is being offered in increments of $538.00.*

When a tentative agreement is made, each side takes it to its respective constituency for approval or rejection. For example, union representatives take the agreement back to the bargaining members, who then need to vote in its favor (or not); management takes the agreement back to the business's executives, such as the company president, who either approve or reject it.

All tentative agreements should be put in writing and initialed by all of the parties with representative capacity. At the conclusion of the negotiations, the parties sign a memorandum of agreement that is subject to **ratification** by the bargaining unit. Ratification means that the parties give their approval or assent to the agreement.

Watch This

Returning to the negotiations that we watched previously, continue with ***this next installment*** (https://www.youtube.com/watch?v=PVij4LOC4es) *that continues the negotiation in progress.*

The Collective Bargaining Agreement

The parties' goal is to conclude the negotiations with a collective bargaining agreement. As the contract that sets out all of the terms and conditions that will control the parties' relationship for the next few years, the CBA is both a necessity and, at times, a burden. A sample excerpt from such an agreement appears in Figure 7.5.

Figure 7.5: Excerpts from sample collective bargaining agreements

Wages

Effective DATE, all employees shall receive a 4 percent increase in their weekly pay; no such increase shall be less than $25 or exceed $50 per week.

Health Benefits

Employees, retirees, and a person with whom the employee shares a committed relationship as defined by [provider] and dependents shall be fully covered by the group medical, surgical, and hospitalization plan negotiated with the employer. (AFL-CIO, 2014)

AFL-CIO (2014). Sample contract language.

A Closer Look: Collective Bargaining Agreements

To view hundreds of different collective bargaining agreements, visit the Department of Labor website available at **http://www.dol.gov/olms/regs/compliance/cba** (http://www.dol.gov/olms/regs/compliance/cba)

To see sample language that is included in collective bargaining agreements, view "Sample Contract Language" available at **http://www.aflcio.org/Learn-About-Unions/Collective -Bargaining/Sample-Contract-Language** (http://www.aflcio.org/Learn-About-Unions/Collective-Bargaining/Sample-Contract-Language)

Even with thorough preparation, there are no guarantees that the negotiating process will have a successful outcome. Many factors may lead to a breakdown in negotiations, including the unwillingness of either side to compromise, the failure to recognize budgetary constraints, or the inability to communicate a position. The next section discusses what happens in the event that parties either cannot or will not come to an agreement, which is commonly referred to as an impasse.

7.3 Impasse

It is not unusual for parties to negotiate in good faith yet still not reach an agreement on basic terms. Often they will regroup and return to the table in the hope that their differences can be worked out. Meetings will be scheduled to comply with the calendars of management, negotiators, and labor representatives and may extend over months, with meetings occurring regularly.

There are times, however, when the parties cannot reach an accord and realize that they will never be able to do so. This situation is called an **impasse.** Quite simply, an impasse is when the parties have come to the table in good faith with the desire to reach an agreement, but are deadlocked. As one court defined it:

> that point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless. . . . The Board and courts look to such matters as the number of meetings between the company and union, the length of those meetings, and the period of time that has transpired between the start of negotiations and their breaking off. (*Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete*, 1988)

The NLRB generally considers five factors when concluding that the parties have reached an impasse. These factors include "(1) the bargaining history, (2) the good faith of the parties in negotiations, (3) the length of negotiations, (4) the importance of the issues over which there is disagreement, and (5) the contemporaneous understanding of the parties as to the state of negotiations" (Earle, 1988). These factors are designed to determine whether further bargaining would be futile. Understanding impasse is important because there are numerous legal ramifications that might result from its occurrence. We will discuss each one in the sections that follow.

Impasse as an Unfair Labor Practice

If the parties reach an impasse because management refuses to concede on an issue, the employees may suspect that the employer is forcing an impasse; that is, using it as a delaying tactic. The union may take the matter to the NLRB and ask it to charge the employer with an unfair labor practice. (Recall from the previous section that delaying tactics are considered bargaining in bad faith.)

If the NLRB determines that the employer has committed an unfair labor practice, it may order the employer to cease and desist from the conduct and perhaps take such affirmative action as returning to the bargaining table, concluding the contract in good faith, or restoring employees to their jobs, previous positions, or shifts. Note that none of these outcomes is especially troubling for the employer, because requiring the employer to return to the bargaining table after a lengthy impasse may have allowed it to regroup or reenergize. For this reason, some observers of this tactic believe it encourages employers to engage in an impasse (Fisk & Pulver, 2009).

Impasse With Unilateral Action

If the parties have reached an impasse and the employer is *not* charged with an unfair labor practice, the employer may take **unilateral action**—that is, one-sided action that lacks the agreement of the other party—so long as it pertains to a mandatory bargaining subject.

For example, assume that employees have asked for a 2% raise, which the employer refuses; instead, the employer agrees to a 0.5% raise. The talks grind to a halt, with neither party willing to make a concession. Assuming that this situation would qualify as an impasse, the employer may now unilaterally impose the 0.5% wage increase. This is because the employer is permitted to impose unilateral changes on terms and conditions of employment as long as they were part of the bargaining process; that is, a mandatory term that was discussed but not agreed on.

Some critics of U.S. labor policy believe that an impasse with unilateral action encourages employers to purposefully create an impasse. The employer has no incentive to reach an agreement, because the employer can bargain until a deadlock and then refuse to bargain further (Fisk & Pulver, 2009). If the employer can cause an impasse that stalls talks for years, this delay costs the union momentum. Workers will want to return to their jobs. As a result, the union may be willing to concede on important issues to avoid an impasse or be more willing to concede over time as the impasse drags on, making it an effective tool for management to eventually get its way. Both are situations that do not benefit the union.

Impasse With Strikes and Lockouts

Let us take the same wage example and add more factors. Suppose the workers threaten to go on strike unless they receive a 2% wage increase. The employer refuses, and the workers go on strike. The employer then locks them out of the business so that they cannot come to work. Now the parties are at an impasse with both a strike and a **lockout**.

The legal implications of a strike in such circumstances depend on whether the employer committed an unfair labor practice. For example, let us assume that the employer offered a 0.5% raise knowing this was objectionable to the employees and would lead to an impasse. In such a circumstance the NLRB could find the employer was not bargaining in good faith. If a strike takes place as the result of an unfair labor practice, it is deemed by law to be an **unfair labor practice strike**. In an unfair labor practice strike, the employer must allow workers to resume their jobs when the strike is over.

Suppose, on the other hand, that the parties reached an impasse and the workers strike to protest the employer's unwillingness to give them a raise. This would be a different type of strike, called an **economic strike**. In this scenario the employer has not committed an unfair labor practice and is also allowed not just to hire **replacement workers** but to allow them to permanently replace the strikers. In effect, the strikers have lost their jobs as a result of going on strike.

This is an important point, and one on which to reflect. Throughout this text, we have identified employees' primary weapon as the ability to shut down a business through a work stoppage. This weapon is not effective, however, if it means that jobs are lost. Taken a step further, the loss of the strike as a weapon means that unions have diminished power when they come to the bargaining table than they had in earlier years.

You Be the Judge: *Horsehead Resource Development Co., Inc. v. NLRB 154 F.3d 328* (6th Circuit, 1998), Chief Judge Boyce F. Martin, Jr.

The following text is from the court opinion in this case.

**** **** ****

I

Horsehead is in the business of recycling hazardous wastes, primarily electric arc furnace dust produced as a by-product in the making of steel. Horsehead's headquarters are in New York City, and the company operates plants (all of which are unionized) in Illinois, Pennsylvania, and Tennessee. During 1993—the last full year of a labor agreement that covered bargaining unit employees at Horsehead's Rockwood plant in rural Tennessee—zinc prices plunged to their lowest levels in 20 years. In response to these financial pressures Horsehead cut its work force by 10 percent, slashed its research and development budget, and froze salaries for all non-bargaining unit employees. The company also began reexamining its health care costs.

Containment of health care costs became the responsibility of Martha Koletar, whom Horse-head hired in the fall of 1993 as vice president for human resources. Ms. Koletar was also put in charge of negotiating a new labor contract at the Rockwood plant. . .

Negotiating teams for the two sides did in fact start a series of bargaining sessions on Monday, February 7, 1994. . . . . . . but as early as the second negotiating session, which was held on Tuesday, February 8, the union announced that a strike vote had been taken.

**** ****

The parties met for more than seven hours on February 24, this time with a federal mediator in attendance. The company withdrew or altered a number of cost-saving proposals to which the union had objected, and agreement was reached on small increases in meal allowances, production guarantees, and hours of severance pay. On Friday, February 25, the company finally offered a wage increase.

The union countered the company's offer with a demand for wage increases of $2.00 per hour in the first year, 75 cents in the second year, and 50 cents in the third year—an overall wage increase of more than 32 percent, with no contribution to health care costs. Ms. Koletar communicated this demand to her superiors in New York, she testified, and was informed that her negotiating authority remained unchanged.

Union representative John Williams had been staying at the Holiday Inn during the week. The tranquility of the weekend was marred by two incidents. At approximately 9:30 Friday evening, an unidentified man telephoned the hotel with a bomb threat. The desk clerk was told that a bomb would go off in half an hour or so, and "you better get your ass out of the motel." There proved to be no bomb, and the identity of the person making the threat was never discovered.

The second incident was shortly after the 11:00 p.m. shift supervisor Danny Foster found that a double-wide trailer which had once been the plant's main office building was in flames. The fire department then arrived and was able to put out the blaze. By that time the trailer was a total loss. The next morning, Foster testified, one of the bargaining unit employees commented, in Foster's presence, "you think the trailer fire is something, wait till somebody's house burns."

With the expiration of the contract on Tuesday morning, March 1, 1994, the company locked out the members of the bargaining unit and started operating the plant with salaried employees. Ms. Koletar, to Mr. Quirk's surprise, returned to New York shortly after the start of the lockout. She was promptly replaced by John Brown as the company's chief negotiator. Eleven more sessions followed, and shortly before the end of the year the negotiations culminated in a new collective bargaining agreement.

II

Meanwhile, on March 15, 1994, union representative John Williams signed an unfair labor practice charge accusing Horsehead of refusing to bargain in good faith.

Taken as a whole, as we read it, the record in the case at bar contains no evidence of sufficient substantiality to support the conclusion that Horsehead was guilty of refusing to bargain in good faith. The evidence on which the Board's decision rests, in other words, is not what a reasonable mind could accept as adequate to demonstrate that the company did not honestly wish to hammer out a labor contract it could live with under the difficult economic conditions to which it was subject.

Horsehead's failure to counter the union's wage proposal until February 25 is not significant, the parties having agreed to leave consideration of all economic issues until last. There is no evidence that the union objected to this schedule.

Horsehead participated in nine days of bargaining between February 7 and February 25. Although under no obligation to do so, it offered a significant wage increase. When an act of arson was committed at the Horsehead plant, the company took a day to try to contain the damage and regroup. It then returned to the table on Monday, February 28, with an innovative wage offer indexed to the market on which the company's financial health was substantially dependent. The company bargained until 9 p.m. on that Monday and offered to continue bargaining the next day under the old contract. These are simply not the acts of a company uninterested in reaching agreement on a contract.

Discussion Questions

1. Why did the court say that Horsehead's failure to counter the union's wage proposal until February 25 was not significant?
2. What evidence could the court use to conclude that Horsehead was bargaining in good faith?

After you have answered the discussion questions, click here to see the holding for this case.

HOLDING: The court held that Horsehead was not guilty of bargaining in bad faith nor was the lockout unlawful:

Our conclusion that the Board had no legitimate basis for finding Horsehead guilty of bargaining in bad faith is dispositive of the question whether the lockout was unlawful. A lockout is a lawful economic weapon when used to support a legitimate bargaining position of the employer, or to prevent sabotage; it is unlawful only if motivated by a "hostility to the process of collective bargaining" and a desire to evade bargaining. Here there is simply no evidence that Horsehead used the lockout to undermine the bargaining process. (*Horsehead Resource Development Co., Inc. v. NLRB*, 1998)

7.4 Role of the Federal Mediation & Conciliation Service

When complications arise during collective bargaining, a federal agency known as the Federal Mediation & Conciliation Service (FMCS) stands ready to assist with negotiations before a collective bargaining agreement comes to an end. In **Chapter 8** (http://content.thuzelearning.com/books/AUBUS372.15.1/sections/ch08sec8.1#ch08sec8.1) we will explore the role of this agency as it pertains to arbitration. However, the agency can also play a significant role in collective bargaining.

The National Labor Relations Act requires notice to the FMCS 60 days prior to the expiration date of a proposed termination or modification of a collective bargaining agreement. Section 8(d)(1) creates a duty to send a written notice to the other party 60 days prior to the expiration date and an offer to meet in order to negotiate a new or modified contract. Once the notice is received, it is routed to the regional manager, who assigns a mediator.

FMCS offers two types of dispute resolution. The first is called **collective bargaining mediation**. In this type, the mediators work with the contract negotiators to make suggestions and guide them through the bargaining process. The mediators have no say in the actual outcome, nor do they have the authority to impose an outcome. All they have at their disposal is their experience and talents as persuasive and convincing individuals who can help the parties come to an agreement.

The second type of mediation service provided by the FMCS is called **interest-based bargaining**, which takes a different type of approach. It is based on understanding the position of the other side with the goal of helping each side realize they have the same interests, which will lead to mutual respect and openness to the other side's requests.

The FMCS describes the principles behind interest-based bargaining this way:

- "Sharing relevant information is critical for effective solutions.
- Focus on issues, not personalities.
- Focus on the present and future, not the past.
- Focus on the interests underlying the issues.
- Focus on mutual interests, and helping to satisfy the other party's interests as well as your own.
- Options developed to satisfy those interests should be evaluated by objective criteria, such as statistical materials prepared by an outside source like the Department of Labor, rather than power or leverage." (FMCS, n.d.b.)

The theory behind collective bargaining—that it reduces the power differential between management and workers—is mere idea until the parties come to the table. It then becomes an action and a process that involves much preparation. Before either side comes to the table, the issues must be identified and researched, a negotiation strategy decided upon, and ground rules for the interaction established. There are many types of bargaining, and no single way to describe every process; the type of relationship between management and labor determines how each side will prepare for negotiations. At the end of the process, the parties will want to reach an agreement that is acceptable to their respective constituencies and walk away from the process with a sense of pride, dignity, and accomplishment.

Summary & Resources

Summary of Chapter Concepts

- Once workers are represented by a union, they have the right to collectively bargain with the employer.
- The nature of collective bargaining has changed since the National Labor Relations Act was passed in 1935 because of the many laws that have been enacted since which protect workers.
- Once a union is certified, it becomes the employees' exclusive representative. Employers may not deal with any other entities or groups of employees within the defined bargaining unit. Because a union is the exclusive representative of all workers, the union must represent all employees equally and without bias.
- Both the union and management have a duty to bargain in good faith, which is often a subjective standard that can only be determined by a factual review by the NLRB.
- Bargaining subjects are divided into three types: mandatory, permissive, and illegal. Mandatory subjects must be negotiated at the bargaining table unless they are waived; permissive subjects may be negotiated; illegal subjects may not be negotiated at all.
- Collective bargaining is a process whereby the parties representing the labor organization and/or workers and the parties representing the owners and/or management attempt to negotiate a collective bargaining agreement.
- It is necessary for both sides to engage in extensive preparation prior to the negotiations in order to clearly prioritize the issues, decide which subjects may be conceded, and organize the presentation of materials.
- Parties traditionally enter into a written set of ground rules for how the bargaining will be conducted.
- The end result of the negotiations should be a collective bargaining agreement that sets out the terms and conditions of employment for the term of the agreement.
- Sometimes parties reach an impasse when conducting negotiations. In such an event the employer may unilaterally enforce and implement its most recent offer that was rejected. If the parties have truly reached a deadlock, the employer is permitted to impose unilateral changes on terms and conditions of employment, as long as they were part of the bargaining process.
- Sometimes during the course of collective bargaining, workers go on strike in an attempt to force the employer to agree to their demands. This may result in an impasse. The employer may then lock out the employees and hire replacement workers, which is legal as the result of an economic strike. Thus, this scenario results in the striking workers losing their jobs. If, on the other hand, the strike was in progress when the employer committed an unfair labor practice, then the replacement strikers may not replace the original workers.
- The Federal Mediation & Conciliation Service offer two types of dispute resolution: collective bargaining mediation, in which the mediators work with the contract negotiators to make suggestions and guide them through the bargaining process, and interest-based bargaining, which is based on understanding the positions of the other side.

Chapter 7 Review Quiz

Chapter 7 Flashcards

View this study set

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Key Terms

collective bargaining mediation

A type of dispute resolution that uses a mediator from the FMCS to assist the parties in arriving at a mutually satisfying outcome.

economic strike
A strike for monetary gain.

exclusive bargaining
The duty to bargain only with the chosen labor organization; the duty to represent all of the workers in the bargaining unit equally and fairly.

exclusive representation
A right granted by the NLRA that states the employer may not bargain with any other employees, no matter how well-intentioned, nor may the employer engage in discussions with another union purporting to represent some of the workers.

ground rules
The initial agreement between labor and management setting out the guidelines for how collective bargaining will take place.

illegal subjects
Those topics that the parties may not negotiate during collective bargaining.

impasse
When the parties cannot reach an accord and realize that they will never be able to do so.

interest-based bargaining
Bargaining based on understanding the other side's viewpoint, rather than just its demands.

lockout
A temporary layoff of employees after an impasse has been reached during bargaining.

mandatory subjects
Those topics that the parties must either negotiate or waive during collective bargaining.

negotiation
The act of discussing and attempting to arrive at a mutually satisfactory agreement.

Occupational Safety and Health Administration (OSHA)
A federal agency that oversees workplace safety.

permissive subjects
Those topics that the parties may negotiate during collective bargaining.

ratification
The granting of approval or assent to an agreement.

replacement workers
Those workers who come into an employer's place of business when the employees are on strike or locked out and take over their jobs.

Title VII of the Civil Rights Act of 1964
The federal law that prohibits discrimination in employment on the basis of race, sex, or national origin.

unfair labor practice strike
A strike that takes place as the result of an unfair labor practice.

unilateral action
A one-sided action taken when the parties cannot reach an agreement and the employer imposes the last offered terms.

waive
To give up a legal right.

Critical Thinking Questions

1. The law divides subjects of bargaining into three types: mandatory, permissive, and illegal. After reviewing each of these types, what do you think characterizes mandatory subjects as opposed to permissive ones? Why do you think the illegal subjects are not allowed?
2. Preparation for collective bargaining involves four steps. Pick a step to discuss and describe what happens in this step. Which of the steps do you think is the most important and why? What would happen if you eliminated one of

the steps? Why?

Research Projects

1. The City of St. Albans has a unionized police force that is coming up for a contract renewal. The police have one issue: the cost of living increases. During the past 10 years, police officers have received minimal cost of living increases, and this time they want to match what other police forces are making. They claim that their salaries are below the national level. The incoming new police hire earns a salary of $48,200. Using the websites provided in the **research section** (http://content.thuzelearning.com/books/AUBUS372.15.1/sections/ch07sec7.2#ch07sec7.2) , prepare data and an argument on behalf of the police officers to support their position.