Negotiating a Labor Contract

A Management Handbook

Second Edition

Charles S. Loughran

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Preface

This book is intended for a variety of persons who have some responsibility for, or interest in, the employer's side of labor contract negotiations. First, it is designed to guide management's spokesperson or chief negotiator, whose duty it is to represent management at the bargaining table. Second, it is intended to assist the labor relations professional, line management executive, sole entrepreneur, or public agency administrator who may not be a direct participant but is responsible nevertheless for seeing to it that there is a successful outcome from labor contract negotiations. Third, the book is meant to assist students and observers of the collective bargaining process to better understand the procedures, strategy, and tactics which management utilizes to successfully negotiate a labor agreement. While this volume was not originally intended for union negotiators, I have been told by a number of union spokespersons since the initial publication in 1984 that they have read it and have found it of value. In fact, certain passages from this book have been quoted to me by my union counterparts in negotiations. Readers are indeed welcome from either side of the bargaining table.

One of the great difficulties in writing a book such as this is that there is no such thing as a "typical" or "normal" labor contract negotiation. A negotiation for a bargaining unit of ten employees may be settled in a single three-hour meeting between one management negotiator and one union business agent, consummated with a shake of hands, and concluded with nothing more than a promise to send a confirming memorandum of agreement. This is in contast to a negotiation covering thousands of employees in a single-employer–multi-plant or multi-employer bargaining unit which may require months of meetings, bargaining committees composed of dozens of persons,

regular press releases, and final contract documents numbering in the hundreds of pages.

Likewise, negotiations in manufacturing industries are somewhat different from those in transportation and service industries, and there is a considerable difference between public employer and private employer collective bargaining. Despite these variations, however, there is sufficient similarity among these various negotiating situations for one volume to be useful to practitioners or students regardless of the size and nature of the bargaining unit or the nature of the employer's enterprise.

Persons who have had experience in other types of negotiations involving such matters as sales contracts, real estate transactions, or litigation settlements may feel that such a background qualifies them to negotiate a labor contract. While such experience is certainly helpful, it would be a serious mistake to conclude that methods and techniques which are successful in other types of bargaining will have direct applicability to contract negotiations with labor unions. Significant differences exist between labor contract negotiations and other types of bargaining.

Unlike a typical sales contract negotiation which is often a one-time event, the relationship between a union and management normally continues over many years. Memories of union negotiators are long. More importantly, the ability of a sales contract negotiator to cease negotiations with a buyer or seller and do business with another buyer or seller is virtually nonexistent in the labor relations arena. Except for very limited situations (e.g., when a union is decertified), the law requires that an employer continue to deal with the union which represents its employees regardless of the degree of difficulty it experiences in reaching an agreement with that union. Other differences exist as well. Labor laws regulate many aspects of bargaining. Parties to a real estate negotiation, for example, are not told by an agency of the state or federal government how they may or may not conduct their negotiations (although it may control what they can agree upon).

Labor negotiations also require a thorough knowledge of work practices within the employer's workplace and within the industry in which the employer competes. The negotiator must also have an understanding of the meaning and effect of typical

labor contract clauses as they affect the day-to-day activities in the employer's workplace. The application of the clauses will have evolved through custom and tradition in that industry, past practices in the employer's workplace, as well as decisions of labor arbitrators, the NLRB, and the courts.

Another major difference between labor contract negotiations and other types of bargaining is the relative permanence of language in a labor contract. Unlike commercial contracts or other types of contracts where unduly burdensome provisions can frequently be renegotiated, labor contract clauses covering hours of work, seniority, union security, work jurisdiction, etc., normally remain unchanged from one contract to another. Major changes in these provisions sought by either party usually are attainable only at the risk of a work stoppage.

Because of the variety of contexts within which labor contract negotiations take place, I have made certain assumptions to limit the scope of matters covered to manageable proportions. The first of these assumptions is that employers and the union or unions with which they deal are subject to the National Labor Relations Act (NLRA), sometimes referred to as the "Taft-Hartley Act," as amended. This, of course, is not always the case. Although the NLRA covers the vast majority of employers in manufacturing and service industries, it does not cover airline and railroad employers (who are covered by the Railway Labor Act) or most employers in agriculture or the public sector. However, where federal or state statutes regulate collective bargaining in industries not covered by the NLRA, such statutes have generally been patterned after the NLRA, and therefore have many features in common with the basic labor law in the United States.

A further assumption throughout most of the book is that the negotiations in which management is involved deal with renegotiation of an existing labor contract, rather than with bargaining over terms of a first contract between union and management. Particular attention, however, is given in Chapter 13, "Special Bargaining Situations," to the peculiarities of negotiating a first contract.

Also, it is assumed that the common objective of the negotiating parties is to reach an agreement. This may not be the case, for example, when a resisting employer who has lost a representation election is simply negotiating with a newly cer-

tified union with the objective of reaching an impasse in order to fulfill a legal bargaining obligation. If the reader is representing such an employer, this is the wrong book to consult for assistance. The guidance provided in this volume is intended to assist management in reaching an agreement, not in avoiding it.

Much has been written and said about adversarial versus cooperative labor negotiations or, as the academicians would say, "distributive" and "zero-sum" bargaining versus "win-win" negotiations. Stated another way, "do we negotiate over how we will split the pie or how we together will make the pie larger?" This book focuses primarily on process rather than philosophy, and aside from portions of Chapter 18 under subsections on concessionary bargaining and joint union-management programs, little attention is given to a distinct management philosophy on labor contact negotiations. To foreclose the reader's speculation, however, the author believes there is ample room for a range of philosophies and styles of negotiating in most union-management relationships. Not only can the parties work together in a cooperative spirit to make the pie larger, they almost necessarily will have to agree on how the pie (smaller, larger or the same) is to be divided. Negotiating over how to split the pie may be termed "adversarial," but it certainly need not be "hostile." Both parties can be winners even though they may take contrary positions. A more in-depth discussion of union-management and labor negotiating philosophies must be reserved for other treatises, since the negotiation process itself requires all of the pages, and probably more, that are contained within the covers of this book.

It has always struck me that effective labor negotiators are essentially pragmatists with a "hands-on" orientation, and are not particularly given to reflecting upon the process in which they are engaged. A review of available literature about the techniques of labor contract negotiations confirms this impression. My search for books on the subject turned up few titles published within the last 30 years. It was this discovery plus my own fascination and love of the negotiating process which prompted me to write this book.

The process of free collective bargaining as practiced throughout the United States has proven to be a most effective and durable means for employers and unions to set the terms and conditions of employment. Although strikes do occur, the

amount of work time lost in the United States due to strikes is extremely small. Differences between unions and management which appear to be completely irreconcilable have a way of being resolved, in the vast majority of cases, in the give-and-take of collective bargaining. It is an amazing and wonderful process to witness and in which to participate.

I hope this volume not only helps the reader make the process work to the reader's advantage but also conveys that sense of amazement and wonder which I have always felt for this subject.

C. S. L.

Seattle, Washington
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