

National FCA North American CBA Conference Call  
February 24, 2011

Attendees

Mike Burke	Randy Bender	Rob Noyce	Terry Mayfield
Al Reynolds	Bernie Gingras	Matt Marquis	Rick and Gary Lundvall
Cliff Mohling	Peter Abbott	John Kuser	F.X. Dickert
Tom Kennedy	Dick Conly	Kevin Sutherland	Tony Caropreso
Debra Wyandt (sheet metal contractors)			

Legal Counsel

Steve Burton

National FCA Staff

Tony Darkangelo      Bob Weaver      Kristin Bromberg

**Managing the Process of Negotiations**

- Understand that the CBA is a process, and a highly politicized one. The union election process effects negotiations.

Contractors are taking a big hit on public work that is not covered by federal prevailing wage. It may be important to get relief on non-prevailing wage federal projects.

Most often, the chairperson should be a contractor, someone that is articulate and that is able to represent the industry as a whole.

**Identifying the key players is a critical issue.**

- The principle spokesperson (chairperson) in negotiations needs to be someone who has stake in the game.
- The chairperson needs to be able to work.
- Willing to listen.
- Have leadership skills

Have continuity of experienced people in negotiations. Have a chairperson as well as a chair in training. Have due recognition in your negotiating committee that have different sized firms, varied trades, people working together toward a common goal.

Contractor members of labor committee should commit to meet for one hour before being joined by the union, so that every bargaining session is planned ahead of time, as much as possible. In this meeting, discuss the issues you intend to cover, how those issues fit into the greater scheme of the final outcome of the negotiations.

Have a committee where each committee member is engaged at different times, not just one spokesperson that does all the talking. Other committee members may speak up to reinforce the issues brought forth by the principle spokesperson. If you start negotiations too early, you'll probably go through extra time accomplishing nothing. Also, starting early has a good potential of making your workforce unhappy for a longer period of time. Set a schedule of the number, time, and location of the negotiating meetings, with the last meeting correlating with the ratification process. No marathon meetings. 4-5 hours per meeting is an appropriate amount of time. Ideally, don't have any back-to-back days of negotiations. Location of meetings should be neutral, i.e. not the union hall, not the association office. A hotel might be an appropriate place.

9(a) bargaining relationships, then you do have a duty to bargain in good faith and you must meet at reasonable times, by law. It is okay to schedule meetings outside of regular business hours.

**Presenting information and managing dialogue**

Decide who we represent in negotiations. Who do we have bargaining authority for, how do we have that authority. I.e. bargaining authorization, language in bylaws, etc.

If intending to modify agreement, must give written notice of reopener to the other party. Evergreen provision states that if neither side reopens the agreement, the agreement will renew itself, typically for one year.

If an agreement has not been reached within thirty days of the reopener, then you must notify Federal Mediation and Conciliation, and any state conciliation agency, in a 9(a) relationship.

If someone has not filed this notice, and you planned to use impasse implementation, you may face an unfair labor practice charge.

A lockout means that if you don't reach an agreement with the union by contract expiration, you prevent employees from working. Before a lockout, you must make sure that someone filed a mediation notice in a 9(a) relationship.

It generally does not matter which parties file, labor or management, a filing by either will suffice.

If threatened with a strike, contact Federal Mediation. When unions threatens to strike, if union has not filed the mediation notice, then legally, the union cannot strike in a 9(a) relationship.

Under 8(f):

90 day notice of intention to modify agreement, if you fail to give notice to reopen or terminate an 8(f) agreement and it has an evergreen clause, the agreement will roll over for one year and both parties will be bound to that agreement.

If you're looking to get concessions in your upcoming negotiations, you must serve the mediation notice so that the contract *does not* automatically renew itself. Do not rely on the union to file the notice.

What to do when the union forgets to serve the mediation notice. You can have a meeting with the business manager, be frank and say, we know what happened and we're willing to work with you, and we are agreeable to modify the agreement if it is mutually beneficial to do so. However, if no agreement is reached, it will be our position that the contract is in effect under the Evergreen provision.

Before the last bargaining meeting, schedule a membership meeting with the members of the association:

If there is a potential for a work stoppage, be sure to hold this meeting to let members know of the chance of a strike. If a strike is underway, hold weekly meetings for everyone that is affected by the strike, keep them informed, and prevent contractors signing interim agreements with the union.

Pick a media spokesperson so that not everyone talks to the media.

Decide when it might be appropriate to consult legal counsel.

In the construction industry, attorneys very seldom help the bargaining process when they sit at the table.

Once independent gives authority to the association, it should provide that the authority should remain in place forever; written notice prior to contract expiration is the only way to remove this.

In an 8(f) setting, if no evergreen and independent contractor does not give notice, then there is no agreement and no duty to bargain. The bargaining relationship expires when the agreement expires.

Define evergreen clause:

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In the event that neither party to this CBA reopens its provision in the times specified, the terms of this agreement shall renew itself for one year and thereafter year to year until such notice is given.

Can we put a clause in the contract that requires union to allocate the money needed? An example would be:  
The current rate of pension contributions is intended to be the employer's contribution rate for the remainder of the agreement, and the union agrees to allocate any additional amounts needed from the contractual wage/fringe package.

By law, the default schedule has to be a schedule that does not require increase in contributions, if possible. It attempts to improve the fund purely through benefit reductions.