Legal Requirements for Bargaining

The Union and Management both are required to follow certain legal requirements in connection with contract negotiations.

**Advance Notice**

Under Section 8(d) of the NLRA, neither party to a contract can change or terminate the contract unless one side has given written notice at least 60 days before the contract is due to expire. Some contracts have a longer time frame in which to submit such notice by mutual agreement of the parties (i.e. 75 days, 90 days, 100 days…) but the minimum is the 60 days as set by the NLRA. The timeframes are usually found in the contract’s “duration clause”.

Once such notice is given, both sides are legally required to meet and negotiate for a new contract.

The party that initiated the process has 30 days to notify the Federal Mediation and Conciliation Service (FMCS) and any similar state or territorial agency in writing that a labor-management dispute exists. It is best to send these notices simultaneously with the notice to the employer.

It is at this point that the contract negotiations is assigned by FMCS to a Federal mediator. The mediator will normally contact the parties early on in the process to introduce him/herself and offer services when needed.

**Health Care Institutions**

Unions that are dealing with healthcare institutions must give written notice at least 90 days in advance of the contract expiration, and also inform FMCS and any similar state or territorial agency in writing that a labor-management dispute exists 60 days before the contract expires. But for first contracts with a healthcare institution, an initial 30 day notice must be given since there is no contract and therefore no expiration date. This notice is best sent when the union sends its demand to bargain to the employer and its initial information request.

Section 8(g) of the NLRA requires that a union dealing with a healthcare institution must in addition send a 10 day notice to the employer and FMCS before conducting an informational picket, strike or other “concerted refusal to work”. Such notice must give the date and time that the action will occur and a general description of what is planned.

Activities as a rally, prayer vigil, leafleting, or other demonstrations may be interpreted as falling within the legal requirements for issuing a 10 day notice, especially if there are signs, marching, chanting or other elements. It is best to check with legal counsel prior to proceeding with such activities.

The timeliness of these notices is measured from the date on which the other party receives the notice, and not when it was sent. Therefore, notices should either be hand-delivered, emailed or sent by certified mail so that there is a way to determine and record when it was received with proof (such as a receipt) that management had received the notice.
Failure to Send the Required Notices

Depending on the situation, failure to meet the notice requirements, even by a few hours may result in the union membership losing the chance to negotiate a new successor contract, as well as the chance to file bad faith charges against the employer or to conduct a legal strike. Therefore a foolproof system must be in place with the union to keep track of the timelines and dates to send such notices.

If the notices are not sent, then the contract rolls-over for one year with the same terms and conditions.

Contract Expiration

When a contract expires, management must maintain the “status quo” regarding wages, hours and working conditions, unless an impasse has been reached. If a genuine impasse is reached, the employer can unilaterally impose its last offer made at the negotiating table on the issues for which impasse has been reached.

But once the contract expires, the union can strike or the employer can lock-out the workers since the No Strike/No Lock-Out clause expired with the contract.

Bargaining in good faith

Under Section 8(a)(5) of the NLRA, the employer must bargain in good faith with the union. This does not mean that the employer must agree to the union’s proposals but it does mean that the employer has to approach the table with the intent of trying to reach an agreement. It prohibits certain management tactics designed to intentionally frustrate or stall the process. Proof is necessary that makes it clear that the employer has no intention of reaching an agreement with the union. Violation of the duty to bargain in good faith is an unfair labor practice.

Providing Time for Workers to Participate in Negotiations

Management is legally required to meet with the union’s negotiation team and representatives. Therefore, management must be either willing to meet during hours when workers would not be on duty or to provide a reasonable number of workers the opportunity to participate in negotiations. The NLRA does not define how many workers must be given time off, how much time they can demand, or who will pay them for their time.

Therefore paid time off, or paid release time, for the union team is often one of the first items for bargaining between the parties.

Some content adapted from the SEIU Contract Campaign Manual.