RESPECT

Thoughts on Workplace Collective Bargaining

By Tom Hayes & Rick Warters

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Tom Hayes | Rick Warters

Tom and Rick came from very different places, and like good negotiators, they learnt how to work together in their mutual interests. They might have first met over a glass of Cava somewhere beside the Mediterranean Sea. And if it was not there, then that is where they spent much time working together and discussed and developed many of the ideas about labour negotiations set out in this book.

Tom Hayes

Tom, born in 1950, comes from a Dublin working class family. His father drove the delivery van for a printing company, his mother had been a seamstress before getting married and becoming a traditional, Irish housewife.

Tom went to University College Dublin [UCD] where he studied history and politics and became active in student politics and student journalism. After he left college in 1972, he took a job as a union official with the Workers Union of Ireland, now part of Ireland's biggest union, SIPTU. After seven years with the WUI, he moved into human resource management with a US health care company. However, management was not for him and after five years he quit and started working as an industrial relations consultant.

In the early 1990s, he saw that incoming European Union legislation on European Works Councils [EWCs] would create challenges for companies that fell within the scope of

the new law, and he started to write about this issue and what it could mean for labour relations practices.

Just after moving from Dublin to Brussels in 2000, he set up the Brussels European Employee Relations Group [BEERG], an information sharing network for labour and employee relations executives from major multinationals. It is now part of HR Policy Global.

Tom has always been interested in the dynamics of negotiations, and this book is the culmination of that interest.

These days he writes the weekly European newsletter for HR Policy Global/Europe, and a Sunday Substack – *Sunday Scribblings* – on labour and political issues. He has written extensively on EWCs over the past 30 years and is seen by many as one of the leading employer-side experts on the matter.

Other than that, he lives a quiet life on the French north coast.

Rick Warters

Rick was raised by two educators in a middle-class community in a very small, very conservative village in upstate New York. Among other things, his father represented the local school district in negotiations with the teachers' union. Rick's mother was a teacher.

Rick became a student of industrial relations at the Cornell School of Industrial and Labor Relations in 1980. Four years later, he joined the global, multi-industrial conglomerate he would call home for the next 35 years. Among the first lessons he learned in the workplace was the mantra that there is nothing more precious than management's rights.

Rick's experiences were shaped strongly by the rise of financial capitalism, automation, and globalization. For him, tales of negotiations, restructuring, and factory closures are far more familiar than "good news stories" about hiring, investing locally, or opening new locations. Others did that.

After decades of negotiations, Rick spent the last nine years of his career leading an employee and labour relations function that ultimately touched 240,000 employees in 75 countries on six continents. Hundreds of unions, more than a hundred works councils, and five European Works Councils provided exposure to nearly every possible representative structure on the planet. And when Tom needed to trot out someone with "blood on his hands", he often turned to Rick. Not that Tom himself has spotless hands.

This book is a passion project by two friends who grew up in two different worlds an ocean apart. We often agree. We sometimes don't. But we always agree on the critical role that sound employee and labour relations practices plays in the creation of a sustainable company.

This book draws mostly on US and European labour relations practices. However, we think the approach we outline is of general applicability. Good practice will always be good practice, no matter where in the world.

This book is clearly written from a management-side perspective, though we think a lot of the things we say can be taken on board by various counterparties, unions, works councils, or ad-hoc groups of employee representatives.

We hope you'll enjoy the read.

CHAPTER 1

Workplace Collective Bargaining

This book was envisioned as a primer about the negotiations between employers and the people and organizations who represent their employees. Our objective is to look broadly at the dynamic between employers on the one side and workers' collective voice on the other, regardless of the mechanism that lets that voice be heard. We'll call it "workplace collective bargaining", a term we will explain below. But for the purposes of this book, we will just use the term "collective bargaining", though we are aware that many will say that this term should just apply to negotiations between trade unions and employers. We just don't agree with them.

Readers in the USA may ask, "Aren't you overcomplicating this? There's either a union or there isn't." That's true in the United States. You deal collectively with a union. Or you deal with employees as individuals. There's no in-between. The rest of the world, however, is more complex. Our focus on workplace collective bargaining is intended to cover the waterfront, to take in every and all the ways workers and employers engage with one another in an organised, sustained, collective manner.

Collective bargaining is the process of establishing or changing terms and conditions of employment where employees have a collective voice. It is also the process by which employees have the opportunity to be heard about proposed management decisions through an exchange of views and proposals between workers' elected representatives and assigned representatives of

management. Outside the USA, this happens through a variety of representative structures. Some involve unions. Others do not.

Collective bargaining may focus on a single issue like a proposal to move production out of a factory in Germany to a lower cost location. Or it may address everything, everywhere, all at once like US negotiators face at the expiration of a collective bargaining agreement.

The classic definition of "collective bargaining" focuses on negotiations between management and trade unions. In this book we take a wider view of collective bargaining. Here, we consider all structured interactions between management and workers' representatives to be workplace collective bargaining, whatever the structure and however those representatives are chosen. Every engagement is a negotiation, whether it is acknowledged as such or not. Trade unions are no longer the sole representatives of workers, however much they may claim to be. Just look at the numbers. Whether in the US or Europe, workers are simply no longer joining unions.

We use the terms "bargaining" and "negotiating" interchangeably. Negotiation is the art of extracting what you need from those who control it. Whether it is a new car, a new job, or a collective agreement, everything is negotiable. But not all bargaining falls within our scope. We are only concerned with "collective" negotiations, between workers' representatives and management. Negotiations between individuals and management are outside our scope, importance as these can be.

We also exclude social media-driven interactions. These ad-hoc, emotionally driven campaigns are neither structured nor permanent. Like a flash mob, they may be impressive, they may even go viral, but they typically have no staying

power. That said, social media can play an important role in structured negotiations. We will touch on that later in this book.

In much of the world, substantive collective bargaining is reserved for unions. In Europe, however, there are numerous other forms of workplace representation provided for by law. These bodies include works councils, standing committees on health and safety, and, for example, ad-hoc committees in cases of collective redundancies. Unlike works councils, employee committees can be found almost everywhere in the world. With some exceptions, committees play more of a role in providing employees with another form of voice than in determining terms and conditions of employment.

In the future, new European regulations will require greater collective voice through workplace representation structures. New worker representative bodies may need to be established to comply with the *Pay Transparency Directive* and the *Corporate Sustainability Reporting Directive,* and other such laws. At a minimum, new conversations will be had. Unions will try to influence these new structures, but they are unlikely to dominate them. They simply do not have the capacity to do so. They have fallen on difficult times.

Europe is also unique in providing for a transnational form of representation through European Works Councils [EWCs], which bring together workers' representatives from every European Union [EU] country in which an undertaking has employees. There are about 1,200 EWCs in existence. They are not endowed with the power to negotiate but they can offer an opinion on proposed transnational management decisions that may adversely impact employees.

Collective bargaining as traditionally understood is premised on the ability of a union to call a strike in the event of deadlock in negotiations. Similarly, in some geographies, an employer may impose a lockout by barring workers from entering the workplace. The parties have been talking. They have failed to achieve a meeting of minds. Labour or management – usually labour – decides they must exercise their most powerful lever to move the opposing party to concede. Consequences ensue.

Strikes are increasingly rare because of changed economic circumstances and declining union numbers. They still happen. And they make headlines when they do. In the past few years, we have seen major strikes in the U.S. auto industry, at Boeing, and on the U.S. East Coast docks. But these are now the exception rather than the rule when compared to previous decades. We do not count stoppages of a day or a matter of hours in Europe as labour strikes. Disruptive as they may seem, they are better described as demonstrations.

In much of Europe, unions and workers' representatives are looking to replace what we call "industrial leverage", the strike, with "legal leverage", the ability to go to court. There, employee representatives seek to buy time and hit employers in the pocketbook through court orders or the imposition of increasingly substantial fines. Even if the appeal to the court fails, the time, effort, and costs on the part of the employer in defending such claims can be painful. Laws, for example, on works councils, pay transparency, and due diligence allow for such legal leverage, with the employer often on the hook for the costs. Just ask anyone who has experience dealing with German works councils or paying for their employees' "expert" costs in France.

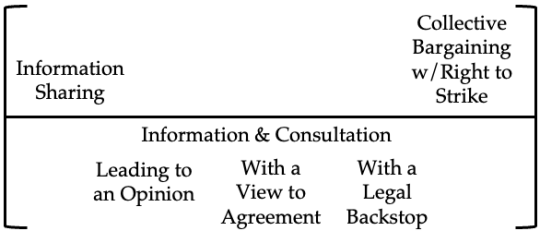
In this book, we distinguish between what we call "hard bargaining" and "soft bargaining".

"Hard bargaining" is a negotiation where one side can impose sanctions on the other if they fail to agree. Strikes, lockouts, or attempts to make use of the courts to put pressure on the other party are the most common sources of leverage brought to bear in hard bargaining.

"Soft bargaining" does not involve recourse to sanctions in the event of a breakdown in discussions. Your business may not be physically disrupted, but the longer-term damage is no less real. Broken relationships and personal animosities may affect your ability to get things done down the road. These things matter. While there are some people who enjoy it, the majority of us do not like working in a hostile environment. It is generally bad for business.

When we talk about workplace bargaining, we are talking about a range of possibilities from basic information sharing with employee committees to full collective bargaining with the right to strike. The heavily European process of Information & Consultation falls squarely in between.

Range of Workplace Collective Bargaining



Across this range and regardless what it is called, every interaction is a negotiation. Both sides bring different interests and perspectives to the table. Both sides seek to

influence the other to move to their point of view. If they all saw things the same way, there would be no need to meet.

Every interaction impacts the relationship between the parties, whether it involves "hard" or "soft" bargaining. The outcome of all bargaining conditions employee relations in the workplace.

The premise

Laws that entitled workers to bargain with employers are to be found on the statute books of most countries, often drawing from ILO Conventions 87 and 98 which set out the rights of workers to organise collectively and bargain with their employer. However, it must be said that national laws are not always robustly enforced and are often strongly ideologically contested.

For example, in Ireland, workers have a right to form and join unions, but there is no legal obligation on an employer to recognise or bargain with the union, unless the union has the industrial leverage and the membership numbers to force the employer to the bargaining table. The same is true in many places elsewhere in the world. Bargaining is about power and leverage, even "soft bargaining", as we highlight throughout this book.

The assumption underlying most labour relations laws is that the balance of power lies heavily with the employer. Employers own and control the workplace. They set the rules. They decide who gets hired. In the United States they can unilaterally decide who gets fired. Most European countries have dismissal laws, and the cost of unfair dismissals can be high. But at the end of the day, whether in the U.S. or Europe, it is up to the employer whether a

worker keeps or loses his/her job. Terminated workers end up without a job and without income unless they can quickly find a spot in another workplace. Often, that is easier said than done.

The promotion of collective bargaining is one solution to the individual worker's powerlessness in the face of the omnipotent employer. Some balance to this unequal relationship can be restored if workers can come together to negotiate collectively with their employer, especially when they have the right to withhold their labour, or when legal redress may be available.

We do not seek to promote or discourage collective bargaining or workplace organizing here. We simply acknowledge that workplace collective bargaining happens. It is a reality. And you should be prepared for it. What follows is our advice and guidance on how to best exercise the process in a way that creates the most sustainable, negotiated outcomes for businesses and their employees.

Fundamental human right or statutory right?

In Europe, freedom of association and the right to bargain collectively are considered fundamental human rights. There are various European Charters which say as much. European laws also enshrine a right to information and consultation. Some European countries go beyond that and give workers' representatives a limited right to co-management through seats on company boards. Germany's co-determination process with employee representation on Supervisory Boards is the most pronounced, but several other countries, including the Netherlands, and Sweden afford employee representatives seats on company boards. Despite these requirements, even in Europe's social market economy, employers always have the final word.

Almost all countries' regulations encompass some protection for collective bargaining for some or most of the population. This is not static and can change from time to time. For example, the Trump administration in the U.S. has rolled-back the entitlement of certain categories of public sector workers to bargain collectively. The courts or the next administration may roll them right back again, but for now, public employee unions in the US are on the defensive.

Some countries restrict the right of employees to come together and bargain collectively. They put difficult conditions in the way of unions getting official recognition from the public authorities, never mind being acknowledged by the employer.

Independent unions are forbidden in China. Only unions affiliated with the All-China Federation of Trade Unions [ACFTU] are authorized to represent workers and bargain with their employers. As a branch of the Chinese Communist Party, the primary purpose of the ACFTU affiliates is to control workers, not to represent them.

Some Middle Eastern countries restrict the right of workers to organize, particularly migrant workers.

Outside of Europe, other than through trade unions, there are few legally mandated channels to provide for collective employee voice in the workplace. Where employee committees are called for, their scope is typically very limited. Employee committees on health and safety are common. Committees on “pocketbook issues” – wages and hours – are not. If you are not in a union, you are on your own. This is the case for the majority of workers in the world. It is also worth remembering, that in many countries, such as India, the number of workers in the “informal” economy by far exceeds those in regular employment.

Workers employed in the formal, regulated economy enjoy whatever legal protections their legislators have enacted. Workers in the informal economy essentially don't exist from a statutory and regulatory perspective. They enjoy few rights and fewer protections.

Respect

Our approach is grounded in a simple phrase, "Respect the people, respect the process, and negotiate today with tomorrow in mind." By this we mean that you always need to remember that what you negotiate today will be with you well into the future. There are no "quick win deals" in labour relations. Just the slow, hard work that is required to build solid, long-lasting relationships.

Between us, we have over 90 years of labour relations negotiations experience. One thing we have learned is that there is no one way to manage a negotiation. How you approach a particular negotiation depends on context and history. Having said that, your approach should always be guided by a commitment to "respect the people and respect the process" even if the atmosphere is hostile. And always keep tomorrow in mind.

We have never liked the framing of negotiations as "you have to compromise; you have to meet in the middle". Why? Because there are some things you cannot compromise on. For example, you cannot compromise on management's right to make the final entrepreneurial decision on how the business should be run. You can compromise on money, money may be the cheapest thing you have to offer despite what the finance guys say, but you should not compromise on decision-making. Money can be sliced and diced and cut any which way, but you cannot slice and dice decision making.

We prefer to see negotiations as a search for mutually acceptable solutions to workplace problems rather than as "lets' meet in the middle" approach to bargaining which can have the effect of pushing both sides to open with extreme positions.

We are not, either of us, starry-eyed idealists who believe that every negotiation can be win/win, when clearly many negotiations involve winners and losers. Nor do we believe that conflict can always be avoided. It can't be in situations where profound clashes of economic interest are at stake and a new balance between management and workers must be struck. This has always been the case and always will be the case.

That said, we also believe that our "respectful" approach works in over 90% of workplace bargaining situations and will produce results that both parties can live with.

In this book, we go through our negotiating approach in step-by-step detail.

We have written the book in an attempt to capture our combined experiences which come from both sides of the Atlantic. We put it out there so the little we have learned will not be lost and others can build on it.

CHAPTER 2

The Players

Unions don't bargain, people do. But it takes unions, works councils, and employee committees to make the bargain collective. As a negotiator, you need to understand the role of each of these organizations as well as what drives the people behind them. Because we are dealing with global labour relations, we will talk broadly about each of these collective forms of representation. How they work in a particular country, in your location will depend on local regulations, local practice, and the history between your local management team and your local employees' representatives. You need to make yourself familiar with all the players, on both sides, as well as the history of the relationship. Otherwise, you are flying blind.

Unions

Unions are probably the most universally recognized representative bodies in the employment setting. They range from local, independent bodies without ties to bigger unions, to the headline-making "professional" unions like the U.S.'s United Auto Workers [USW], Germany's Industriegewerkschaft [IG] Metall, or China's All China Federation of Trade Unions [ACFTU]. Where unions are established as employees' representatives, they are usually, but not always, responsible for the "pocketbook matters" like wages and hours. They negotiate pay rates and the number of hours to be worked, inclusive of holiday entitlements. In the U.S., they also negotiate benefits, such

as employer-provided medical coverage and retirement programs, which in Europe are generally provided through government welfare systems.

Independent unions come in very different forms. They are the embodiment of the U.S.'s "right to self-organization". In the purest sense, employees choose to act collectively to get "more" or to put right what they see as a collective wrong that has been imposed on them by their more powerful employer. If you have an independent union forming among your employees, it's time to take a hard look at your employee relations practices. When the organizing comes from the inside, something is broken.

The challenge for the organizers of independent unions, however, is that they tend to have few resources, little experience, and often little leverage. These shortcomings become recognized over time and local independent unions often affiliate with larger, professional unions. As an example, in 2022, the independent Amazon Labor Union [ALU] was the first group to organize one of the web-retailer's fulfillment centers in the U.S. After two years of stalled efforts to deliver an initial contract, the independent local union joined forces with the International Brotherhood of Teamsters. Whether the Teamsters can succeed where a grass roots organization could not, remains to be seen.

At the other end of the spectrum, independent unions have a long and colorful history in Mexico. There, independent unions were often established as a block to true representation. These so-called "white unions" signed "protection agreements" with employers that spelled out the bare minimums required for a collective agreement. The agreements were typically signed without the knowledge of "represented" employees in exchange for some agreed-upon payment by the employer of annual "dues" to the union. These agreements were of no value to employees.

The only theoretical benefit was to the employer who could pull the secret agreement out of a drawer if a less employer-friendly union ever showed up with the intention of offering real representation. “Sorry. Our employees are already represented. This contract is proof.”

These arrangements were the driver behind Mexico’s recent labour reforms to bring the law and practice into compliance with the U.S.-Mexico-Canada Agreement [USMCA]. The "independent unions" are theoretically gone under the new legislation. But “ownership” of many of these independent unions has been passed down through the generations as family businesses. Old habits die hard.

“Professional” unions are another story. They are the organizations those of us who represent big companies are accustomed to meeting across the table. We call them “professional” because worker representation is their main paid occupation, not because they are only organizations of professionals – engineers, teachers, etc. In our vernacular, professional unions can and do represent anyone in any line of work.

Professional unions are often large, bureaucratic organizations with levels, layers, and confusing organization charts that rival the most complex companies. Professional unions come in three generic types, industrial unions, craft unions, and ideological unions.

It is important to note that the distinctions have become increasingly blurry over time. Declining union membership has sent professional unions scrambling to sources new revenue streams in whatever corner they can find them. The UAW has ranged far from its automotive roots. On its website, the union says, “UAW-represented workplaces range from multinational corporations, small manufacturers and state and local governments to colleges

and universities, hospitals and private non-profit organizations." They've strayed a long way from Detroit's Big Three, but the union's leaders have their own jobs to secure and, of course, there is strength in numbers for the American working man.

Like the UAW, the bid for survival during a decades-long downturn has led many unions to merge, creating what are essentially cross-industry confederations that are unrecognizable from their initial charters. Germany's, IG Bergbau, Chemie, Energie [IG BCE], for example, is the result of a merger of the Chemical, Paper and Ceramic Union, the Leather Union, and the Union of Mining and Energy. Like successful companies, scale matters if professional unions are going to survive. In their business, dues-paying members equal revenue, leverage with employers, and influence with legislators. When your core industry is on the ropes, you need to expand your horizons. They did.

Unlike industrial unions, craft unions seek power and influence by locking up a particular skill. Where industrial unions seek to represent everyone in a particular workplace, from the groundskeepers to the engineers, craft unions originally courted one specific trade.

The U.S. construction trades may be the best modern example of craft unions at work. The United Steel Workers, an industrial union, represents all the workers in all the trades needed to produce girders and sheets of steel. They usually represent all the production and maintenance workers inside a factory from wall to wall. The conglomeration of skills represented under their umbrella gets the steel out of the mill. Their leverage hinges on the ability to shut down an entire factory.

Once that steel is delivered to a construction site, members of a craft union, the Iron Workers, cut, fit, rivet, and weld that steel into bridges, dams, and skyscrapers. The iconic photo of the men enjoying a lunch break on a girder high above New York City during the construction of the Empire State Building is a classic example of the Iron Workers environment. Like other unions, power comes in numbers, but their numbers target a particular skill. They don't control all the crafts assembled to build a bridge, but if they don't work, construction grinds to a halt. That's leverage.

In many U.S. construction trades, apprenticeships, health and welfare benefits, and pensions are delivered through joint union-management trusts. Adding to their hold over their members, workers are often assigned to jobs through a union hiring hall. Marlon Brando's classically depicted a dockworker's interaction with the longshoremen's hiring hall in the 1954 movie, "*On the Waterfront*". Under these unions, time employed on "union" jobs determines the value of a worker's ultimate benefits, not time with a particular employer. Employer contributions fund wages and benefits, but in the workers' eyes, the lifestyle comes from the union. Workers' allegiance is to the union. And when the union says, "Strike!", they fall in line.

Political or ideological unions exist and are the norm in several countries. France is unique in many ways but provides a good example of ideological representation. The Confédération Générale du Travail [CGT] has been historically aligned with the French Communist Party [PCF] and is known for its confrontational and militant approach. By contrast, the Confédération Française Démocratique du Travail [CFDT] has been historically aligned with the French Socialist Party [PS]. While the distinction may be lost on those of us in the U.S., the CFDT remains more independent and is seen behaving as a more pragmatic

"social partner" than its further left counterpart. These are just two of the five national unions that an employer may find in their workplace. They represent a political perspective and bring a related approach to the labour-management relationship.

Unlike most places, French unions' funding is tied to workplace electoral performance, not dues. As a result, unions' influence is heaviest in pattern-setting wage negotiations that cover more than 95% of workers in the country, despite the fact that fewer than 10% carry union cards.

The form and reach of unions varies widely by country and industry. It is almost a universal truth that union membership is much higher for government workers than for their private sector peers. But regardless of their shape, if you've got a union in your workplace, you can be sure they're out to expand the size of your workers' pay envelopes and seize a greater share of your profits.

Works Councils

In the U.S., employees are represented by a union, or they are not. No one else, no other group or individual, can represent employees in negotiations over wages, hours, or any other terms and conditions of employment with the employer. Workers negotiate individually or through a union. Period. In the private sector, fewer than six percent of workers choose to be represented by a union. The other 94%+ speak for themselves. There are no works councils. And employee committees, regardless what they are called, cannot negotiate with the employer. The employer can listen to groups of employees, but no one except a union can negotiate as a representative of the workforce. No one. That's the way the National Labor Relations Act [NLRA]

was written in the 1930s, and nothing has changed since then to alter this fundamental fact of U.S. labour relations.

This concept of "exclusive representation" does not exist in many other countries. As a result, other representative bodies may – and, in fact may be required to – negotiate with the employer on behalf of employees. In Europe, unions typically negotiate wage agreements and total hours of work. This often happens annually. Works councils are then responsible for virtually everything else. Given the total hours to be worked, they may negotiate over the specific schedules of work. They are also the representative for virtually all the "non-economic" terms and conditions of work ranging from the rules of conduct to the company's data privacy policies and beyond. Where works councils are not standing bodies, they may need to be formed by statute to deal with issues like restructuring or changes to retirement benefits.

You are likely to encounter works councils at the local, site level and, at least in some countries, at the national level. European legislation seeks to "level the playing field" between employees and employers when it comes to the matters that are of utmost importance to employees. That has created Europe's most unique representative structure, the European Works Council [EWC].

EWCs took hold as a concept as globalization took off, and the increasingly influential role of the multinational corporation became clear. The idea was to establish a forum for information and consultation between employee representatives and management at a pan-European level. EWCs were established to give employees a voice in "transnational" matters. While the definition has expanded over the years, the idea was that if a company intended to transfer work from France to the Czech Republic,

employees should have a chance to hear from and be heard by the decision makers.

EWCs are not mandatory, nor are they ever formed on an ad hoc basis. The creation of an EWC is triggered by a request by at least 100 employees or their representatives in at least two European Union member countries. Unlike unions, EWCs have no authority to negotiate wages. Where you've got one, however, you must be certain to comply with your obligations. A failure to inform and consult over a significant or transnational matter could land you in court. Respect the process!

Employee Committees

Employee committees are required in many countries. These are typically single-purpose, standing bodies. Health and safety committees are the most common instance of this representative structure globally. Others address country-specific matters. France and Mexico require employee committees on profit sharing. India, for example, requires the establishment of a committee to protect women from sexual harassment. In a space somewhere between works councils and employee committees, China requires policy changes involving matters like wages, hours, and rules of conduct be discussed with an "employee representative congress" or with all employees. Few employee committees elsewhere have such leverage.

As with anything else, enforcement varies widely regarding the use of employee representative bodies. Failure to comply, however, will be a problem if you ever end up before an administrative or adjudicative body. Faced with a strike in China, some of us have been asked, "Did the employee congress sign off on the rules of conduct?" When the answer was "no", the Ministry of Labour was more than

happy to extract themselves from the problem. "You didn't follow the rules? There's nothing we can do."

Board Representation

Some countries require the employee representation at the board level. This is the highest form of representation. In Germany, the co-determination rights of employees through their representatives on Supervisory Boards are enshrined in the country's laws. Other countries reserve seats for employee representatives on the Boards of Directors of native companies.

These requirements provide a significant form of voice and access to companies' most senior leaders. Like information and consultation, U.S. readers need to understand that this is just the way it is. It is normal for your European counterparts in several countries. Having employee representatives in the boardroom likely influences the nature of the cost-saving considerations that are brought forward. Volkswagen's 2024 restructuring announcements in Germany reinforce important points. First, difficult actions can be taken anywhere, especially where there is a "burning platform" and decisions can no longer be kicked down the road. And second, management always maintains control, even where employee representatives make up 50% of a board. The chair, with a casting vote, always comes from the employer side.

Board representation is a fairly atypical form of employee voice. As negotiators, we must understand the approval process and who will be involved in the review of the plans for any workplace collective bargaining event. Will you have to go through a Supervisory Board before engaging your German works council on a full-scale restructuring project? Probably.

You need to anticipate the step in the process and understand the relationships between the employee representatives on the different representative bodies. No one said it would be easy. It is not.

There are other implications for the international labour relations professional. U.S. companies typically take a pretty firm approach to union organizing in their facilities. If you work for a Swedish company with operations in the U.S., would you approach organizing efforts differently?

The Swedish parent company would undoubtedly have employee representatives on its board and would have stated and restated its commitment to the freedom of association over the years. How would a European CEO react to having to spend a board meeting explaining your efforts to keep the Teamsters or the United Auto Workers or the Service Employees International Union out of your American facility?

We won't say much more about co-management, but suffice it to say, negotiation comes in many forms. It is up to you to ask the right questions.

What are the representative bodies you may need to engage with? What are the issues that require information, consultation, and/or negotiation? What does that look like in practice at this location? What happens if you did not do what the law required you to do? It is your job to know. We will come back to this later in the chapter on "The Knowledge".

The Negotiators

While we often hear about negotiations between "unions and management", or between "works councils and management", bargaining happens across the table

between people like you and me. Be prepared. People will always bring their own values, biases, perspectives, and personal agendas to the talks. That is just the way it is. It is human nature. That is never going to change.

We also need to remember that it will not just be one person talking to his or her opposite number. There will be teams of people on both sides. Each team member will come to the table with his or her personal agenda. As a result, there will always be differences within teams. Sometimes there will be more differences within teams than between teams. We will deal with this later in this book when we discuss what is known as "*intra-organisational bargaining*".

Let's consider the possible players in workplace collective bargaining.

On the worker side we can have: local shop stewards, professional union officials, works council members, standing employee committee members, ad-hoc elected representatives, supervisory board members, and outside advisors.

On the management side, we are going to see employee and labour relations leaders, human resource leaders, operations leaders and general managers from various levels, all assisted by lawyers dotting the i's and crossing the t's, and the finance folks watching every dollar or euro.

Don't forget, depending on the issue there may be other interested parties, such as national and local politicians, labour administrators, local interest groups, and, in some cases, mediation agencies and labour courts. Again, depending on the topic of the negotiation and its potential ramifications, the media may also be interested. If the traditional media forgets to take notice, social media posts from activist employees will remind them to pay attention.

Nothing gets more press than a negotiation when jobs are at risk or when a picket line forms.

In the world of labour relations some players live for the sugar-rush high of conflict. Fortunately, they are few and far between, but watch out! Their behaviour is corrosive. And they could be on either side of the table.

If they're on your side, root them out. If they're on the other side of the table, be aware that you may have to help your counterpart manage them throughout the negotiation if you ever hope to get to agreement.

Not quite as dangerous, but equally challenging are those who see a representative role as a way of pushing a personal or political agenda. These are the ones who live for the high of conflict, the "struggle", caring little about the actual outcome. They may be waiting to avenge a perceived personal wrong or worse, to launch a revolution of the working class.

Fortunately, most professional negotiators just want to deliver a good deal for their constituents. Many have pressing workloads, and they just want to get on with it and close out the negotiation.

Local, elected, workers representatives will, for the most part, also want to deliver for their constituents. These are very political roles. Delivering a good deal to the members increases the likelihood of re-election to office. For many, that means they maintain a hold on the white-collar lifestyle to which they have become accustomed. For many "full-time" representatives, re-election means they do not have to return to manual labour or the factory floor.

Most management negotiators are just looking for a way to deliver on their mandate and bring home a deal within budget. That way, they live to negotiate another day.

Management negotiators are often playing high stakes poker with other people's money. They are the intermediary between a company's general management and its employees' representatives. Like any other profession, the best of the best love what they do. They are intellectually curious about the function and personally curious about what makes the other side tick. They relish the challenge and creativity required to find the best path forward – the path that brings labour and management together to create a sustainable company. Those who deliver might even move up the ladder. And they may eventually choose to retire early, write books, and take wildlife photographs, like one of us. The other one just writes.

Good negotiators on either side should never put their own interests ahead of the collective good of the parties they represent. In our experience, they may get away with that once, but the truth will always out. Once lost a reputation may never be recovered. Short term gain can result in long term pain.

Workplace bargaining is a team game where relationships matter. It is important to build good processes that limit maverick behaviour. Temptation comes at us all. Put guardrails in place to keep it out.

CHAPTER 3

The Need to Negotiate

Before you open a negotiation with workers' representatives, you first need to ask yourself one very basic, very important question, "Do we need to negotiate?" Is there a contractual or statutory obligation that requires us to do so? If there is, then prepare to negotiate. But if there is not, then you can decide the matter for yourself.

Decide when you can. Negotiate when you must.

As we said in Chapter 1, our approach is grounded in the simple concept, "Respect the people and respect the process, and negotiate today with tomorrow in mind."

You only negotiate today if you must. You do not negotiate if you do not have to. For example, in the U.S., you renegotiate your collective bargaining contract when it comes time for renewal. If both parties agree, you may open the contract earlier. But, generally, you do not have to open negotiations at any point during the life of the agreement. You administer what has been agreed. You respect the agreement and in so doing, you respect the people who negotiated it and those they bargained for – your employees.

That does not mean you won't be negotiating mid-contract. Unless your contract gives you an iron-clad release and waiver of the union's rights, you may find yourself negotiating over the implementation or implications of new or changing rules or policies, the decision and/or effects of the relocation of work, and the like. The most common form

of negotiation will be over the administration of your collective bargaining agreement through the grievance procedure.

In Europe, matters are even more fluid. There, you operate under an extensive framework of laws at both the European and national levels. A plethora of often vaguely written statutes require engagement with workers' representatives in many forms. Companies' obligations run the gamut from simple information sharing through consultation and all the way through to collective bargaining, underpinned by the right to strike.

In our experience, when you have workers' representatives in place there is a tendency toward what might be called "mission creep". Mission creep is a desire on the part of representatives to have a say on more and more matters, to push the boundaries of the negotiable. This is understandable from their perspective. The further you expand the negotiating agenda, the more you may be able to deliver for your constituents. It is the rational thing for them to do. It might be summed up as: "if you don't ask, you don't get."

Mission creep is a direct challenge to management's right to run the company. The more you agree to negotiate collectively, the less you can do unilaterally. To be clear, the ability to act unilaterally does not mean making decisions only with the business's short-term interests in mind. You could do that, but we advocate always acting with your employees' interests in mind as well.

Anyone who creates, manages, or administers any policies that touch employees should always consider the implications of their actions on the workforce. Consultation with a union, works council, employee committee, or other representative body should not be necessary for you to

understand the implications of your actions on your employees.

Engage in collective bargaining when you must. Engage with employee representatives when there is something to be gained. We do not advise subjecting your company's decisions to a process that unnecessarily increases the time, cost, and potentially drama of the change you need to make if you do not have to do so.

Just because your workers' representatives ask [or demand] to discuss something beyond their mandate, does not mean you have to engage. Some company representatives start with the view, "We'll just talk to them anyway and see what they have to say. There's no harm in talking." Actually, there may well be. In our view, it is better to draw a line and simply, politely, and respectfully say, "This is beyond your mandate, so the answer is no."

Engage properly when you must. Decline when you are not obliged to bargain. It is always best to draw clear lines from the start. Once you start talking about subjects you aren't required to discuss – subjects your employees' representatives have no statutory or contractual right to discuss - it becomes increasingly hard to say no, however politely.

To be able to decide when to engage and when to say no, you need to have a deep knowledge of the rules of the game. That is the essence of the job. You cannot outsource it to lawyers, or others. You can ask for their advice and guidance, but you need to be on top on the issues yourself in the first place, so you know the questions to ask and to be able to evaluate what advisors tell you.

There are no shortcuts. You need to put in the hard yards. You need to be familiar with all the relevant laws. You need to know the substance, intent, and history of your contract

or agreement from first page to last. And also you need to dig into the history of the relationship. How did we get here? What have we agreed to discuss before? What have we refused? How did they respond? Were there protests, work stoppages, or litigation? If so, what caused the disputes and how were they resolved?

If you are involved in global labour relations, this goes for multiple jurisdictions. Of course, you are never going to be familiar with the granule detail of the labour laws of every jurisdiction in which you have operations. You will at least need to know the broad contours, the procedures that need to be followed, and, maybe most importantly, the questions that you will need to ask of your advisors and your people on the ground.

Yes, learning all of that is hard work. And it takes time. The internet makes access to information easier than it was when either of us started, but you still have to put in the hours, to read and to learn. After all, a search is only as good as the query you create. And the result is only as good as any of the multitude of sources your search engine pinged. As with every other subject, some websites are incredibly helpful. Others are pure rubbish. You need to be able to separate the treasure from the trash.

So, why do you need to negotiate? We break it down into two broad categories: reactive and proactive.

Reactive bargaining

"Reactive" is when circumstances force you to negotiate. For example, your agreement or contract is approaching termination date, and you need to negotiate its renewal. You may not be unhappy with your agreement but letting

it lapse would cause you problems. You need to open negotiations.

Revisions in the law can also force you to negotiate. This is often the case in Europe. The current changes being legislated for in the *European Works Council Directive [EWCD]* are one example. These changes will require all 1,200 undertakings with EWCs to reopen their agreements and bring them into line with the changes that have been decided on by the legislators.

Likewise, the *Pay Transparency Directive* will require management to engage with workers' representatives when data analyses expose gender pay gaps of more than five percent that cannot be justified on objective, non-gender grounds. Any such engagement will involve workplace collective bargaining about how those unexplained gaps can be closed.

The same will be true for those undertakings who will fall within the scope of the *Corporate Sustainability Reporting Directive [CSRD].*

Beyond Europe, trade deals have led many companies to the bargaining table. The United States-Canada-Mexico Agreement required Mexico [and only Mexico] to address deficiencies to employees' rights to freedom of association and collective bargaining. Subsequent, sweeping labour law reform required the registration and recertification of every collective agreement. The legislation was directed at what were colloquially known as "protection agreements" referenced in Chapter 2.

Based on one report, 30,552 contracts were legitimized by the deadline in 2023. Of those, just 2.1% were rejected. There was no effort to register or certify more than 100,000 other agreements that then simply dissolved in the eyes of the law.

30,552 companies engaged in additional, mandated workforce bargaining to validate agreements they already had. It is safe to say that the real problem lies in the more than 100,000 agreements that theoretically went away. They didn't, but that's a story for another day.

Proactive bargaining

"Proactive" bargaining happens when the company needs to make changes that require the agreement of your workers' representatives. You may intend to restructure operations because of a change in demand for the goods or services you offer. Maybe you risk others passing you by if you don't embrace AI. And development in technology is pushing you to relook at the way work is done, job classifications are defined, and how work is assigned. Or perhaps societal pressures are leading you to strengthen [or relax] your rules of conduct. There will always be literal and figurative "new kids in town" who upend your old ways and force you to adapt if you want to stay in business. These are the realities of life in a competitive, market economy.

Sometimes the drive to open negotiations comes from your Managing Director, General Manager or the like. [S]he says, "Go ask the union for an exception to the X, Y, or Z." Interested as you are in your continued employment, you say, "I'm on it." What you should have asked is, "What is the operational problem you are trying to solve?" Their job is to identify the problem. Yours is to understand your obligations well enough to know [1] if an exception to the collective agreement is required at all, and [2] whether there are alternatives that would solve the operational problem and avoid workforce bargaining. Bargaining is bargaining. You get, you give. Why give if there is any rational alternative?

Workers' representatives never like it when you come to them with a change agenda. They will generally resist change, because change means that someone is going to be on the losing side. And, to be fair, how often does management approach labor intent on offering more? What company is going to propose a change that reduces productivity and cost more?

Those who are going to lose will push back on their negotiators the hardest. They will exert pressure on their representatives to fight your proposals. No one likes change. Even fewer like losing. You need to know this, expect it, and be prepared for it.

So, whether reactively or proactively, there are times you just have to negotiate.

For those not familiar with workplace collective bargaining, there is a presumption that the entirety of negotiations take place across a table. Two "chiefs", two teams, on opposite sides, locked in a battle to wring concessions out of their opponents for hours on end. In our experience, this is very far from the truth.

Of course, "across the table" happens, it is part of any negotiation. But it is only about 10% of the negotiating process. 90% of negotiations happens outside of the room. About 70% is preparation, preparation, preparation. We will deal with this in the next chapter.

The other 20%? Informal discussions with the other party to explore the limits of the possible. In Irish terms, a "pint in the pub." But this is only doable if you have built a relationship of trust with the lead negotiator[s] for the other party. What is said "in the pub" is always off the record. It is not to be repeated. The discussion is certainly not to be referenced in formal meetings. These informal

conversations are a way of testing the waters, to see what will float and what will sink.

In the late 1950s, the British Labour politician, Nye Bevan, speaking about nuclear disarmament, used the memorable phrase, "walking naked into the conference chamber." Bevan was referring to a push from the left wing of the Labour Party for the UK to unilaterally disarm itself of its nuclear weapons, while the Russians would still hold on to theirs. Britain would have the moral high ground in their view, but the Russians would still have their bombs. Their belief was that the moral high ground would win out and Russia would also disarm.

Bevan was right. The moral high ground is a lonely place and if that is where you want to go, you are likely to find yourself alone. Don't expect others to do the right thing just because you think it's right. Be prepared. The other side just might hang onto their warheads.

We prefer Roosevelt's approach. "Speak softly and carry a big stick; you will go far." In negotiation, your "big stick" is leverage, a topic we will cover in detail in coming chapters.

Before you open a negotiation, or find yourself being pushed into a negotiation, always ask yourself the questions:

- Do we have to negotiate? Do we already have the right to do what we need to do?
- If not, is there a way to exercise our rights in a way that delivers the desired outcome without invoking a need for workplace collective bargaining?
- What will we realistically have to concede? Is it worth it? Is the possible gain worth the pain? At the end of the day, how much better off will we be?
- Would we be better off just letting it go. Can we live with the status quo?

Both of us can recall situations where the status quo was less than ideal. There were clauses we would have changed and restrictions we would have preferred to live without. But the time, the precedent, and/or the cost to negotiate a change would not have been worth it. The expected investment outweighed the potential return.

So, we prepared to address the issue the next time we were obliged to go to the bargaining table. And we sought alternatives we could implement in the meantime. If the need for change is real, there is always a way to deliver. When the cost exceeds the return, you'll have to rethink your strategy or find a way to live with what you've got.

As Kenny Rogers sings in *The Gambler:*

> You've got to know when to hold 'em
> Know when to fold 'em
> Know when to walk away
> And know when to run

CHAPTER 4

The Knowledge

Back before smart phones and Google Maps, someone who wanted to drive a London taxi had to spend a couple of years learning what was known as *The Knowledge*. Those who could internalize the streets of the city, the traffic patterns, and the landmarks could plot the quickest way to take a fare-paying passenger from point A to point B. Once they figured it out, aspiring taxi drivers had to take an exam to show that they had mastered *The Knowledge*. How did they learn? By cycling around London, street by street. Later they started using little 50cc Honda Super Cubs. It could take up to two years to learn *The Knowledge*.

There wasn't a class. They didn't ride along. They learned by experience on the street and lots of time in the seat.

We are not suggesting that you buy Honda 50s, or whatever today's equivalent are. What we are saying is that when it comes to negotiations, you need the knowledge. You need information. The more the better. Facts are your friends. The more friends you have the better-off you will be. Information will shape everything you will do.

You need to build a data pipeline, to keep yourself informed about what is happening out there, to know what others are doing. You need to network with your colleagues in other companies, to learn from them, especially if they are dealing with the same issues as you are or, more importantly, the same workers' representatives or expert advisors as you are.

You cannot walk into a negotiation without a great deal of preparation. Preparation about the issues, preparation about the people, preparation about the process.

Negotiations do not just begin the day you sit down across the table from your employees' representatives. It has been said that the day a negotiated agreement is signed is the day the next negotiation begins. That is partially true. The reality is that workplace collective bargaining is shaped by the totality of the experience between the parties from Day One. And every day thereafter.

Your preparation starts by learning about the history of the relationship. History shapes expectations. You will need to understand what happened between the parties. More importantly, you will need to understand how the outcomes of previous negotiations were perceived by your employees. Has history repeated itself? Have your predecessors created a pattern that you can leverage? Or is it one you have to break?

You also need to be familiar with today's realities. You cannot assume that your employees' representatives fully represent your employees' interests. You need to remember that the people they represent are your employees first. If you have to engage, it is your job to satisfy your workplace bargaining obligations in a way that satisfies management's needs, protects management's rights, and is as responsive as possible to the real interests of your employees. If you are only prepared to blindly accept what you hear across the table as fact, you may do your employees a real disservice. That will ultimately backfire on the business.

Unions can have their own agendas, and those agendas may not always align with the interests of your employees. Whatever their origins, these days professional unions are large, bureaucratic organisations with their own internal

political dynamics. As is the case with many large organisations, the interests of the organisation can take precedence over other interests. Unions are no different.

Collective bargaining in the workplace is not only about getting a deal done today. It is about finding the path to an agreement that creates terms and conditions that encourage your employees to engage with their work in increasingly productive ways. You need to be more prepared than anyone else on either side of the table. You need to master the knowledge.

Here are some of the questions we think you need to find answers to if you are going to be properly prepared:

- Who are the stakeholders on your side? Have they been stakeholders in such negotiations before or are they new to the process? What are their expectations? How are you going to engage with them? How will they react?
- Who are the players on the other side? Again, the same questions. Have they been here before or are they new, with a new agenda. What motivates them? What tactics do they employ? How will they engage with your workforce?
- How did previous negotiations work out? What did management get? What did management give?
- Did previous agreements deliver for both parties, or did they fall short? If they fell short, what was the problem? Who was responsible for the failure?
- Who do your employees think were the winners and losers in previous negotiations? How do they feel going into the current talks? Do they think they've got the power? Or do they feel like they're the underdog? In today's language, what's the "vibe" out there on the floor or in the office complex?

Reach out to those who were previously involved. Research the history. As we said earlier, history shapes expectations.

What will workers' representatives anticipate? How will they expect you to approach the process? Will you continue to negotiate within the framework set down by previous negotiation, or will you bring a different approach to the table?

While history shapes expectations, we are not captives to it. Different circumstances may call for a different approach. But change requires management. If you're going to negotiate differently than you or your predecessors negotiated last time, you're going to have to lay the groundwork. Otherwise, no one will expect anything but the same old, same old. We are all creatures of habit.

Speaking of changed times, we need to take stock of the times in which we live because the times in which we live can have a major bearing on the outcome of negotiations.

For example, how do the politicians in power see the balance between "capital" and "labour"? Do they lean in one direction or the other? Most collective bargaining negotiations fall below the political radar. But some do not.

In 2024/25, the U.S. East Coast union for dockworkers, the International Longshoremen's Association [ILA], negotiated a 60%+ wage increase over six years for its members. It also got language in the contract which limits management's right to use automation on the docks in order to preserve the jobs of its members who are among the highest paid blue-collar workers in the US. This is what unions do, and this is why workers are members of unions. There is no point in complaining that the union and its members are short-sighted. They may well be, but this is the reality you must deal with.

The contract negotiations between the ILA and the employers, USMX [United States Maritime Alliance] took place in two phases. The first phase, in 2024, focused on wages. The then President, Joe Biden, put pressure on the employers to cut a deal to avoid a dock strike in the run-up to the presidential election.

The second phase, in 2025, dealt with automation. The new President, Donald Trump, went on the record as saying he did not want to see automation do away with good American jobs on the East Coast docks and he put pressure on the employers to cut a deal favorable to the union. As a result, the union was able to claim that it had seen off the threat of automation.

It is worth noting that not one U.S. port is in the top 50 in the world for efficiency, nor are any of them going to make the grade anytime soon given the deal that has been done.

It is not for us to comment further on the outcome of the USMX/ILA negotiations. The parties to a private, collective agreement will always have to act in their own best interest, as they see fit in the circumstances.

The point we want to make is how the political climate of the day can influence negotiations, especially when the negotiations are high profile and disputes can have significant economic consequences. Ocean-going vessels with U.S.-bound cargo are captive to U.S. ports. U.S. ports are captive to the longshoremen. Absent competition, efficiency-be-damned. Let the consumer bear the cost. The bottom line is that a strike on the docks can shut down an economy. That gives the strikers a lot of leverage.

Before you open a major negotiation, run a political temperature check to see how what you are proposing will play out with political decision makers, locally and nationally. Check your timing. Are you proposing

something that would be bad news in the run-up to an election? Politicians hate bad news. Incumbents hate bad news right before elections even more. Elected public officials and employees' representatives are in a similar boat when it comes to workplace collective bargaining. Both detest anything that looks like it disadvantages their constituents. Reducing benefits is bad. Reducing jobs is worse. Attempts to improve competitiveness will be painted as corporate greed. These are the facts of life. Learn to live with them. Be prepared.

Apart from the political temperature, you need to check the market temperature. What is happening in your local/regional/national/industry labour market? What is happening in other companies? What data is publicly available? What insight can you access through your networks and contacts with colleagues?

How are other companies reacting to changes in the law? For example, as we write this in August 2025, European legislators are finalising changes to the European Works Council Directive.

These changes will necessitate the renegotiation of all existing 1,200+ EWC agreements. While the changes are not major, they are still significant. Which company will be the first to renegotiate their agreement? What headline will that set? Will a template for EWC agreements, in line with the 2025 Directive emerge? What will trade union strategy be?

All negotiators should understand the totality of the environment that encompasses workplace collective bargaining. We do not negotiate in a vacuum. We look at what others have done. We look at their recent agreements. They provide a yardstick against which our own agreement will be measured.

Consider others' agreements. Study their language. But you should not "copy and paste" someone else's agreement. Every agreement has its features that are unique to the individual business, its culture, histories, and traditions. Every agreement is the culmination of both parties' responsiveness to the others' needs at a given point in time.

You need to look at recent, relevant agreements to see if there is a pattern. Are there common features or a similar direction of travel that establishes parameters within which you can work?

You can then craft your own agreement which runs with the grain of these other agreements. These are "coercive comparisons" that can put pressure on the other party to accept an agreement in line with industry standards. In the U.S., this is sometimes referred to as "pattern bargaining".

Before a professional sports team takes to the field, coaches and players study the players on the other team in detail. How do they play? What is their style of play? Do they have any particular tactics they like to use? Who is their main player, the leader of the line? What are their strengths and weaknesses? You will never win if you do not know who you are playing against.

In labour negotiations, you need to do the same. You need to know and understand the team on the other side of the table.

Who are they and how did they come to be there? What drives them? What is their motivation? What do they want and what do they want to deliver for their constituents?

Do they have the leverage to deliver what they want? What are they asking for? And most importantly, what do they *need*?

Interests vs. positions

Sometimes what a party asks for in a negotiation and what they actually need are two different things. This is referred to as the difference between "positions" and "interests". There is the negotiating story told of an old married couple arguing over an orange. They both wanted the orange. That was their "position".

They agreed to cut the orange in half. The wife took the flesh of the orange from her half and ate it. She discarded the peel. Her husband took the peel of the orange from his half and used it to flavor a dish he had simmering on the stove. He discarded the flesh.

Their stated positions were the same. They wanted the orange. Their interests - their intended uses for the orange - were very different.

Had they not been caught up in their positions, they could have easily agreed on a better solution. "You take the flesh. I'll take the peel." Both parties would have been happier. An interest-based negotiation would have yielded twice as much for each, nothing would have gone to waste, and there would have been no cause for lingering discontent.

How do you explore and identify the difference between positions and interests? By asking questions. "Could you talk me through your thinking on this issue?" "Why is this important to your members?" "How about walking me through what you see happening?"

New possibilities for agreement can be unearthed by listening closely to what the other side is saying. Positions present a single potential point of agreement. "You agree with my proposal, or you don't." It will be up to you to get beneath the words and into the meaning. Socrates taught complex subjects by asking probing questions. Negotiators

can further complex negotiations in the same way. It is important that the questions are open-ended… questions that encourage the other side to talk. Questions that evoke a simple "yes" or "no" will keep meetings short and the space for agreement small.

The upper hand

Before you open a negotiation, you need to determine if the other party has leverage. Leverage can come in many forms: industrial leverage [strikes]; legal leverage; political leverage; and public opinion/social leverage.

We mentioned the ILA East Coast dock negotiations earlier. The ILA had leverage. You don't get to work on the docks unless you are a union member. The ILA was in a position to call a very effective strike. Not only that, the union had political leverage in the form of support from two Presidents of very different political colours. The ILA had leverage, they knew it, and they knew how to make effective use of it.

The ILA/dock strike is an extreme case in which one side appears to have all the leverage. Most labour relations situations are not like that. Generally, both parties will have some leverage though who has the greater leverage is not always clear at the outset. A union can call a strike. A works council can go to court. Activists can launch social media campaigns. Part of the job of the management negotiator is to anticipate these scenarios, to be prepared for them, and to have countermeasures ready.

However, it needs to be remembered that your objective is always to reach an acceptable agreement. As a management negotiator, a representative of "capital", you should understand you will be the bad guy. Always.

The worker, even the longshoreman who makes hundreds of thousands of dollars a year, will be David to your Goliath in the public eye. Your job is not to engage in every confrontation. Your job is to pick your battles very carefully. You are playing the long game. You need to be careful that it does not look like you are spoiling for a fight.

We believe it is almost always in the company negotiator's best interest to keep a low profile. Sometimes the matter you're negotiating will put you on the radar screen. Even then, sound relationships and good process can go a long way toward minimizing your exposure. If you just come out swinging, you'll end up with confrontation. Employee representatives are always happy to rally their troops. "If they want a fight, we'll give them a fight".

Conclusion

To repeat, facts are you friend in any negotiation. The more facts you have, the more friends you have. You need to do the work, to do the research. You can have members of your team do the digging for you, but you need to be on top of the file, to read and understand the research, to know it inside out.

You should memorise the key facts and figures, the relevant contract provisions, know the important articles of whatever laws are in play. You should not have to think twice about them when they come up in the discussions.

The rest of the information you keep close to hand, to be consulted if and when necessary. Have it organised on your laptop so it can be accessed quickly and easily.

If there is a particular expertise required for the matter at hand build your team accordingly. An operations expert might be needed to discuss automation. A finance executive

may be needed to explain restructuring accounting. Or an information technology person may be needed to answer questions about the inner workings of Artificial Intelligence. It's up to you to determine the expertise you need. The responsibility for organising things falls on your shoulders because you are the conductor. If someone else is needed to help tell the story, make sure they are close at hand. You may want them with you at the table or certainly no farther than your back room. The time it takes to "phone a friend" could mean the difference between a deal and no deal.

You need to understand the issues at hand inside and out. You need to understand the history of the relationship, the state of your workforce, and the legal, political, and social context in which your bargaining will take place.

Avoid "paralysis through analysis" by starting early. Engage your own intellectual curiosity, but make sure you've thought through what you need to know versus what would be nice to know.

Preparation is everything and "the knowledge" is your key to successful workplace bargaining.

CHAPTER 5

Leverage

As we said earlier, decide when you can, negotiate when you must.

Before you open any negotiation, you need to explore your alternatives. What is the issue, or issues, that need to be addressed? Does it require a negotiation or is there another way of dealing with the matter? Negotiations imply settlements and settlements mean that there has to be some sort of exchange. There is nothing for nothing.

We are negotiators at heart. We have been debating, preaching and teaching principles of negotiations in various settings for years. While some come easily, like "respect the people", others are more difficult to internalize. In this chapter and the next, we will cover two principles that are intuitive, but hard to put into practice. Both deal with leverage. To deliver the best, most sustainable agreement you can deliver, you will need to maximize your leverage and minimize your exposure.

We use the acronym L'APEX to keep these principles front of mind:

Leverage = Alternatives x Power - Exposure

The concept of leverage is at the center of any treatise on negotiation. It is the multiplier. You can develop alternatives. You will have power. But if you don't exercise the two beneficially together, you have nothing. Maximizing your leverage is critical to achieving "more" for your employer.

Alternatives

Many readers will be familiar with acronym BATNA, your *Best Alternative To a Negotiated Agreement.* It was first coined by Fisher and Ury in the book from the Harvard Negotiating Project, *Getting to Yes.* The concept forces you to ask yourself the questions:

- *What are my options if the negotiation fails?*
- *Do I have options?*
- *If I do not have options, can I develop options?*
- *Can I find alternatives in the event of a failure in the negotiations?*

Consider the L'APEX formula. The more alternatives you have, the more leverage you have. And that leverage is amplified by the amount of support you have marshaled behind each option.

When you change your car, your dealings with the car salesman are purely transactional. Whether you like him or her is irrelevant. Whether [s]he likes you is equally unimportant. Get the deal done at the best price and drive away.

Now suppose you decide to trade in your Ford for an Audi. There is only one dealership in town that sells Audis. Your bargaining leverage is immediately reduced. If you want an Audi, you can't walk away. Sure, you could drive to the Audi dealership in the next town, but you are still going to be in the same negotiating position.

Your decision that you must have an Audi has limited your options for negotiation. On the other hand, if you decide that the purpose of a car is to get you from point A to point B and the marque is irrelevant, you now have multiple options. You can negotiate with every dealership in town.

In a labour negotiation, you need to ask what you really need from the process. You need to ask how you can deliver an agreement that satisfies all your stakeholders, including those 'family stakeholders' who want to see your employment continue. A not unimportant consideration!

The ability to develop alternatives requires a deep understanding of the business you support. It also requires that you have established yourself as a credible member of the business's leadership team. You need to be the most knowledgeable person on the team when it comes to the content and interpretation of every agreement between the company and your employees' representatives. You also need to know how the nuances of those agreements impact every part of the business's operation. The way the commitments you and your predecessors have made affect the cost, quality, and delivery schedule of the products and services your company sells is the heart of the matter. To coin a phrase, the business of labour relations is business.

Among the events that stand out in Rick's career was the day a senior operations leader said, "I don't need to be at the table. You know what we need." He knew Rick would work to seek out alternatives to get a deal done that was responsive to the needs of the business and the company's employees. That operations guy also knew that Rick wouldn't commit to anything without understanding the implications of the change on the factory floor. A key question should always be: "How is this going to work in practice?"

If you don't understand how the business works, you can't possibly understand how the changes you agree to at the bargaining table will affect your company's operations. For decades, we've heard the mantra that HR has to be a real business partner. We agree. That's a start.

We strongly believe the person employed to make legally binding commitments with employee representatives about everything from wages to the introduction of automation really needs has to have a complete and better grasp on the way things work inside the company than anyone else in the room.

Alternatives come from an open mind and a firm handle on "the knowledge". Negotiators can only be trusted to exercise their creativity when they can truly anticipate the next level implications of the deals they're making for their company's operations and the workforce.

Some people like to work in a narrowly defined stovepipe. Those people should not pursue careers as negotiators. The labour relations negotiator needs to be a mountain climber, able to reach the summit, *L'APEX*, and have a wide perspective of the landscape below.

A typical step in preparations for wide-ranging negotiations is to solicit input from other functions. The knee-jerk reaction of respondents is usually to say, "We need to change clauses X and Y and get rid of paragraph Z." These are positions. Positions are rigid. They don't lend themselves to alternatives.

The good negotiator will turn that around to identify the problem. [S]he will ask: "Can you explain to me why you need this change so I understand it fully and can communicate it effectively across the bargaining table?"

The effective negotiator listens and identifies the operational pain. Correcting that pain becomes the negotiator's [and the company's] interest. He or she then begins the search for solutions.

There may be several alternative solutions to address that operational pain. One of those might even address concerns

from the other sides of the table. Alternatives provide room for movement. They give you flexibility to be responsive to your side and theirs. And they demonstrate your desire to resolve problems, not just rip apart elements of agreements that may have been hard won by employee representatives over a long history of workplace collective bargaining.

Working with your team, and we will come to teams later in this book, you need to brainstorm a series of questions:

- What is the problem we are trying to deal with?
- Why is it an issue?
- Who made it an issue?
- What is the range of settlement options that would resolve our issue?
- Are there alternatives that would satisfy our interests *and* that the other side could live with?
- How can we craft a negotiating approach to create space for genuine dialogue, especially on the most contentious issues?

In the following chapters, we will dive deeper into all of these issues.

It is unlikely that you will be able to identify the perfect proposal that meets your operational leaders' pain and that satisfies your employees' representatives' needs in the first go. That is why you should not enter negotiations hell-bent on a specific proposal with specific language. Let your proposal be your starting point. Let your interests guide the way.

Thinking through a range of acceptable alternatives in advance improves your ability to resolve issues, to respond where you can, and ultimately to negotiate a new

agreement with a minimum of drama. And isn't that what it's all about?

Power

As we have discussed, workplace collective bargaining has been instituted in most countries to balance power between omnipotent employers and their powerless and economically-beholden employees. The irony is that we have all too often seen employers forget the power they hold when it comes to negotiations. We have also seen employers blindly think they "hold all the cards."

You cannot use your leverage unless you know its components. You have taken the first step. You cast your negotiating objectives as interests. Alternatives are being explored. It's time to take a realistic inventory of the power behind your proposals.

We have talked about the power of unions. The source of power varies by country, but they are often reinforced by legislation. They are emboldened by their membership numbers. And they are can be encouraged by elected officials who stand with them in support of their shared constituent base.

Let's explore the other side of that coin. Through the exercise of rights almost exclusively reserved for management, company representatives have the power to decide:

- The location[s] of production and delivery
- The products to be produced and/or the services to be delivered
- The target customers for the company's output

- The means and methods of production and service delivery
- The assignment of the work of production and service delivery
- How much the company is willing to pay for the parts and labour required to make and/or deliver the company's output

This partial list encapsulates much of company's power. In the employment context, the company controls everything. What the company makes and where it makes it, who it sells to, and how much it will invest are almost always respected in a market economy as core entrepreneurial decisions. Beyond that, the lines start to blur once the first employees have been hired and they begin to acquire workplace rights.

When an entrepreneur establishes a company, [s]he has all the power. [S]he makes all the decisions; how the work will be done how many jobs will be created, and how much will be paid. Once those decisions have been made the first time, any changes to that original direction – especially changes that negatively impact people [s]he has hired – may be subject to regulatory oversight and potential negotiation with employee representatives in any of the forms we have covered in earlier chapters.

The first time you decide to open a facility, you are a hero. You are adding to the tax base, you may be attracting suppliers in, and, most importantly, you are creating jobs. From that point on, every decision will be scrutinized. If you decide to expand elsewhere when your company's demand grows, you will be challenged to explain why you didn't expand "at home". And if your decision negatively affects the employees you decided to hire, your hero status will be reduced to zero. As David Bowie might have put it, entrepreneurs risk being "heroes, just for one day".

If workplace collective bargaining has found its way into your facility, then each decision taken by management in the past will affect the power you take to the bargaining table. Consider a manufacturing example:

- Is all your production done internally or did you decide to outsource some?
- Are the operations you kept in-house sole-sourced, or have you ensured there is no "single point of failure"?
- Are your in-house operations highly skill-intensive or is the labour element readily replaceable?
- Are your in-house operations entirely staffed with employees or have you sub-contracted certain tasks or parts of the operation?

Management holds the power of employment, the power of investment, and the power of time. Nearly every operational decision has some impact on the balance of power in workplace collective bargaining. As a negotiator, you need to be at the management leadership table to ensure the implications of decisions made are clear and leverage is preserved.

The first critical step is to ensure that nothing is given away for free. Fortunately, we're not always restructuring. When times are good, it can be cost effective and operationally efficient to put more work in an existing facility. That's great as long as everyone remembers that jobs are the primary source of a company's power in workplace collective bargaining.

How can you use the expansion of the workforce to your advantage? If you give, you need to get something in return.

Are there changes to negotiated work rules that would make that new work even more efficient? Are there

restrictions on the work schedule that would allow even greater output? In the U.S., can you time the good news to link with contract negotiations? If nothing else, negotiations typically go easier when people aren't worried about losing their jobs.

It is important to note that your leverage as a negotiator is just one of many concerns facing the management team of a complex business. You will not win every battle. Some leverage will be sacrificed for expediency or financial gain, but you must be heard. There may be no stopping a management team that is committed to add jobs or invest heavily in a facility without a quid pro quo. It is nonetheless important for you to explore alternatives to preserve your leverage. If there are none, it is equally important for the leadership team to understand the value they are compromising.

Never forget that collective bargaining exists because employers have significant power. Understand the real balance of power in the relationship between your company and your employees' representatives. Understand what is going on inside your company. And remember, employee representatives get only what companies give. Don't give anything away for free.

Conclusion

As negotiators, we are always looking to create the best conditions for success. A good outcome from any negotiation is good for the company, fair to employees, and helps secure the negotiator's path to the summit, L'APEX [s]he has chosen.

Leverage = Alternatives x Power – Exposure

Exercise "the knowledge" to create a range of alternatives that satisfy your company's interests. Give yourself extra points for every alternative that also addresses your employees' concerns.

Realistically assess just how powerful your company really is in the employer-employee dynamic. Start with the jobs you offer. Are they good jobs? Are they secure? Are they easily replaceable? Is your pay leading or lagging?

Once you've got a handle on that, make sure you know what is coming down the line. Management decisions affect your leverage at the bargaining table. Make sure nothing is given away for free. For every quid, there should be a quo.

CHAPTER 6

Exposure

All negotiations come with risks attached. It is part of the game. After decades in industrial relations, we have found that managing risks – minimizing exposure – is a big part of the job. The savvy negotiator is going to exercise "the knowledge" to assess the risks any workplace collective bargaining event might pose. [S]he is then going to recommend a course that minimizes the company's exposure to the greatest risks and that still satisfies the company's interests.

The Risks

In the U.S., the risk could be the possibility of a costly strike. How much did the three-day strike by the International Longshoremen's Association in 2024 cost East Coast port operators? How much did it cost the wider economy? How much did the Machinists' seven-week strike cost Boeing in 2024? How did that affect the reputation of a company already reeling from a series of accidents that had already badly dented its reputation? How many aircraft deliveries were delayed to already impatient airline customers?

In July 2025, a minority of French air traffic controllers went on strike for a number of days. Thousands of flight were cancelled and hundreds of thousands of passengers had their travel plans disrupted. The strike is estimated to have cost the airline companies around €100m. In August 2025, a

strike by 10,000 flight attendants wrought similar havoc on Air Canada passengers over several days.

Where big numbers of workers touch big sectors of the economy, the strike risk is very real. And the exposure can be staggering.

In all European countries, unions and/or works councils can take an employer to court over alleged breaches of various laws. The financial penalties can be significant. For example, in the UK, incoming changes in the law on collective redundancies will double the penalty for breaches of information and consultation obligations. If you fail to comply, you could be subject to a fine of 180 days' pay for each affected employee. That could quickly translate into a considerable sum if a company gets things wrong. These payments would, of course, come in on top of all other separation-related entitlements.

However, the risk is greater than the fines alone. The very fact of having to appear before a court or a labour tribunal in the first place can have serious cost and reputational implications. Unions and workers' representatives know this and can often be quite happy to threaten court actions, even when they know their claim is built on flimsy legal foundations. The financial costs of defending against such actions can be significant, not to mention the drain on the time, effort, and attention of management required to prepare their defense to be heard before a judge.

There is generally little downside in Europe for unions or works councils in going to court or to a tribunal. They do not have to call their members out on strike, so there's no "pain in the pocket" for them through lost earnings, and courts and tribunals usually do not fine unions or works councils for frivolous claims. In some countries, such as Germany, the employer is also on the hook for the legal

costs incurred by the works council. As strange as it may seem, if you run afoul of your workplace collective bargaining obligations, you may end up paying for opposing counsel to prosecute your employees' case against you. As we all know, lawyers do not come cheap.

The 2025 revision of the European Works Council Directive will require the renegotiation of existing agreements to include language on how the employer will fund expert and legal costs on the part of the EWC. Even in the absence of such language in the current law, we know of one company that has been taken to court by its EWC eighteen times.

It is easy for activists to "capture" an EWC or a local works council and make use of legal leverage to push their agenda. "Activist capture" of representative structures like this can present a significant risk that needs to be guarded against. Sound process, vigilance, and strong relationships are a start.

In our experience, other than when jobs are at real risk or there is a big pay demand on the table, the majority of employees are indifferent to most labour relations issues. They pay little attention to what their representatives' are doing as long as they don't cause problems on the jobsite. Most employees just want to get on with their lives, do their work as best they can, and spend time with friends and family.

As we have already discussed, we also need to be conscious of "political risks", especially when jobs are on the line. Elected officials often become very supportive when "the little guy" is under attack. When jobs are threatened, concessions are sought, or a pandemic turns truck drivers into heroes, politicians turn out for their constituents. Workers vote in elections, and no politician wants to lose

votes because he or she failed to come to their assistance in their moment of need.

In today's world, every company, no matter how big, is dependent on government in some way. As we write this in August 2025, the *Financial Times* is reporting, "*Nvidia and AMD to pay 15% of China chip sale revenues to U.S. government*". Nvidia has a market capitalization of over $4 trillion, making it one of the biggest companies in the world in terms of valuation. Even a company of that size is subject to political pressure. Sovereign power will always trump corporate power [no pun intended]. Paying an "export tax" is unheard of in the U.S., but that is what is on the line. No company is immune to political pressure and some, like government contractors, are more exposed than others.

We know from our extensive dealings with European Works Councils over major transnational restructuring projects how often and quickly politicians can get involved. You can always expect representatives from the losing country to be heard loudly and publicly. Do not, however, think the winners will come to your aid. They may celebrate the win at home, but they understand they can't gloat over another's loss on the international stage. We've said it before, but it's worth repeating, big companies are always the bad guys when the little guy is in harm's way.

In many parts of the world, political risk is the major risk that labour negotiators must keep in mind. The bigger the action, the bigger the risk. The louder your employees' representatives are, the louder the response. Politicians may see your restructuring activity as a nuisance, a political death knell for them personally, depending on the breadth of public awareness, proximity to the next election, and whether they are the incumbent or the contender. They may also see it as an opportunity to attack "heartless and unfeeling employers".

In the U.S., we have seen presidents on picket lines, U.S. senators arm-in-arm with union officials on courthouse steps, and other law makers threatening to undermine companies' bids for government work. But political risk extends far beyond representative democracies. We have witnessed equally quick calls for the resolution of disputes in China when workplace discord turned publicly disharmonious.

Finally, reputational risk is a specter that haunts every negotiation. In fact, in these days of always-on 24/7 social media it constantly hangs over every company. The risk is especially great for multinationals with far-flung global supply chains, especially when environmental, labour, or human rights issue surface from somewhere deep down in the chain. Reputational risk often boils up from parts of the supply chain the C-Suite didn't even know existed.

Who knew that one insignificant cog in your complex contraption was subcontracted by a subcontractor to yet another subcontractor's subcontractor? For example, look at the fines that the tax and competition authorities have recently hit top fashion brands like Armani and Dior with in Italy. The fact that their €2,000 designer handbags were being made, not by Italian craftsmen, but by a couple of euro a day Chinese laborers in Northern Italian sweatshops was ammunition for the regulators and even greater fodder of the social media machine.

That happened in Europe. Do you know what's happening at your suppliers half a world away? Do you know if the contractor who makes parts for you in Singapore uses an employment agency to bring in Chinese laborers? Who holds the passports of those immigrants? If the employment agency is holding them as collateral, you may be a party to modern slavery. Who knew?

We are not persuaded that "reputational damage" is necessarily as big an issue as is sometimes made out by activists. How many of the Western companies that were sourcing goods from Rana Plaza factories in Bangladesh went out of business when a building collapsed and over 1,100 died? None. They are all still in business. Western consumers still want the cheap prices that are the hallmark of "fast fashion". Families suffered untold tragedies. Activists moved for change. And the big brands shifted their production, at least temporarily.

Unless reputational risk motivates consumers or stockowners sufficiently to either materially damage the offending company's sales [and ultimately profit] or its stock price, the impact will be as fleeting as the next quarter's results.

For whatever reason, labour matters don't spark the same visceral reaction we see in other corners of this increasingly divided world. In the U.S., consumers and shareowners moved quickly to punish a brewer who engaged a transgender spokesperson. The reaction was equally vehement when an old white guy and his cracker barrel were removed from one company's logo. Sales and stock prices suffered. Remarkably, workplace collective bargaining issues, even those with catastrophic consequences, have yet to provoke the kinds of responses evoked by these purported calamities.

While "reputational damage" is rarely long-lasting, bad news events can generate considerable unfavorable media attention in the short-term. In the words of the song, it can be unpleasant "when the heat is on". How do you avoid this kind of exposure? Whether the law requires it or not, it is best to know your supply chain down to the last worker and root out bad practices. This way, you minimize the chances

of being surprised and ambushed publicly or at the bargaining table.

Assessing Risk

No matter where in the world you are, you job as a labour relations negotiator is to execute your workplace bargaining obligations in a way that minimizes risk to your company. You can never eliminate all risks associated with any labour-management engagement. That is the world we live in. You can, however, identify, assess, and put plans in place to mitigate those risks.

It is critical to discuss the potential pitfalls associated with any employment-related negotiation in the planning stages. Everything we do in business has a cost and a benefit. Decision makers need to be made aware of the risks they might face and the costs they might bear as a consequence of pursuing a major restructuring action, a particularly tough labour agreement, or a major policy change. They will also need to understand the cost associated with your mitigation plans.

Your credibility is on the line here. Potential risks should be surfaced in a way that is realistic, not alarmist. Dealing across cultures, we have too often seen uninformed American managers dismissing the risk of going boldly where no one has gone before in Europe. “Just do it!”, the demand, and "do it yesterday." Similarly, and sometimes in response, we have too often seen European say, “You can’t do that here.”

In our experience, reality is in the middle. For the good of the organization and in the need to comply with the law, changes to the terms and conditions of a European workforce cannot be changed by fiat. The American

manager may enjoy that level of entrepreneurial freedom in the USA, but elsewhere there are individual employment contracts and collective agreements to consider and be respected. There are also more often than not regulatory requirements to engage workers' representatives before making changes that impact working conditions.

But it is equally important to mention that these obligations almost never prevent a company from taking the responsible steps it needs to take. They just have to comply first. They must follow the rules.

As we have mentioned, there can be significant costs associated with non-compliance. The trade-off is often time. You may not lay off 10% of the employees in every country in the world tomorrow. But that doesn't mean, for example, you can't lay off 10% of your workforce in Germany after you have informed and consulted with the appropriate representative bodies and after you have provided the requisite notices and filed the necessary paperwork. We have yet to find any rational company initiative that could not be implemented in due course in any country. There is no evidence of information and consultation obligations ever derailing any major restructuring or reorganization once it is approached properly.

Our American readers need to understand that European countries deliberately make dismissing employees hard and put procedures in place that must be followed.

To our European readers, your collective obligations are a risk to a "go now" strategy. Identify them accordingly and lay out a realistic plan and timetable for implementation. It is also your responsibility to make the cost of non-compliance very clear. It is very real, and the numbers are only increasing, as we noted earlier with the doubling of the

penalty in the UK for not informing and consulting correctly in situations of collective redundancy.

As we were writing this, in August 2025, newspapers were reporting that the Australian airline Qantas was being hit with a $100m+ fine for illegally outsourcing around 1,800 employees during the Covid pandemic. This fine was on top of a $120m settlement already agreed with the illegally outsourced workers. Non-compliance no longer comes cheap. Get it right. Respect the process.

Minimizing Exposure

As we have seen, the business world is fraught with risks from all sides. The unique and differing interests of all stakeholders creates the opportunity for exposure on all fronts. It's hard to satisfy everyone. And in today's always-on social media and 24/7 news world, little goes unnoticed.

Compliance First

As mentioned above, the steps to minimizing exposure begin with compliance. That is the bare minimum. You have to know what is required of you from an employment and labour law perspective and you need to ensure you are compliant. This is one thing when you're dealing with a facility your large, multinational company opened decades ago. It is entirely another when your large, multinational company bought a "mom and pop operation" in the hinterlands of a country in the Global South a year ago.

It sounds simple, but things like the following matter:

- Are you paying the minimum wage for all hours worked?
- Are you employing any underage workers?

- Are you respecting restrictions on the number of overtime hours and shift schedules?
- Have individual employment agreements been executed, where appropriate? Do they comply with most recent employment laws?
- Do employees have access to your rules of conduct, and have they been reviewed, acknowledged, and/or approved by employee representatives where necessary?
- Have you appropriately informed, informed and consulted, or negotiated over the changes you are implementing?

If the answer you get from your local team is, "That's not how it's done here.", then it's time for some re-education. The fact is that multinational corporations are held to a different standard. Small employers may violate the law. They may not comply. That is no excuse, especially for those with the resources of a multi-billion-dollar companies. If you are taking any action with adverse consequences for your employees [including action that "forces" them into the street in a strike], then labour departments, ministries of labour, and labour courts in all but the most employer-friendly countries will use your non-compliance as an excuse to send you back to do things right. You may or may not face huge fines, but you will find yourself revisiting the process you should have followed in the first case. That will cost you time. And time is money. Compliance first.

No Surprises

Mastering "The Knowledge" includes understanding what steps you have to take in order to deliver envisioned changes. If a change to schedules of work requires workplace collective bargaining, make sure you have

shared your understanding of the process with the operations team before a schedule change is announced.

Your leadership team may want to close a factory in the United Kingdom where they have never dealt with either a union or a works council. With no employee representatives in place, they may logically assume they can move ahead with the closure unilaterally. Wrong. You have "The Knowledge". You need to ensure they know their obligations under the law.

The idea of "no surprises" works both ways. For you to educate the broader management team, you will have to know what actions they anticipate. And you will have to know earlier, rather than later. Good governance practice will include having the person responsible for employee and labour relations in the approval chain for any restructuring actions and employee-related policy changes from the start. The earlier you are in-the-know, the earlier the organization can plan for a successful implementation.

Beyond building strong relationships with operations teams, we encourage organizations to develop a standing, working committee among three functions: labour relations; communications: government relations.

Understanding what each other's calendars look like can make your combined lives much easier. If the government relations team has arranged for the president of a division to meet with a French cabinet minister, that may be the wrong day to announce redundancies in Paris. Common sense? Yes. Do things like this, or worse happen when "one hand doesn't know what the other is doing?" Yes, this happens, especially in large and complex organisations.

We have emphasized the importance of relationships throughout this book. Maintaining strong working ties is part of respecting the people. We build relationships in the

good times, and test them in the bad. That means ensuring people are not caught off guard by good news or bad. Your employment-related action may be cloaked in secrecy for anti-trust reasons [i.e. the sale of a publicly traded business], but you need to advise your counterparts of major changes as soon as possible. If the press release goes out at 8:00 AM, you or the right member of your team need to be on the phone with that union representative or works council member at 7:59 AM. There is nothing more disrespectful than letting your employees' representatives learn about news that affects their constituents in the press.

Your government relations and communications counterparts will similarly want to respect the relationships they have cultivated over the years by making their calls at the same time.

No one likes changes. Surprises are worse. Productive relationships take time to cultivate and an instant to end.

Contingency Planning

Operational and financial risks get managed through contingency planning. You are planning to announce your intent to close a plant in France. You have a contract expiring with a contentious union in the US. Competitive pressures are driving you to a near-zero increase during wage negotiations in Korea. All of these could result in workplace disruption or even a protracted strike.

The implications of leverage on negotiations during a strike are straightforward. The side of the contest that is better prepared to weather the financial hardship involved has the greatest likelihood of prevailing. If a company isn't organised to continue to deliver products or services in the face of a walkout, they are likely to bend. If employees

haven't saved and don't have alternative sources of income, they will ultimately concede.

To deliver success, you have ensured your management team is aware. You have realistically laid out the likelihood of a strike because you understand the value of "no surprises". The company is now exposed to the possibility that an operation may be worker-free for some period of time. The potential consequences? You may lose sales in the short term. Worse, you may lose customers for the long term. It is probably not your job to run the operation in the face of a work stoppage. It is, however, your job to make sure they have a plan. If they don't, you are exposed at the bargaining table. Your leverage is compromised.

In some places, like the U.S., you can bring replacement workers into the factory. The higher the required skill is, the more difficult [and expensive] it will be to keep your operations running. Remember, choices made early influence your leverage later. When your company first determined the means and methods of production or service delivery, they had a choice: lean heavily on process or rely on the skills of people. If your operations depend on the skills of people, your exposure is greater. Your leverage is decreased, at least on this count.

If replacement workers aren't an option, work may be able to be shifted if your company was careful to ensure there would never be a single point of production. Single points of production are potentially single points of failure unless second sources, other company facilities or contractors, may be able to pick up the slack. Alternatively, with sound planning, inventories of manufactured goods may be housed offsite for distribution in the event of a work stoppage.

This points out the additional risk faced by certain service providers. When airline pilots go on strike, there is usually no good replacement. Passengers can be routed to other airlines, but… then they're flying on other airlines. Sitting planes generate nothing but cost. This is not to say there are no alternatives, but the more your operation is captive to your employees, the more costly a strike.

The subject of contingency planning could fill volumes. We have just touched on it here because of the importance operational risk has on your ability to succeed at the table.

Conclusion

Exposure reduces leverage. Risks will seldom be eliminated, but they can be managed. They come in many forms with the ability to damage your company and to sidetrack your negotiation.

The best way to minimize exposure is to understand the potential sources and to plan for it. Testosterone can flow freely during heated negotiations. Less experienced managers convince themselves they can deal with a strike. "If we plan for it, we'll be fine." More experienced leaders understand the reality is more complex.

The economic impact of workplace collective bargaining gone wrong can be significant. Companies can usually dig themselves out of that hole fairly quickly, but not always. Reputational harm can be long-lasting. Protect your relationships. Ensure there are no surprises.

And always, always start with compliance.

CHAPTER 7

The Mandate

You need a destination to plot a course. When it comes to workplace bargaining, delivering an agreement within your mandate is your destination. It defines what you have to get, what you're not willing to give, and what consequences you're willing to suffer if you fail to reach an agreement. This, as any seasoned negotiator will tell you, is often the most difficult part of any negotiation, it is where the rubber meets the road.

The time, effort, and internal political capital you will employ corresponds to the nature of the bargaining ahead. If your obligation is information-sharing only, agreement will likely come much faster than if you are facing a full-blown negotiation where your employees' representatives can call a strike. The greater the potential consequences, the greater the risk, the greater the challenge of cementing internal agreement. In high-exposure situations, you will spend far more time working the system to secure alignment with your own stakeholders than you spend at the bargaining table. This is know as "*intra-organisational bargaining*".

It may be a pay negotiation, in which case you must have agreement from all your internal stakeholders on the "envelope of money", to use a European term, that is available. You can negotiate inside the envelope, but not outside it.

It could be a European Works Council agreement. How do your ensure that you do not give away management decision-making prerogatives? How will you guarantee that the information and consultation process will not delay decision implementation? In U.S.-based multinationals, there can be tensions between U.S. executives who unabashedly "want it all, and [they] want it now" and Europeans who know that the law requires time to exercise the process. It is your job to manage this tension.

"Internal bargaining" begins with an assessment of the needs of all the relevant stakeholders. You are the keeper of "the knowledge". That is your starting point. You need to understand the specific interests of company representatives, those who have the authority to authorise the deal, those who will have to operate their businesses under the conditions of the deal, and those who will have to implement the deal. Remember, in the long-term, a deal is only as good as its implementation. Failure to implement properly just creates problems down the road.

From the beginning

You did your homework. You've have gotten yourself steeped in the knowledge. You know the context, the players, and the process. Now you need to control the narrative. The offer is yours to shape. The case is yours to make.

As the lead negotiator, it is your job to synthesize the wide range of opinions, wants, needs, and get them into the recommended package you are prepared to negotiate. Your challenge is to craft a mandate that balances your company's interests with the needs of your employees.

They were your employees before they were union members. You need to keep their interests as your employees in mind because, as we have said, sometime their representatives don't. They may have other agendas.

The mandate will need to be packaged in a way that is most likely to ultimately earn the endorsement of your employees' representatives, though they are unlikely to do so at the outset. Your aim is to get a deal that will ensure your company's future is sustained, your employees are treated fairly and working relationships with their representatives are strengthened. Confrontation is generally the enemy. Getting there is hard work.

You've already run the traps. There is no alternative to negotiation. You have to, otherwise you wouldn't.

Now start with the reason for the negotiation. Is it a pay deal, a contract renewal, an EWC agreement, a major restructuring, etc.? No matter the issue, you'll start by identifying the primary interests on both sides of the table. Then, what choices do you have? What are your alternatives? And eventually, what do the various potential positions look like?

Start with the interests, both of labour and capital. Agree on where you are [your current state] and where you need to be [future state]. The gap between the two will help define your interests. Competitive pressures might be forcing you to reduce unit labor costs. That is one of your interests. Your alternatives could range from automating jobs to reducing wages to increasing the productivity of your existing workforce. It's up to you to identify the alternative ways to address each.

You can start with "concede everything, get nothing", and work your way forward from there. Identify the pros and cons of each possible alternative. Brainstorm which

solutions will work for you, and which won't. Ask questions. Why do you think this will work? Why do you think this will not work? Could it be fixed? Is there a workaround? Are we looking at this the wrong way?

In the end you need to agree on the mandate. Alignment equals leverage at the bargaining table. When you say, "That's all there is.", no one else is going to second guess you. No one else is going to parachute in and undercut you by giving the other side more. This is what we can do, this is where we are going, and this is where we are not going.

You have your "envelope". You can negotiate within the "envelope" but not outside it. We can't reiterate this strongly enough!

Think about the "envelope" as a room, the size of that room is fixed. You have your budget, the interests you must resolve, and various alternatives to satisfy them. The room is the room. You can't go outside those four walls. The room has four chairs and a table.

Your authority – your mandate – is to deliver an agreement that includes four chairs and a table inside a 12′ x 12′ space bounded by four immovable walls. You have 144 ft^2, four chairs and a table. You can rearrange the furniture, but the size of the room cannot change.

You can put those chairs anywhere in the room. They don't have to be around the table as long as there are four chairs and a table inside that 144 ft^2. If you agree to 145 ft^2, you've exceeded your authority. If you agree to five chairs, you've exceeded your authority. Do so at your own peril. You are now on your own.

This is where the importance of interests and alternatives comes in. If you anticipated various solutions during the

mandate alignment process, you might already have the authority to swap out the table for two more chairs.

Then, instead of: "You're done. That was your last negotiation. You screwed up", it becomes, "Yeah. We agreed that was a possibility. You pulled it out of the bag. Well done."

Your mandate must contain specifics to address the various interests you identify. "Here is what you can give, here is what you cannot give. Here is what we need to get, and this is what you have to deliver on."

A good management-side negotiator never exceeds the parameters of his or her authority without prior, expressed permission. Never.

This is not the time to seek forgiveness over approval. You built the recommendation. You created expectations around the process. You created alignment around the mandate. A violation of the mandate is a fundamental violation of any trust you may have earned from your own side.

By the way, it doesn't matter if you turn out to be right after the fact. People may later agree you needed to do what you did. But they will not agree that you should have acted beyond your authority. If you need to move in a different direction, if you need to give more or get less, you need to return to the internal negotiating table *before* proceeding.

When you are in the final throes of a negotiation, it may seem painful to have to circle back for approval on what you know needs to be done. Taking the time to make a call or send a text will be far less painful in the long run. Some of us learned that lesson the hard way. You never want to be faced with the question, "Who gave you permission to do that?"

Governance committee

It is a good idea to form a "governance committee" to help guide the process. These are the people in your back room. They are your trusted advisors and confidants, your *consiglieri*. They make the decisions or have direct access to those who do. They know you. They know where the deal is headed. And they are one step removed from the bargaining table.

The negotiating room can become a hothouse, and sometimes a desire to just get the deal done can take hold, and objectivity dissolves. The "governance committeee" exists to ask you the tough questions and to ensure that the mandate is respected and, in some regards, that you are protected. By asking the right questions, they can help separate "want" from "need". Is the union's demand for an extra five cents in the third year of the contract really going to be the difference between agreement and a strike? Probably not, but it might feel like it when the people across from you are saying they're ready to walk out. Negotiators need a reality check from time to time.

Your governance committee can also be structured as an important piece of your bargaining alignment process. They can keep non-bargaining, senior leaders informed. They can field calls. And if the unexpected happens and you need to exceed the mandate, they can start to "work" senior leadership to align around the next steps.

You are working to your mandate, but things change. A high-profile government ministers calls or something changes in the external environment which has an impact on your negotiations. You need to recalibrate. Your governance committee is there to discuss the change, give you a reality check, and hit the phones if needed.

In some cases, they also give you the ability to be able to say to the other side, across the table, "Hmm, I'll need to refer back on this one. Let me think about it and I'll talk to my people and see where it leaves us. You're pushing it here, but let's see what's doable. Just as you have to refer back to your members, I have also got to talk with my team. It cuts both ways."

This tactic works better in some environments than others. In many negotiations in the U.S., suggesting you need to consult with others risks the challenge, "If you can't make the decision, we want to sit across from someone who can." To which the answer can be: "Yeah, I can make the decision, but I want to make sure my people are with me on this. Same as you do."

And you probably don't want your boss at the table. More on that later.

You need to develop a "feedback loop" with your governance committee. From the outset, you should agree on a mechanism through which you will keep them informed and updated on a constant basis. Remember, no one likes surprises, especially if the surprise involves bad news. And if you do not keep them informed, the bad news could result in you having to update your LinkedIn profile as you "seek you next challenge."

One of the most important aspects of aligning around a mandate is the communal agreement among your stakeholders that it represents everything you're willing to give. As the negotiator, you know when you've put every penny, pence, or peso on the table. And you know there is no more. At that point, you have issued your "last, best, and final offer". That should be that. Your leadership team has agreed that's all there is, there is no more, and they are unanimously prepared to accept the consequences. Nothing

more will be available, no more money on the table, no more concessions on the information and consultation timeline.

As we said previously, history structures expectations. So does management behaviour. If employees and their representatives learn that you will fold if they apply pressure, then they are going to apply pressure. Why wouldn't they?

The credibility of the last, best, and final offer is often a hard-learned lesson between the parties. To be truly credible, there had to be a test. The company said, "That's all there is." The employees' representatives went to the media, went to court, or went on strike. And yet the offer remained unchanged.

People often ask, "How can you say that you're done? Isn't that bad faith?" The reality is that businesses have limits. There may be some opportunity to be responsive to employee representatives' demands and not others. Obligations vary in different countries across the globe, but we don't know of any statute that mandates concessions from one side or the other in workplace bargaining. Legislation often requires the parties to meet, the company to provide information, and a legitimate exchange of ideas. Concessions and the give-and-take that popularly defines negotiations are typically indicia of "good faith" bargaining, but they are not necessarily required.

The law may require people to meet. The law can never require them to agree.

Don't reward bad behavior

Your mandate is all there is. You have looked the most senior approver on your side in the eye and you have agreed. "If they strike, they strike. There is no more." That

is easier said in the weeks or months leading up to a negotiation than done in the final hours before a strike deadline. It is, nevertheless, critical for the credibility of the process, the company, and for you as a negotiator.

Never reward bad behaviour because if you do it once you will only encourage bad behaviour in the future. We have been challenged by our labour-side friends, "So, you think strikes are bad behaviour?" As management-side negotiators, the answer is simple, "Yes. Yes we do." The right to strike is protected in one way or another in most countries. We respect that right but strikes have negative implications for businesses [and employees], so from management's perspective, work stoppages = bad behaviour.

You went through all the trouble to align your entire management chain around your mandate. You agreed it contained the sum total of what you were willing to give in exchange for what you needed to get. And you agreed you would go no further, regardless what your employees' representatives threatened to do or did.

Once employee representatives have taken action of whatever sort to push their demand for more, you cannot waiver. You must demonstrate that last, best, and final means last, best, and final. And that you won't concede to additional demands because they have exercised their collective leverage. Don't reward a strike by giving them more to return to work. It will only convince them that they should never settle for your "last, best, and final" because there's always more if they push.

Back in the early Middle Ages when the Danes [Vikings] invaded England they would demand gold [geld] from local conquered princes and kings as a form of tribute. It was known as *danegeld.* The problem is that when you pay

the Dane his *geld* he knows you will pay, and he will always come back for more.

In a poem about taxes levied to raise protection payments for Viking raiders, the English poet Rudyard Kipling wrote:

> *And that is called paying the Dane-geld;*
> *But we've proved it again and again,*
> *That if once you have paid him the Dane-geld*
> *You never get rid of the Dane.*

Conclusion

As a negotiator, you fashion the mandate. You build it in a way that best addresses your company's interests and is as responsive to your employees' needs as you can reasonably be.

Once you have committed the plan to writing, build alignment around it from the top to the bottom. The mandate is a guiding star and everyone in the approval process needs to agree, as hard as it may be, there is no more.

The most important lesson predates us by generations. Once you reward bad behaviour, you will forever be rewarding bad behaviour.

CHAPTER 8

The Story

You have your mandate, your "envelope", the guard rails for your negotiation. Now you need to develop the story you are going to tell. How you are going to frame the negotiations matters. The story you tell and the way you tell it will shape attitudes and create expectations. It is important for negotiators to hone the art of storytelling for all workplace bargaining events.

We pause here to address a common misconception. People often equate the word "story" with fiction. Storytime is for children and fairytales. The fact is that storytelling is a critical tool to help you get to an agreement.

The plot is clear. It pits the characters David against Goliath, labour against management, and good against evil. Your CEO is a leading character and his [because it usually is a he] compensation plays a starring role. The immediate setting is a hotel or conference center meeting room, and the conflict is tangible. The broader setting is the state of the company in the context of its particular industry. As a storyteller, you are handed all these elements. Your most important job is to establish a few simple, logical, and supportable themes as the foundation for all of management's interests and positions. In the courtroom,

these may be arguments, but your audience is broader. You are crafting the story that anyone who touches your negotiation should be able to repeat.

Your story answers the question, "Why?", and does so with fact. This is not fiction. Facts are your friend.

Here we have to acknowledge that there are accomplished storytellers. Some people maliciously spin fictious tales as truth. Others just make stuff up and they get away with it. don't be one of these people.

Rest assured there will be plenty of fact checkers on the other side of the bargaining table. They will challenge you, your numbers, and your sources. And if they don't, the labour authorities will.

Dig into the facts. For us, themes have typically begun with growing a financially sustainable business. At the highest level, every business leader we have ever dealt with has really only been interested in the cost, quality, and delivery of his or her company's product or service. How are your company's numbers on each of those fronts relative to the competition? Start there.

Why can't you open the corporate coffers and make it rain for the workforce? Growth demands competitiveness. You want to deliver an agreement that is fair to this generation of workers and ensures the sustainability of the company for future generations. It is never *only* about cost. On this matter, you may find yourself pushing the senior management team. If you're closing a factory and laying off hundreds or thousands of employees, the story you tell

needs to go beyond cost. It will never be a pretty tale, but in the public eye, if dollars are the reason, greed is the culprit. Corporate greed. Cue the inflatable rat, often used by strikers in the US outside a building to draw attention to the "bad management" inside the building.

You should develop your themes in the preparation of your mandate. Test them, get them into the corporate vernacular, get people repeating them early and often. Your story at the bargaining table will fall apart if the General Manager says something different in an "all hands" meeting or if the Chief Financial Officer says something different during the quarterly earnings call. Consistency counts. Alignment is leverage. Messaging matters.

This is all the more important when what you have to say starts popping up on social media feeds. And it will, as sure as night follows day. If it is a major negotiation, and if you are unlucky, President Trump may even have something to say on Truth Social. In CAPITAL LETTERS. SAD.

By you, of course we just do not mean you personally, we mean the company. But if you are the lead negotiator, then you are the face of the company in the eyes of your employees and their representatives. So, be careful what you say from the get-go. Words matter, phrasing matters, and tone matters.

Once, there were gatekeepers to information flows about negotiations. Management might put out a statement that would be picked up by the newspapers or TV, whether local or national, depending on the profile of the negotiation.

The union would circulate a flyer to its members.

Information flows were controlled. Today, that is no longer the case. Anyone with a smartphone - and who has not got a smartphone? - is their own publisher. They can put a story or a comment out there in less than a minute. Most will fall on stony internet ground, but every so often one will get traction.

For example, a blog by Susan Fowler in in 2017 about sexual harassment in Uber gave rise to the MeToo movement. In 2016, an employee's surreptitious filming of a plant closure announcement in the heartland of America went viral after she posted it on Facebook. Four days and 4,000,000 hits later, the story made headlines across the country. More importantly, the "buzz" put the company squarely in the sights of a presidential contender.

In this ever-connected world, everyone has a smartphone, so you need to have a wide-reaching media strategy. Leverage your communications team. You control the message. They can help shape it. And they should be the delivery experts. They understand the outlets and the influencers that can best spread your word. Let's be clear, old-school traditional media and the flashiest new-school app-based social media are outlets. They are channels for the communication of the one, true story you are trying to get out there.

To that end, your media strategy starts with your story. It makes clear what you are trying to do and why you are doing it. Your story is credible. It is rooted in fact. It stands

up to scrutiny. Your story needs only to be massaged for the plethora of media outlets and formats you will encounter, and it needs to sound credible. Your story publicly underpins what you will do at the table.

Always remember that your employees are the primary audience for every story built for any workplace collective bargaining event. Neither the local television news station nor TikTok is your audience. They are just outlets. And you will need to be able to deliver your key messages in their format, because your employees are consumers. They will hear your message through others' channels. But your employees are the ones you need to focus on. You craft your message with them in mind with an ear to how it will play with the rest of your company's stakeholders.

As they say in politics, you need "message discipline". Everyone on your side needs to be saying the same thing – exactly the same thing. They need to be singing from the same song sheet. And there will be no guitar solos. Write a script and makes sure everyone sticks to the script. All day, every day, everywhere.

Keep it simple. While they are not to our particular political tastes, look at the power of simple slogans like Brexit's "Take Back Control", or Trump's "Make America Great Again". The simpler the better. If you have to start explaining your message, you are losing.

Take time to craft what you want to say. Write it down. Sleep on it. Road-test it with colleagues. "How does this sound? How does it come across?" If you think you've got

a good sense for how things sound to the man on the street, think again. You're a management shill, literally a paid company spokesperson. "He would say that, wouldn't he?"

You sold your mandate to the C-suite. Now you need to make sure it sells on main street. Back in the dark ages, Rick wrote the radio script for a 15-second ad that ran during the morning and afternoon commutes in the early days of a strike.

He thought he had a pretty good sense for what would appeal to the working man's sensibility. He was wrong. The ad ran on Monday morning. That evening a family friend called and asked, "What asshole wrote that spot?" Test, test, test. Listen to the experts and listen carefully to your detractors.

Visualize the situations and circumstances in which this message will have to be delivered. Someone might end up talking it through in front of a TV camera or while discussing it with a senior politician. Or, more importantly, to a group of your own employees.

Does it have the ring of authenticity? Does it sound true and real, or false and contrived?

Remember as well, that anything you say or anything you write will be in the public domain sooner than you think. You need to work on that assumption. Emails leak. People talk and who knows who is taking to whom? Never make the mistake of thinking that anything is confidential.

The messages you send are a fraction of the battle. You will need a monitoring team. They will watch what the other party is putting out there. They will monitor how your message is being received. And they will need to work with you to respond in real time to questions, concerns, and challenges that are gaining traction.

You will not want to respond to every comment. You will not want to respond to every ridiculous allegation on every forum. But you will need to understand which of your detractors' themes and which bits of harmful misinformation are gaining traction. You will then need the ability to respond without having to work through a complex chain of command. If you cannot respond in real time you lose.

So your "script" needs to anticipate everything. Keep a running list of questions and answers ready so your media team can put them out there when the social media posts hit the fan. If they have to wait for days for approval from someone who may be on another continent, and in another time-zone, you lose. The bigger the issue, the more controversial the proposal, the more complex the negotiation, the more media planning you need.

As you are putting the message out there, remember the old public relations' saying: Tell them, tell them again, then tell them what you told them. Lather, rinse, and repeat.

Never forget where you stand. We have said it before, but you are Goliath to labour's David. You are the big, evil corporation incarnate. You are the one who wants to make

changes without properly consulting your EWC, as they would see it.

Or you want to offer just a small pay hike, or to close a factory, or to make hundreds of workers redundant. You want to put "profits before people". "Corporate greed" always plays well in the media, and unions and works councils are adept at working it. Most people who encounter your story will begin with a bias against you. You won't convince them you aren't the evil ogre, but they might get a sense that you actions aren't' completely unreasonable. Keep your expectations low for the public's sentiment. Focus on your employees.

Conclusion

Your story has to be authentic, and it has to ring true. You won't sway the activists, but you may be able to move some in the middle to your side. Your story can preserve your reputation or leave you with a black eye.

Your communications team is a vital partner in the battle for the hearts and minds of your employees. You will be caught in a loop where you communicate, monitor feedback, respond [or not], and adapt in real time. Lather, rinse, repeat.

Remember, when everyone has a smartphone in their pockets, you must have a media plan.

CHAPTER 9

The Team

In this chapter we will focus on two things. Getting you negotiating team together and getting the logistics of your meetings right. Get the wrong team together, and you will be limping off the field after a heavy defeat. Even with the right team, if you get the logistics wrong, you could badly damage the negotiations. We will come back later to what we call the "dynamics of the meeting venue". For European readers, don't forget that those dynamics may involve the use of multiple languages and the need for interpretation. When interpretation is involved, there is a different flow to a meeting than when you are dealing in just one language.

Build a team with a purpose

Even if we think we can, no one person can negotiate a complex workplace deal on their own. As the "chief" or "lead" negotiator, you are the conductor of a complex orchestra. You are the quarterback of something much bigger than a game. You call the shots, but you don't – you can't - execute every one of them. You need to manage messaging and tone across the table. You need to direct the tempo [timing] and cadence [sequencing] of the talks. And you need to be constantly aware of the dynamics in the

room and behind the scenes. You can't focus on all that if you're worried about whether copies of the next proposal have been made, whether a press inquiry has been answered, or whether coffee has been ordered for the meeting room. You need to build a negotiating team, not just of those who will be "on the field" but also of those who will support and who make sure the team will lack for nothing.

As we said in our opening chapter, our guiding principles are, [1] respect the people, and [2] respect the process. Your team needs to show respect to their team. You don't have to personally like the people on the other side of the table, but you have to respect them in the context of their position. They represent your employees. You may think they are a collection of radicals and ranters, but, again, they represent the people who create and deliver the products and services that make your company what it is. To disrespect your workers' spokespeople is to disrespect them.

Obviously the composition of the team will depend on the nature of the negotiations. The team you put together for a U.S. contract negotiation will be different from the team you put together to negotiate, for example, a European Works Council agreement subject to Irish law. But the guiding principle will be the same: you build a team fit for purpose. You need people who can bring relationships, skills, and/or insight to the table. There should be no free-riders. If they cannot contribute, they stay at home or back in the office.

Employee representatives do not get to dictate who represents the company, but you need to pay attention to

how particular members of management, or outside advisors, are seen by the employee side. Let's call them the good, the bad, and the ugly.

The "good" is the management member who the worker side likes and trusts because they know [s]he will work to find mutually beneficial solutions. They have done so in the past and have a proven record of delivering. They have built good, working relationships with the representatives during the course of everyday business.

The "bad", from your perspective, is a member of management who the worker side know will "roll over" and concede because they dislike conflict and confrontation. Or they just want to be liked. They are not bad people. Just bad negotiators.

The "ugly" are those who for whatever reason are deeply disliked by the worker wide. Their very presence sets off the other side. They may have made unpopular decisions in the past and they are still resented for this. Their demeanour may be condescending to the ordinary workers, despite their best efforts to be "one of the boys." Let's face it, we don't all fit in with every crowd. They may be good in the board room, but a disaster on the shop floor.

Then there are the absolute worst of the ugly. They are the managers who actually detest the fact that they have to negotiate at all. They think they should be able to lord over their workers with impunity. And they are your worst nightmare. They usually think they know the ins and outs of the collective agreement better than anyone on either side

of the table. And it shows. Keep them away from the meeting room. They can be in the back room, if they must. Better still, position them somewhere far away from the negotiation, but readily available by phone if their input is needed.

As you put your team together you need to determine the right level of management to include. If your team is too junior, you risk the appearance that you do not consider the other party's issues important. Too senior, and you create an entirely different set of problems.

You need to know who will make up their team and build your team accordingly. For example, if you are negotiating a European Works Council agreement, you will generally be faced with a mix of senior workers' representatives from various European countries, along with some representatives from countries where worker representative structures are weak. Invariably, the more experienced representatives will dominate the worker side. You will need people on your side who can balance this out. And it is best if the management team, even in a U.S.-based company, is European, though we would not be overly rigid about this.

In a U.S. negotiation, it is equally important to align your team with theirs. It is always good to have people on your side who have dealt credibly with those on the other side. We recommend keeping the talks as local as possible, but if the union brings in the "big guns" from national headquarters, you need to consider how you will reciprocate. The typical U.S. contract negotiation covers

employees at one site. Anyone eying labour relations as a career will do many of these kinds of local contracts before ever being entrusted to negotiate a multi-plant, nationwide, or pattern agreement that sets the tone for an industry. These are the deals that make news. They are not the norm.

Where contracts cover a single location, Rick prefers to have the local Human Resource Manager take the lead. They have the local relationships on both sides of the table. They are responsible for ensuring the effective administration of the contract day-to-day. They have to live with the outcome. They should negotiate the agreement with the right support from the experts. To that end, it is critical to back up the HR Manager with an experienced labour relations expert who sits at bargaining tables more than once every three, four, or five years.

In this scenario, the HR Manager is responsible for all the preparation and execution. The labour relations expert acts as an active consultant and guiding hand to ensure readiness and sound process execution. They should also have history with the more senior union officials brought to the local table from "away".

In Europe, where the freedom of association and collective bargaining are fundamental human rights, HR people typically gain some experience with workplace collective bargaining as they develop in their careers. In the U.S., where fewer than six percent of private sector employees are represented by a union, it is easy to have a career that never involves a negotiation. We believe the best HR leaders should gain workplace bargaining experience early in their

careers. Even if their U.S. workforce is "management-represented", they are certain to face a collective reality if they ever hope to assume international HR responsibility.

You cannot bring the American "union free" mindset with you if you go global. Well, you can, but you will soon find that labour relations in other countries march to the beat of a very different drum. Say hello to the French Communist CGT representative, or to the hardened IG Metall negotiator in Germany.

The editorial board

There is a phrase "the power of the pen". Roughly translated, it means that [s]he who writes the document takes control of the process. To use a phrase from the Harvard Negotiating Project, putting a draft agreement on the table "drops an anchor" and sets the terms of the discussion.

As we have said previously, generally in labour negotiations the workers' side does not get anything substantive that management is not prepared to give. We say "substantive" because in some European negotiations, such as those establishing a European Works Council [EWC] there is a legal backstop in the event of a failure to agree. The backstop is known as the Subsidiary Requirements. But an EWC is, in reality, a procedural agreement. While running an EWC can cost several hundreds of thousands of euros annually, it does not commit management to pay increases or make changes in working conditions. At best, the EWC can offer a non-

binding opinion on proposed decisions. Union demands that EWCs be given the power to go to court to seek injunctions to block management decisions never made it onto the statute book.

Just as in the U.S., in Europe, management controls the things that workers' representatives want, money, jobs, and better working conditions.

For us, it is imperative that management hold the pen, and the power that comes from holding the pen. All discussions should be on the basis of a document that management puts on the table.

The person charged with writing your proposals needs to be familiar with your existing agreements, if any, and how those agreements have been interpreted in practice. In a European context, if you are working in English, then the writer should always be someone whose first language is English and who is familiar with the nuances of the language. Over the years we have both seen documents written in good faith but in tortured prose that leaves them too open to misinterpretation.

With the increasing "legalization" of employee and labour relations there is a trend for all proposals to be drafted by lawyers, either in-house or externally. It will come as no surprise that we do not believe that this needs to be the case. Don't get us wrong, some of our best friends are lawyers. We are not picky.

We turn to our lawyer friends on many an occasion for help with the most complex matters. But you don't need a law

degree to write good language *if* you 've got the right training and experience.

Both of us have drafted numerous agreements over the years that have more than delivered in practice. Lawyers tend to write in "legalese" when what is normally required is an agreement written in language that is understandable to all and functional in the context of your business.

It is prudent to have any proposal reviewed by a small "editorial board" before it is shared with the other side. No matter how good a writer the drafter may be, it is inevitable that some of what they have written may be open to misinterpretation. Best to get it right first time.

Your legal advisors should also always be on hand. While we are not convinced that you need lawyers to write your proposals or agreements, you will need them to check the final language to make sure it complies with all relevant laws and regulations and that what is on the table does not bind you into contractual commitments that may not be deliverable. But start with simple, straightforward and easy-to-understand language, language that the shop-floor worker can read and understand.

One final point that may seem obvious. Make sure your editorial board double and treble checks that all the **Is** are dotted and all the **Ts** are crossed. Have someone hunt and double hunt for typos. There is nothing as frustrating or annoying as spending hours drafting something only for someone on the other side of the table to say, "I see a mistake here." They will use that error to put you off

balance. It is a distraction. Even minor mistakes open the door for the other side to question the validity of your entire proposal. Make sure it does not happen.

The costing team

Everything comes at a price. Nothing is free. Remember, costs may not just come in dollars or euros but can also come as a drain on management time. How many days and weeks can a European information and consultation process take?

It is critical you understand the cost to your organization, in money and time, of your proposals and any counterproposals you consider. How can you abide by your mandate if you haven't calculated the cost of what you're giving?

You may have a model, or you may need to build one ad hoc, but someone needs to be charged with evaluating the financial implications of your proposal. This may be a person from finance or someone on your industrial relations team who can work a model that conforms with your organization's financial planning.

Organizations with a significant number of workplace collective bargaining events on their annual calendar should consider the development or purchase of a single costing model. A good model may provide the best assessment of real labour costs available within your organization. We found the exercise of populating a

comprehensive costing model often provided detailed insights into components of labour costs that weren't available from any other source. The composition of the costs associated with the workforce you're bargaining with is a key part of the knowledge when economics are in play.

Your mandate comes with a price tag. It is difficult to "rearrange the furniture" if you don't know just how much each piece costs. In one best practice case, one U.S. company's contract costing model was used as a pricing tool for the labour element of commercial service contracts. When you've worked with your finance team to build and exercise a single tool, your numbers will never be second guessed.

Understanding the elements of cost enables you to be responsive at the table. That understanding can also save your hide. During one particularly contentious negotiation, Rick rearranged the furniture so much that his supervisors had a hard time recognizing the outcome. Upon ratification of the contract, Rick was summoned to his boss's boss's office to explain how the final settlement complied with his mandate. The model bore out the detail of a settlement that looked markedly different than what was initially anticipated, but that cost exactly the same as the approved mandate. A meeting that could have gone very poorly ended with a simple, "Congratulations." As they say, facts are your friends and numbers don't lie. Embrace them!

While you should understand the financial implications of your proposals, you don't necessarily need to run the numbers yourself. It is always useful to have an expert on

standby to run the numbers by as matters progress. They do not need to be in the room, but they should be easily accessible. You will not be able to do everything yourself. That will become increasingly clear as talks progress.

Working out what an agreement might cost in financial terms is never straightforward, but still relatively easy compared to trying to guesstimate the cost in terms of management time and resources.

One of us was speaking recently with a colleague at a large U.S. multinational with extensive European interests. It quickly became clear that the amount of time she and her team have to put into European-level information and consultation has become all-consuming with little to show for it. Not only were she and her team tied up and stretched to distraction, but the company was also forced to shoulder the significant financial burden associated with running innumerable meetings, often involving interpretation into multiple languages, and payments to "experts" for reports of dubious value.

Agreeing to another meeting or two a year may seem innocent at the time, but the burden can be very real.

Be careful what you sign up for.

The communications [and government relations] team

Throughout your negotiations, you need to keep in close contact with your communications and your government relations teams. Depending on the project, they should have

been involved from the start. Invite them in early. Welcome their expertise. They can help you craft your narrative and identify the best ways to get your message heard. Remember, the themes underpinning your story have to be delivered consistently across the stakeholder spectrum, to friends and foes alike.

As we said in a previous chapter, your biggest "audience" will always be your own employees, and this will be true in most cases, but if the project involves job losses or a plant closure then the media, local authorities, politicians, and government ministers are going to take an interest. The "narrative" always needs to be communicated and updated for all stakeholders. They all need to be kept properly informed. As with proposals, you want to control the pen. It is almost always better for stakeholders to hear your message first. Once a story is out, it's hard to walk it back. Once it has been painted as bad, it's hard to get anyone to believe it is anything but. Surprises are bad. Surprises delivered with the worst possible spin by the other side can put you in an almost irrecoverable position. In pool terms, you will be forever behind the eight ball.

One of your "at the table" people needs to be tasked to constantly connect with the communications and government relations teams. Their role will be to keep the teams informed of developments at the table, while making sure that everyone stays on message. As noted in Chapter 8, these teams will also be expected to relay feedback about what they are hearing in the media, online, and in halls of the relevant legislators' offices.

Feedback is a critical part of "the knowledge" that influences how you approach workforce bargaining. That typically means understanding what is in the "hearts and minds" of your employees. The perception of the company's actions in the public, the press, and in political arenas may affect how you move forward. The communications and government relations teams have their own feedback channels to ensure you know what is being said "out there" and by whom.

The front line

Negotiations can take on a life of their own. The process can be a high stakes game played out across the bargaining table with real world consequences. For the management team it is always important to remember that negotiations are not an end in themselves. As fascinating as the game can be, you are there to negotiate to further [or at least preserve] the interests of the business.

So, it is always useful to have someone from the "front line" with you at the table. Someone who knows what is happening and what is being said "on the floor". On a day-to-day basis, managers and supervisors are the embodiment of the company to the workforce. They know what is going on and can call out the nonsense when they hear it.

They can also be your sounding board on proposals, "Would this work in practice?" "Could you live with it?" Here, we are obliged to share a note of caution. Because operations guys are focused on the continued smooth

running of their operations, some can be remarkably risk adverse and lean towards giving concessions to get an agreement, any agreement, across the line to avoid production disruption. Make sure you know who you're bringing to the table. If *you* fail to get an agreement, *their* operations may be compromised, and the strength of *their* contingency plans will be put to the test. Remember, teams are made up of people who all have their own personal interests to consider.

It is up to you to keep the bigger picture in mind, to think about the long term, and not just today and tomorrow.

The industrial relations team

We will break your industrial relations team into two. Those with you at the table, and those back home, on the ground.

We have a phrase: in any negotiation there is only one singer in the band, one frontman. One person who does the talking. Others intervene only when asked by the leader to do so. "Marie, do you want to comment on what Juan has just said?"

The job of those at the table is to listen, to take notes, and to observe. Each person should be assigned to someone on the other side, preferably someone they have worked with. They will answer the questions:

- How did they react when you presented proposal X, Y, or Z?

- Did what you said genuinely shock them, or were they just going through the "we are shocked" routine to see how you would react?
- What was the "vibe" in the hallway when you broke for coffee?

The ability to gauge who is on board, who is holding out, and who is genuinely offended by your proposals goes a long way in helping their spokesperson help you deliver an agreement. You need to keep a mental inventory. One person upset about one proposal won't sink a deal. But if each and every representative has found one proposal that upsets him or her, you could be done.

Not everyone is in the meeting room. The job of those back in the shop or office is to listen for what employee representatives are reporting back to employees and to gauge reaction. How is what you are proposing playing out, good or bad?

As we said previously, the negotiating room is a hothouse, a pressure cooker, a bubble which can become disconnected from the outside world. The focus can too easily become "the game across the table". You need to stay connected to the outside world. You need reality checks from time to time. Your industrial relations team back in the workplace should be providing you with real-time data so you can adjust accordingly. They are your link to reality.

Logistics

In any negotiation, the "dynamics of the meeting venue" are critical. Attention must be paid to detail, detail, detail. Nothing should ever be left to chance. The venue should be checked and double-checked beforehand.

The "dynamics of the meeting venue" create ambiance and send a message about how you see and value the negotiation. An airport hotel in the middle of nowhere, or a meeting venue where there are shops, and cafes, and bars nearby, ideal for informal conversations? What message do these contrasting venues send?

Organise the rooms. The main meeting room, breakout rooms, working rooms where you have the technology you need, printers and copiers, and back-up if necessary. How often have negotiations grinded to a halt because the printer would not work, or the copier jammed? And don't forget to have enough paper!

These days, every meeting venue must have state-of-the-art wi-fi and a strong mobile phone service. Nothing less will do. Make sure it is all working before you start. Make sure you know how it works.

You need to have a logistics team or meeting coordinator on hand to take care of the details. They should know who to call if the room is too hot or too cold, to be able to assist with travel arrangements in cases of emergency, what to do if the technology crashes, to be the silent person who makes sure everything runs smoothly.

Last but by far not least, you need to pay attention to the "coffee" and by "coffee" we mean the catering

arrangements. The coffee breaks, the lunch breaks, and evening dinners. No one likes to negotiate on an empty stomach, Empty stomachs can make people tetchy, angry even. So, catering arrangements need to be planned carefully.

More importantly, breaks can offer the chance for informal talks. Breaks are part of the negotiation, a chance to take the temperature, to check the mood, to gauge feelings.

These will be determined in part by culture, and in part by the nature of the negotiation. While discussions with an EWC may continue over coffee, aperitifs, and meals, that is not always the norm during U.S. contract negotiations. There, teams often sequester when they're not at the table. "Chance" meetings in the hallway or in the bar at the end of the day may create an opportunity for a quick temperature check, but more lengthy discussions can be more difficult to arrange. In those circumstances, it is important that the union chief does appear to be cutting deals with "the enemy". In some circles, there is a naïve perception that negotiations happen exclusively in full view in a ballroom with scores of people on hand.

It may be a coffee, a lunch break, or a "chance" meeting in the hallway, but in a negotiation, there are no breaks. You are always negotiating.

CHAPTER 10

The Invitation

Someone has to make the first move. Negotiations just do not happen by themselves. There has to be a reason. Someone wants something. Someone wants to change the status quo. Even if a regulatory change demands change, someone has to make the first move.

In the U.S., the invitation to negotiate may stem from the expiration of a collective bargaining agreement. It's simply time to negotiate again. There can be a whole technical dance about who makes the first move, but everyone knows there's going to be a negotiation. And if they want to renegotiate, you have a duty to bargain.

Sometimes, management is intent on making changes. You intend to close a plant in France. You know you are going to have to enter into extensive information and consultations with your works council. You may also have to involve your European Works Councils. These are legal obligations.

In the U.S., if you intend to close a union represented facility, you will have to notify the union. From there, you only have a further obligation if they ask you to bargain over the decision and/or the effects of the intended closure. Theoretically, if they don't ask, your collective bargaining obligations are complete. Don't worry. They'll ask.

You will have many questions to answer in these cases. Do you have an obligation to bargain at all? Has the union

clearly and unequivocally waived its right to bargain over restructuring activity? Probably not.

If the decision is economic, could the union offer up concessions or other alternatives to offset the cost advantage of the layoffs or closure? If so, you probably have to bargain the decision. We have been in situations where workers would have to work for less than minimum wage in order to achieve the savings anticipated by the relocation of work. In those circumstances, we could have said, "We're not bargaining the decision." Some will argue we should have.

Instead, if you have captured "the knowledge" and that knowledge is on your side, you may be better off sharing the facts, letting the reality of the situation settle in, and then moving on to the "effects" like notice, severance pay, benefit continuation, etc. By engaging, you minimize the risk that your workers' representatives will turn to the authorities with a claim that you failed to bargain.

You may, of course, be right that you had no obligation, but litigating the question before the National Labor Relations Board and in the court of public opinion will take time and money.

The right answer will require study. You will need deep knowledge of your contractual arrangements, good counsel, and a complete understanding of the potential implications for employees of the project management is pursuing. Remember too that what your predecessors did in similar situations will set expectations for how you will deal with your workers' representatives now.

In the normal course of business, a works council may determine that the implementation of an evergreen agreement they made regarding social media, or bullying, or smoking is having an undue impact on a group of employees, and they want to revisit it. You have to talk.

Or changes in the law could impose new bargaining obligations. A good example is Europe's *Pay Transparency Directive* which requires an employer to engage with workers' representatives to address gaps:

1. If the data shows gender pay disparity of more the five percent within a category of workers, and
2. if those gaps cannot be justified on objective, non-gender grounds.
3. And cannot be closed within six months of having been identified.

It may not officially be referred to bargaining, but that is what it will be in practice. You will have to sit down, engage around a problem, and discuss potential solutions. They may not have to agree. They may not be likely to strike. But when there are two sides at a table, it is always a negotiation. You also have to consider if disagreements can be referred to the courts, which they generally can when it comes to matters of European law.

There is a useful European word when it comes to bargaining: *demandeur.* You don't have to speak French to work out that this means the one who is asking, the one looking for something. The one who is asking is almost always in the weaker position because the other party has something or holds the key to something that you need.

Labor is generally the *demandeur*, but not always. Management may seek changes to wages, hours, or terms and conditions of employment. Or they may identify a need to shut down factories.

For example, in late 2024, Volkswagen in Germany announced its intention to shutter three plants. The move was an unprecedented in the bastion of co-determination and intense negotiations ensued. In the end, VW and IG Metall reached a deal that avoided plant closures but will

see 35,000 jobs go by 2030. The actions will reportedly generate €15 billion in savings for the company.

This was not a negotiation IG Metall wanted. What union would want to be faced with such circumstances? But once VW made the closure announcement, IG Metall had no option but to accept the "invitation to bargain". Volkswagen led with the worst-case scenario, plants will close. In a perverse and all-too-familiar way, IG Metall was able to take credit for a victory despite the loss of tens of thousands of jobs that will be shed "in a socially responsible manner". The invitation set the expectation. Hard times indeed.

Before you issue an invitation to bargain, go back to basics and test again whether you need to bargain. If you do, how you frame the issue will affect expectations for the process and the outcome. For example, companies with a European Works Council have to inform and consult the EWC in "exceptional circumstances" involving significant transnational issues. Some EWCs regard every issue as "significant" and "transnational". You have to make the call. If the proposed decision meets these criteria, you have to inform and consult. If the matter is neither significant nor transnational, then you don't involve the EWC. You might proactively inform them of the action in the course of a regular meeting. Ensure you are prepared to answer the question, "Why didn't you consult us?"

Language plays an important part in the invitation to bargain. Words matter.

- We'd like to talk to you about… [could be anything, but signals mutual problem-solving is in the offing]
- We intend to… [implies a chance to change the outcome]
- We are going to… [suggests a foregone conclusion]

- …subject to the satisfactory conclusion of our obligations to you… [acknowledges there will be a negotiation]

Your approach may be informal, proforma, or exceptional. Based on relationships, you will likely start with a "heads-up" – "I want to let you know about something that is coming down the road." If you want to downplay the change, you can bring it up in a normal meeting.

If you are contemplating a major decision with far-reaching consequences, you will need to adopt a more formal, procedural approach to ensure compliance with applicable legal obligations.

We differentiate between what we call "normal" collective bargaining, the day-to-day stuff that goes on between employers and employees' representatives and "exceptional" collective bargaining that involves major decisions on which hang the future of plants and thousands of jobs.

You need to tightly define specifically what you will be bargaining about in "exceptional bargaining". You need to make it clear that only X is up for discussion and other matters are not on the table. Presumably, you want an agreement. So, you need to know what the consequences are if you don't get one. What are the risks you run? For example, in Europe, the risks are less likely to be protracted strikes than substantial financial penalties and potential delays if you do not inform and consult properly.

National-level European information and consultation processes can be time-consuming and involve a lot of paperwork. Think France. That is just the way things are. If done properly, however, you can be assured that what management's needs can be achieved. The leverage comes

from meticulous preparation. Get the paperwork right from the start, and you are 80% there.

You need to be open about what is necessary. Honesty is always the best policy. Be prepared to listen. Be open to suggestions. Be ready to explore options. You can always say no.

With that said, it is important to manage expectations carefully. If employees' representatives present a thoughtful alternative to your intent to close a factory, you cannot dismiss it out of hand. You have to give it [and them] the same consideration they put into the proposal.

At the same time, you need to reinforce the challenges that any proposal faces. "By closing this factory, we would achieve the strategic goals of reducing complexity, eliminating redundancy in our operation, reducing our operational footprint, decreasing our lead times, and we would reduce our overall cost structure by $XX million." Emphasizing the goals and expected outcomes of a project sets the bar appropriately. "Just" reducing wages won't address footprint size and the operational advantages of management's plan. Any alternative proposal would have to address the strategic objectives. The bar is high.

We are not naïve. We understand what drives many corporations, but operational changes should not only be made to pad the bottom line. Your organization probably started with a cost problem [or opportunity]. But getting to the best solution hopefully took the decision-makers through a more nuanced, more strategic assessment. If it didn't, it's worth brushing up your resume for entirely different reasons.

A word of caution. When the stakes are high, employees' representatives will look to use all the resources at their disposal to defend their position. Yes, they will accept the

invitation to sit down with you. They have no other choice. But they will look to other stakeholders to exert pressure on you even before you sit down at the table. In the Volkswagen case we touched on earlier, of course the works council and IG Metall went to the politicians, and the politicians applied pressure on management. That is what happens in these situations. Be prepared for it.

Do your homework, have your paperwork in order, your organization on alert, and your narrative ready before you issue the invitation to bargain. Get it right first time. You rarely get a second chance.

CHAPTER 11

The Deal

Workplace collective bargaining encompasses the totality of the relationship between the parties in all its complexity. The "in the room" negotiation is the bit most people focus on. It is the part of the process that catches attention. If it is a high-profile negotiation, it is when the TV crews turn up, when social media feeds ramp up, and when politicians take to the podium. In the U.S. terms, it is the "The Superbowl". All eyes are on you.

This negotiation began the day the last one ended. This negotiation builds on the work that has gone into the administration of the last agreement. It leans heavily on the relationship you have built with your employees and their representatives and the preparation you have put in before you ever approached the bargaining table. It is just the latest in a series of interactions between the parties in a history that may stretch back for decades, or maybe just a few years. Regardless, history shapes expectations.

Many people want to negotiate a contract or an EWC agreement. They want to check the "labour box" in their HR career. They want to add it to their CV or LinkedIn profile, and then get out. They want it done. You might get away with just dropping in and "doing a deal." But you won't

understand labour relations. It is best to be steeped in the process. Take the time to get your hands dirty, to have scars on your back and to feel the pain. Only then can you understand the real-world implications of the factories you close, the jobs you make redundant, the wages you raise, or the clauses you concede. And what the decisions you make mean for workers and their families. If you haven't lived through the administration of a collective agreement and suffered the consequences of all that you negotiated, you haven't ticked the box.

Controlling the clock

Good negotiators learn the value of time. The best learn how to control the clock. Never enter a bet with the chief spokesman about when a negotiation will end. [S]he holds all the cards.

Depending on the negotiation, you will find yourself looking for ways to kill time or trying to expedite the process. This is where you need to control the clock. Typically, employee representatives are doing the demanding and companies are relegated to giving. No union ever got out of a negotiation anything a company didn't concede. In U.S. contract negotiations, you're likely to be doing the giving. In this situation, controlling the clock means pacing the talks in a way that builds to your final offer. You may have six, 12, or 20 days scheduled over the course of two to 20 weeks. How are you going to fill the time you have in a way that is productive and that culminates in enough to gain support for the proposed agreement from

the union representatives in the first place, and subsequently from the employees in the bargaining unit?

Start by building a calendar. Some issues may be contentious and will take a lot of time. Where have the management and labour been at odds during the current agreement? What does management planned operationally in the coming years that requires restrictive contract provisions to be reworked? Identify all the issues and assign a date when you will put them out there for discussion.

In many negotiations, the parties will exchange a comprehensive set of proposals at the outset. Company's economic proposals may be listed only as "Economic – Proposal to Follow". Similarly, the union's may be as simple as, "Significant wage increases." These issues will be dealt with in due time. Filling the time in the meantime is the trick. After all, virtually all those non-economic contract clauses represent restrictions on your right to manage the business unilaterally. Any further erosion must be considered very carefully. Remember, sometimes money is the cheapest thing you have to give.

This is the Goldilocks conundrum. If you spend too much time on an issue, it suggests a great deal of importance. If you don't spend enough time on issues of importance to the union, it can be perceived as disrespectful. You need to spend just the right amount of time on non-economic proposals to give you just the right amount of time to go from "No" to "Whoa!" in the final hours of the negotiation. Build your calendar. Work backwards from the expiration

date. And make sure you allow enough time for the issues of importance to you and them.

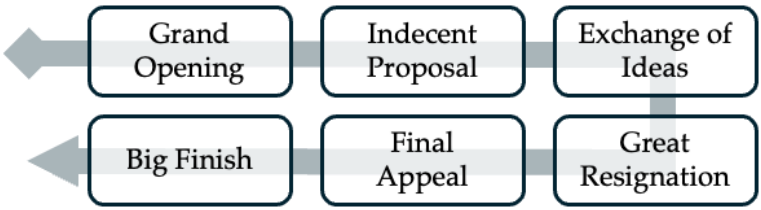
The opposite can be true if you are negotiating with a Special Negotiating Body [SNB] over the establishment or an EWC. In that case, employee representatives and their expert[s] are "on your dime." Those who are your employees are being paid to sit at the bargaining table rather than perform their regular jobs. They might very well prefer sitting in an air-conditioned conference room to their "day job" on a factory floor or in a cubicle. Worse, the "experts" employed for the benefit of the workers at significant expense to you often have little incentive to reach agreement. You've got three years to reach a deal. If you fail, the administration of the EWC will default to the Subsidiary Requirements. If you've been given a reprieve from your job on the factory floor or if you're being paid by the hour to negotiate, what is the incentive to do a deal? Controlling the clock in these situations is a whole different ballgame.

The entire job of employee experts is to extract from the company what trade unions were unable to extract from European legislators. When it comes to EWC's, prepare to engage seriously. Spend enough time to ensure the SNB members concerns have been heard. Be responsive where you can. Exercise the process, explain your limits, and put your best offer out there. At that point, you can make it clear you are more than comfortable to default to the less attractive Subsidiary Requirements, or you can both get on with the real business of an EWC together.

Every circumstance is different. The nature of the existing relationships, the history between the parties, the gulf in expectations between management and labour are going to come into play in the negotiation. You need to integrate all that with what you've got to offer and build your game plan accordingly. Time is money.

The negotiation

"Doing the deal" typically moves through six phases. We will cover each in detail



The grand opening

The first day of any negotiation is the time to set the stage for what is to come. Remember, you "never get a second chance to make a first impression." Depending on the scale of the negotiation, you may need to start with introductions. The pleasantries may begin and end there.

Ground rules should be agreed. The chief spokespeople should have signed off on these in advance, but they should be stated on the record for all to hear. Everyone in the room

– everyone involved - should be clear as to the rules of the game.

Ground rules may include:

- Who is authorized to bind the company and the employees' representatives, who has the authority to sign the deal
- Expected dates, times, and locations of the negotiations, including when talks are expected to conclude. For instance, the 2025 EWC Directive will require a timeline for meetings for the negotiation of new EWC agreements.
- How expenses associated with the negotiation will be paid and/or divided. In Europe, this always falls to the company, but the procedures to be followed need to be stated.
- How the parties will agree what has been agreed [the use of joint tracking mechanisms and tentative agreements]. Write it down and then further agree what has been agreed.
- Rules regarding the communication of information about the negotiations. Will there be a total blackout? If not, what will be acceptable to both parties? Are you implementing a media blackout? What about social media or the use of company email systems, etc.? Both parties need to communicate to their constituents about the process.

  History will dictate what is expected, but times have changed. We are reminded of an incident some years ago involving sensitive negotiations between the UK

union, Unite, and British Airways during which one of the Unite negotiators was tweeting out in real time what was being said across the table. It did not end well.

- Rules regarding note taking and/or electronic recording of negotiation sessions. In our view, of course participants can take their own written notes, we all do, but they are not part of any official record. It needs to be made clear that anyone unofficially electronically recording what is said in the room will be acting in bad faith. Make it clear that illicit recording will not be tolerated and may lead to further consequences for the individual. In some geographies, disciplinary action may result.
- The company may want to confirm the process for presenting the final offer to employees, if required. How will the agreement be ratified?

The culmination of The Grand Opening is the opening statement.

This is the first opportunity to get across the company's story in its totality and to set out the business and economic context in which the negotiation will be conducted. This is the moment at which you set the narrative. This exposes the other side to the key themes and messages you will constantly refer back to as the basis for what you are proposing. Those themes will also form the basis for your responses to their demands. This is when you "drop the anchor" and begin to structure expectations. Clarity at the outset will ensure there are no surprises down the line.

The statement should be relatively brief, but must be complete. You get one shot at this. To get it right, you should have worked on this with your communications team beforehand. You cannot "ad-lib" it. It must be prepared and properly thought through. Every word counts. Practice delivering it. Think about how it will come across as you read it out. Adjust it until it is pitch perfect.

Depending on the "vibe", it may be formally read into the record or delivered more informally. It all depends on history, context, and the severity of the matter at hand.

We know many people who prefer to skip the opening statement. At a wedding, people are invited to, "Speak now or forever hold [their] peace." Say what you have to say if you have something to say.

If you don't tell the story in a comprehensive way from your first meeting, you will always be playing catch up. You will forever be looking for opportunities to clarify the rationale for the company's actions, your proposals, and your rejections. This is your chance to make a first impression in this setting. Don't let it pass you by.

From here, it's time to start putting proposals on the table.

The indecent proposal

With the formalities and the opening statement delivered, the parties can get down to business

In many negotiations, the lead negotiators may have discussed how proposals will be exchanged and how the process will unfold.

Logic dictates that the party seeking change, whether management or the worker side, should be the first to set out what they are looking for. "We want the following changes in pay and terms and conditions." "We want to renegotiate the following articles in the EWC agreement." "We need to restructure to return to competitiveness, so we are proposing to close the following, less-efficient plants."

Company proposals should be formally presented in written form. As with the opening statement, these proposals must be in line with the "narrative". If your editorial board has done its job, every line has been worked through again and again, leaving no room for misinterpretation. Remember the importance of the power of the pen. Say what you mean and mean what you say. And no typos!

Again, we repeat, the history between the parties will set a level of expectation. Do you have a "Trumpian" record of asking for the ridiculous, then folding and walking away with whatever little you can get? It is a strategy. It is not one we recommend, but it's a strategy we have seen used by players on both sides of the workplace bargaining table.

Our preferred approach is to put a balanced and reasoned proposal on the table from the start. Our proposals are based on interests and explained by the themes we laid out at the beginning. Linking our proposals to our narrative

explains the importance of the topic and emphasizes our commitment to the idea. Putting the proposals in the context of our interests reinforces that we will engage in problem solving. Our proposals address issues that must be addressed. Our proposal may not be the only possible solution, but it is a good one. It is based in logic, supported by fact. And its implications for the workforce have been considered and mitigated to the greatest extent possible. This is our preferred approach for contract negotiations in the U.S., where the range of issues fills a volume, and where give and take is part of the theatre.

In other negotiations, we may take a more forceful approach. When negotiating with a Special Negotiating Body [SNB] about the establishment of an EWC, we recommend the company approach the discussions with a comprehensive proposal that is nearly as good as it gets. The SNB should be advised as much and informed [respectfully and firmly] that some of the details can be refined, but that the major parameters are set and are not going to change. In this situation, the Subsidiary Requirements [the default provisions] are the baseline. Anything employee representatives achieve above those minimums has been wrested from management. It makes sense to make it clear where there is and where there is not room for manoeuvre from the outset.

This is where labour negotiations vary widely from transactional dealmaking. The parties have a history and a future. Pounding the table, insisting on ridiculous demands from which you will retreat in an instant does nothing but

insult your employees' representatives and detract from your own credibility.

The same is true in reverse, if employee representatives open by demanding the impossible. They'll do themselves no favours.

In comprehensive negotiations [i.e. the negotiation of U.S. collective bargaining agreements], proposals for economic issues may be withheld pending sufficient resolution of the "non-economic" sections of the contract.

Economic issues are often of the greatest interest to employees, but there is little to discuss. "We want more." vs. "That's all there is.", doesn't really require much time. The money is there or isn't.

Non-economic matters [the seniority system, the grievance procedure, work rules, job security, etc.] make up the majority of most contracts and account for a majority of the contentious issues in contract administration. Again, the administration of a contract's economic provisions is pretty straightforward, we paid you correctly or we didn't. As a result, plenty of time can be spent discussing the rest of the contract and constructive solutions can often be found.

The exchange of ideas

When you're at the table, company representatives must be prepared to explain the rationale for their proposals within the context of the key messages. Tell 'em, tell 'em, and tell 'em again. And keep coming back to your themes and the

"meta narrative". By the end of the negotiation, employee representatives should have internalised your message. They should be able to tell your story in their sleep.

Depending on the nature of the negotiation, there may not be an initial exchange of proposals. Whether or not you exchanged proposals at the outset, this phase of the negotiation is where real problem-solving takes place.

You need to be the expert. You need to be completely on top of all the key issues. Any data you haven't locked in your head needs to be close at hand and instantly accessible. In sporting terms, you need to have put in the hours on the training ground to be able to perform on the day. You can't just turn up and run a marathon.

If you have a preferred solution, you need to lead them there on the basis of your narrative and supporting facts.

But you won't get there unless you help them understand why it's the best possible outcome they can hope for, that all the alternatives deliver a worse result for them. We don't believe you can just say "no", you need to explain why you are saying no. They need to understand your reasoning.

You need to explain how your proposals will work in practice, how it addresses their concerns, and how it will deliver for your employees – their constituents.

If you didn't put a proposal on the table, explain the problem - the matter - in clear, operational terms. The steps are straightforward:

- Outline management's problem in terms of cost, quality, and/or speed
- Make your employees' impact on the matter clear. What do they need to do differently to fix the problem?
- Address what happens if the matter goes unaddressed
- Make it clear it's better addressed through negotiation than through an imposed settlement

In any negotiation, you can't just push your ideas full-on. You need to sell them. You need to convince the other side that what you are proposing addresses their interests too.

In order to do this, you need to pay close attention to what they are saying. Listen, listen, listen, and they play back to them what you heard. "As I understand your position, and correct me if I have got this wrong…." Letting the other side know that you have heard them and understood them is important. But you also, when necessary, need to make it clear that understanding does not mean agreeing.

If what you propose is really the best available solution, that will become obvious in most cases. There will always be holdouts you may never win over. They are often ideologically driven. They believe they can and should have the moon and the stars. You need to appreciate that no one is ever going to "accept" that closing the factory they have worked in for decades is the "best" alternative. They might, however, see that the closure is inevitable and unavoidable.

They'll never accept your proposals if all you have done is explain why your solution works and their ideas and

demands are completely unrealistic. That belittles them and shows a lack of respect and when that happens, they will respond in kind.

Once there is a convergence around a solution, capture it as a concrete proposal. Here you have to make sure they know they've been heard. It is best to leave them after a robust exchange of ideas with, "We'll come back to you with a proposal in the next session." Then write it down. Control the pen. Getting things onto paper moves the process along.

You can argue forever, but you need to get to the point where you can say, "OK, are we agreed on the following?" "Let me read out what I have here." "Are we agreed that this is what we have agreed?" In any negotiation, ideas are interesting, but concrete proposals lead to a conclusion. And proposals constructed through dialog around interests lead to agreement.

Everything in an agreement is interconnected. It is critical to show progress, however small. In part to keep track and in part to demonstrate progress, many negotiations are run using tentative agreements, or T/A's, along the way. The use of T/A's as a tool should be covered on opening day in the discussion of ground rules.

You may reach a tentative agreement on an entire article, a clause or just a sentence. Each T/A indicates progress, however small. Each T/A is predicated on the ultimate acceptance of the entire agreement. Collective agreements are agreed upon in their totality. Neither employee

representatives nor employers can choose to accept the good and dismiss the bad. Everything is connected.

One strong word of advice. Once you have reached an agreement, even a tentative agreement on an issue, never try to walk it back. Never say "we need to rethink that". Doing so damages trust and credibility. How can anyone believe what you say if they think you will turn around in an instance and change your mind?

Consider this scenario: A company makes two proposals. Proposal A gives employees five additional holidays. Proposal B adds 12 minutes to each day worked. Together, the proposals are roughly cost neutral in theory. A savvy employee representative may propose a tentative agreement on Proposal A. "We'd like to propose a tentative agreement on the company's Proposal A."

As odd as it may seem, you cannot accept agreement on your own proposal because it is inextricably and economically linked to another. You need to balance the ledger before you can agree. Don't get caught off guard.

If you're not sure, don't tentatively agree. The agreement may be tentative pending resolution of the entire deal, but your commitment to a T/A should be absolute. And this may seem obvious, but don't ever pass a proposal across the table that you're not ready to T/A if the other side says, "OK." It's your proposal. You need to be ready to stand behind it.

The great resignation

This is the autumn of the negotiation. Original demands and ideas lie on the floor like leaves in September. Now, proposals have been agreed. Disagreements have been parked. And all the time, the clock keeps ticking away.

A certain tiredness creeps over all of those involved. Time to try and get this done. Arguments and counterarguments have been tortured. It is time to put them out of their misery.

Both sides come to know what they have to let go. There is a sense of reciprocity: we'll let go if you let go.

The final shape of the deal is in sight, but some significant issues remain to be resolved.

You need to be careful at this stage. Take careful stock of where you are and what you're seeing on the other side of the table. They're leaning toward acceptance. There can't be any bombs or surprises to turn that resignation to anger. For your part, watch your mandate. There are lines you cannot cross.

The final appeal

The shape of the agreement is clear. Almost all that you are willing to offer is on the table. You're close, but you're not done. You've held back enough to be able to close things out. That extra that will push things over the line.

But before you put that final offer on the table, you need to know, you need to be certain, that if you do put the extra on

the table, you will have a deal. The workers' side need to make clear their final expectations. There can be no, "or sorry we forget to mention".

Rick recalls, "In one negotiation where I was not at the table, the union's chief negotiator, with whom I had shared the terms the company would offer, said, "If we don't have another 50¢ in wages, another $1,000 in bonus, and an extra year to implement the health care changes, I will take this workforce out on strike for the first time in 30 years!" He was, of course, demanding exactly what he knew we were prepared to offer. When the company's chief negotiator returned with the "Last, Best, and Final" offer that included everything he demanded, he said, "That's better. You've got a deal. Now, you can tell that son of a bitch in the back room that he can come shake my hand."

Both Rick and Tom know what it is to be the "ugly" one, and best that they are not in the room. We are not always seen as the nice guys that we are. It is a burden we bear.

Of course, your employees' representatives don't always know exactly where you're going. Sometimes you may not either. In those instances, it is critical that they make clear what is absolutely necessary for a deal.

Some representatives are better than others about separating "needs" from "wants". It is up to you to know the representatives you are dealing with and your workforce so as to be able to shape your final proposal in a way that can and will be accepted. As we said earlier, listen, listen, listen, to those on the other side of the table and to

the intelligence flowing to you from your workforce through your industrial relations team.

The big finish

Employee representatives get only what companies give, so the final offer is yours. As we said earlier, in certain circumstances in Europe there may be legal fallbacks, but these generally refer to procedural matters, not to substantive terms and conditions.

But no matter what the circumstances, your final offer should always be constructed in such a way that the workers' representatives see and appreciate that you have been listening to them and that as best you can, you are trying to address their concerns. But you make it clear, that this is it, you cannot go any further. Then you need to stick with that. Take the consequences, whatever they may be.

If you say your offer is the best the company will offer and there is a history of coming back with more, you are in difficulties and you will need to explain why this time is different than every other time You should be prepared for them to question your credibility. "Yeah, yeah, that's what they always say."

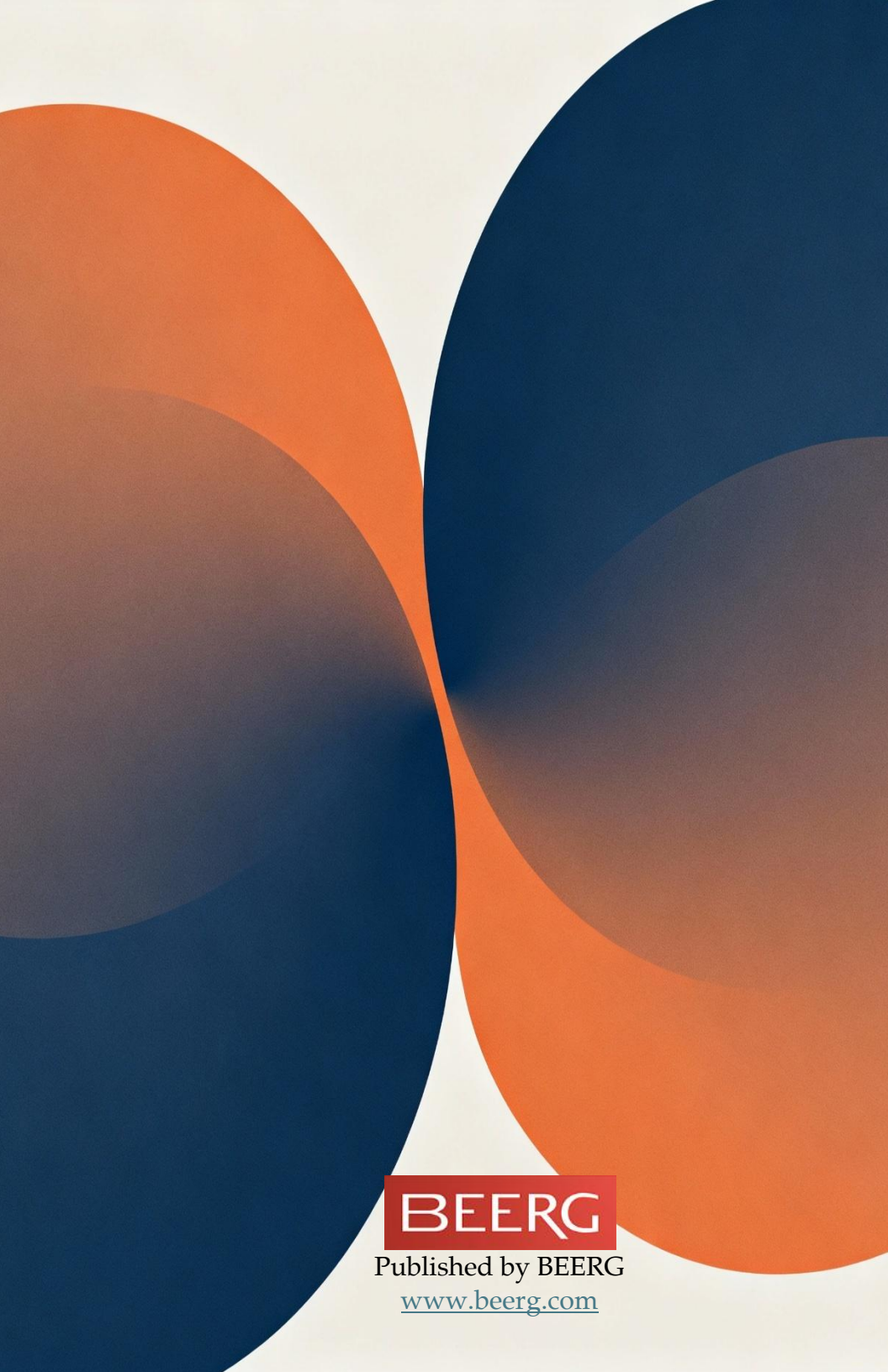
If your approach to this negotiation really is different from the historical pattern, you need to realign their expectations. You need to have the narrative clear and concise from Day One.

If you are pushing the "reset button" on your negotiation process, you need to explain why and how beginning with the Invitation to Bargain. You need to reiterate it clearly and concisely in the Opening Statement. And you need to tell them, tell them, and tell them again and at every step along the way.

The new way of negotiating needs to be an integral part of your story. Employee representatives need to be repeating your refrain by the end of the negotiation. They should be sick of it. They have to believe it in order to convince your employees that this time is really different.

In one U.S. negotiation with a newly acquired bargaining unit, the union's chief spokesman addressed a crowd of angry members who were gathered to ratify or reject the company's contract proposal. He concluded his offering, "Look, I know you don't like it, but I've been dealing with these guys for 30 years and they are not going to change the health care package they have implemented across the country for one unit of 200 people. You can strike if you want, but it won't change the deal."

Credibility is earned over time. It can be lost in a heartbeat.



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