

COLLECTIVE BARGAINING 101

What is collective bargaining?

- Collective bargaining is the formal process of negotiation between an employer and a group of employees – often with their union representative – that sets the terms and conditions of work.
- Collective bargaining results in a collective bargaining agreement (CBA), a legally binding agreement that lays out policies agreed to by management and labor. Because of its role in governing the actions of both management and labor, a CBA is often referred to as the “law” of the workplace. While each agreement is unique to a given labor-management relationship, most CBAs include provisions that address compensation, scheduling, promotions, discipline and job standards. CBAs also usually contain a grievance procedure, which provides a process for resolving disputes between management and labor over interpretation of the contract and in the event of employee discipline or termination.

When does collective bargaining occur?

- Employees and employers engage in collective bargaining to negotiate new contracts and renegotiate existing contracts that have expired. In 2015 alone, an estimated five million men and women are engaged in the collective bargaining process.¹ By one measure, more than 21,000 labor-management relationships engaged in collective bargaining during the 2014 fiscal year.² Despite the amount of bargaining that occurs every year, only 7.4 percent of private sector employees and 39.2 percent of public sector employees are covered by a contract.³

Who can collectively bargain?

- The National Labor Relations Act (NLRA) grants most private sector employees the right to organize unions and collectively bargain. The Railway Labor Act (RLA) provides railway and airline employees the right to form unions and engage in collective bargaining. Between the NLRA and RLA, approximately 85 percent of all private sector employees hold collective bargaining rights. Some members of the private sector, including employees of very small businesses, agricultural workers, domestic workers, supervisors and independent contractors, do not have the right to engage in collective bargaining.⁴
- Public sector collective bargaining rights are established by a patchwork of laws. Federal law offers many federal employees the right to engage in collective bargaining over a limited set of issues, and state laws govern the right of state and local government employees to engage in collective bargaining.⁵ As of 2014, three states expressly prohibit collective bargaining for all public sector employees.⁶ The prohibition of bargaining is considered by Human Rights Watch to be in direct violation of international human rights law.

What topics can employees bargain over?

- While the NLRA – the law that applies to most private sector employees – does not include a list of bargaining topics, the National Labor Relations Board (NLRB) and courts determine which subjects are covered by the NLRA. They divide bargaining subjects into three categories: mandatory, permissive, and illegal.

- ◇ Mandatory subjects, broadly speaking, relate to wages, hours, pensions, healthcare and working conditions. Employers cannot refuse to bargain over these subjects, and negotiations may continue to the point of mediation or strike.
- ◇ Permissive subjects are non-mandatory subjects of bargaining, meaning employers are not required to bargain over them. Use of union labels is an example of a permissive bargaining subject.
- ◇ Finally, illegal bargaining subjects are those that violate the NLRA, such as a closed-shop provision in a right-to-work state.⁸

The collective bargaining process

- Though more formal in nature, the collective bargaining process is not much different from everyday negotiations between parties, like the process of buying a car. Bargaining commonly begins with employees coming together with their union to determine and prioritize a set of demands they have for their employer. A bargaining committee, comprised of employees and union representatives, then meets with management at the “bargaining table,” presenting a series of proposals and explaining the intention behind them. Management will then respond with its own proposals and counteroffers. The sides will begin to reach agreement on some proposals and continue trading counteroffers over unresolved issues. The length of bargaining and amount of counteroffers varies depending on the complexity and number of bargaining proposals.
- Collective bargaining in the United States is typically a decentralized process, occurring between a single employer and its employees. However, in industries like hospitality and trucking, employers and unions sometimes engage in regional or industry-wide bargaining, where a CBA covers employers in a specific city or across an entire industry.⁹
- In the construction sector, a project labor agreement (PLA) serves as a pre-hire collective bargaining agreement establishing the terms and conditions of employment for a particular construction project. PLAs are negotiated between a coalition of building trades unions and a general contractor. Typically, they require all the contractors on the project to pay fair wages and to contribute to joint labor-management health, pension and training funds.

What happens when management and labor don’t agree?

- If management and labor cannot reach agreement on a mandatory subject, they are said to be at impasse. At this point, management may unilaterally implement its final offer. Alternatively, both sides can agree to engage in a mediation process where a federal or private mediator or arbitrator helps the parties work to an agreement. Labor or management may also try to exert economic pressure to force the other side into agreement.
- In the private sector, economic pressure typically occurs in the form of a strike or lockout. Such actions are relatively rare, though, as it is the threat of a work stoppage that pushes the opposite side toward agreement.
- In the public sector, employees may only strike if allowed to do so by the relevant law. Federal law prohibits strikes by federal employees, while state and local laws vary. As of March 2014, only 12 states allow teachers to go on strike.¹⁰ Some states, like Pennsylvania, prohibit strikes by emergency workers (police officers, firefighters and prison guards), but offer them access to a binding arbitration process for

Expanding the theater of bargaining

- The vast majority of Americans do not have access to a collective bargaining process. Employer hostility towards unions chills organizing efforts.¹¹ Working people who wish to join together to raise wages and standards are seeking new “on ramps” to bargaining, particularly when their employers refuse to either recognize their union or bargain with them collectively. Sometimes, the NLRA structure of bargaining does not enable people to bargain with their “real” boss—the company that has actual economic control over their work but is not their direct employer. In those cases, employees are utilizing alternative strategies to build power and influence their wages and standards. For example, the cleaning staff for Target stores in Minnesota managed to win a direct agreement with Target in order to improve standards with the stores’ subcontracted cleaning firms.

- Bargaining spaces can also be created through legislation. Child-care and home-care providers in Connecticut recently mobilized in support of a Low-Wage Employer Fee, which would assess a fee on large, low wage employers in order to fund the state’s strained public care programs. While the fee did not pass, advocates won a Low Wage Employer Advisory Board, where care workers will have the chance to sit with employers, public assistance recipients, elected officials and other stakeholders to confer over recommendations to the governor and state legislature on how to address the public cost of low wage work.
- Finally, working people who lack the right to collectively bargain are taking their “bargaining” demands to the public too. Domestic workers in Hawaii, Massachusetts, California, Connecticut and New York have successfully won “Domestic Workers’ Bill of Rights” laws that ensure they receive access to overtime pay and adequate workplace protections.

Citations

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