



SHEET METAL & AIR CONDITIONING  
CONTRACTORS' NATIONAL ASSOCIATION

**Collective Bargaining Basics**  
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## FIRST DAY OF BARGAINING

### WHAT TO EXPECT

1. Exchange pleasantries and do introductions.
2. Address ground rules (if that is the practice).
3. The Union should present its proposals first.
4. Management always presents its proposals *after* the Union, typically on the same day and often right after the Union is finished.
5. Caucus and go from there.





## THE GENERAL NATURE OF BARGAINING

### HOW THE PROCESS WORKS

1. Both parties come to the bargaining table with proposals.
  - ✓ Proposals to modify or add or delete contract language.
  - ✓ Economic changes.
  - ✓ Items for discussion (not really proposals, but may lead to them).



**Note** – Injecting *new* proposals after negotiations are underway...

... is bad form.

... may run afoul of ground rules established by the parties.

... may be evidence of bad faith bargaining in an NLRB ULP case.



## THE GENERAL NATURE OF BARGAINING

### HOW THE PROCESS WORKS, *continued*

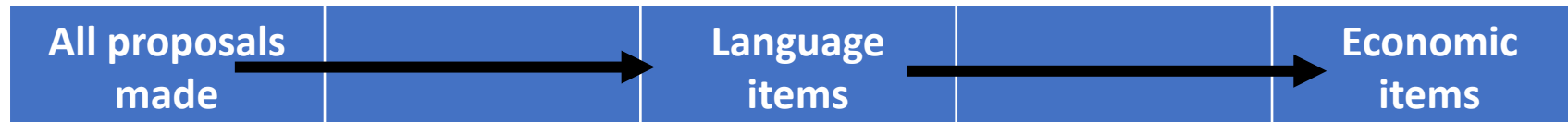
2. During the process,
  - ✓ proposals may be agreed-to (“*tentative agreement*” or “*TA*”).
  - ✓ Proposals may be withdrawn or dropped.
  - ✓ Proposals may be modified (which may lead to TAs or withdrawals or further modified proposals, and so on).
- In essence, the parties make a series of counter-proposals and modified proposals, while also reaching TAs and withdrawing proposals.



## THE GENERAL NATURE OF BARGAINING

### HOW THE PROCESS WORKS, *continued*

- Generally start with *language* proposals, and later address *economics*, but this is a general rule, and things typically are not so clean in practice.



- This back-and-forth results in the narrowing and narrowing of remaining proposals until the final remaining proposals are addressed and *ideally resolved*.



## THE GENERAL NATURE OF BARGAINING

### HOW THE PROCESS WORKS, *continued*

3. ***The goal.*** Ideally, the end result is a ***Tentative Agreement*** on the entire contract for the membership to ratify.
  - Where possible, get the Union committee to agree to ***unanimously favorably recommend*** that the membership vote to ratify the TA.
  - ❖ Otherwise the membership will need to vote on a ***proposal*** made by management.





## MAKING MOVEMENT | SIGNALLING ROOM FOR MOVEMENT

### THE MOST BASIC BARGAINING PRECEPTS

1. Start at a point where you are leaving yourself some room for compromise.
2. When making modified proposals and counter-proposals, leave yourself room for additional movement.
3. Don't bargain against yourself.
4. Consider whether it is better to "easily" get 85% to 90% of what you want versus getting into a long, bloody fight trying to slam dunk it.
5. Don't forget that the Union needs to get the deal ratified.



## MAKING MOVEMENT | SIGNALLING ROOM FOR MOVEMENT

### FORMS OF EXCHANGES

1. Proposals, modified proposals, and counter-proposals.
  - Package proposals
2. Conveying that this particular topic is extremely important to us.
3. Saying “no” to Union proposals.
4. “What-ifs” or “supposals.”
5. Identifying that, if you propose this, we will accept it.
6. Informal discussion of room for movement (without making it a proposal).
7. Signal that we can do **x** (whether specific or non-specific) as part of an overall satisfactory contract settlement.





## MAKING MOVEMENT | SIGNALLING ROOM FOR MOVEMENT

### NATURE OF THE DIALOGUE

1. Joint sessions.
2. Sidebars.
3. Simply delivering a document with management's position(s) or proposal(s) (but not orally presenting it or running through it).
4. Shuttle diplomacy involving the FMCS mediator (if mediation is used).



## JOINT SESSIONS

### INTERACTIONS DURING JOINT SESSION

1. The role of the chief spokesperson.
  - Coordinating the discussion.
  - Identifying proposals / counter-proposals.
  - Stating management's position in response to union proposals / counter-proposals.





## JOINT SESSIONS

### INTERACTIONS DURING JOINT SESSION

2. The discussions during joint session – at least the presentations from the management side – should be planned, structured, deliberate, and methodical.





## JOINT SESSIONS

### INTERACTIONS DURING JOINT SESSION

3. Other members of the management team speaking or presenting during joint session.
  - Planned remarks.
  - Responding to questions from the Union.





## EFFECTIVE USE OF SIDEBARS

1. What is a sidebar, and who should participate?
2. Opportunity for discussion without the theatrics and as much posturing.
3. Your aim, at least initially, is ***to learn from the Union*** what it sees as the pathway to settlement.
  - “Where do you actually need this to land on the wages?”
  - “You don’t actually need something on *issue x*, do you?”

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## EFFECTIVE USE OF SIDEBARS

After exhausting information gathering, if it makes sense....

4. “If the contractors are able to get up to \_\_\_\_\_, and I have no authority for this and I’m not saying that we can get there, would that [accomplish x -OR- get us a deal]?”

Form of “what-if” or “supposal,” but the focus is **still** on **obtaining** information.



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## EFFECTIVE USE OF SIDEBARS

5. The use of sidebars may be the way to reach an overall tentative agreement if both parties are skittish about making proposals, or making *the* proposal to land it.

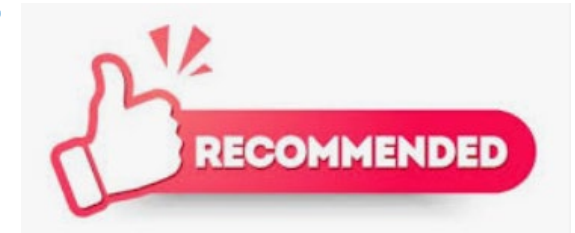
You hash out the details in sidebars, and then get together in joint session simply to confirm the terms.





## OBTAINING THE UNION COMMITTEE'S AGREEMENT TO UNANIMOUSLY, FAVORABLY RECOMMEND THE TENTATIVE AGREEMENT FOR RATIFICATION BY THE MEMBERSHIP

1. This is nice to have as part of the Tentative Agreement.
  - But what does this really require of the Union?
2. When you are able to secure this, make sure to include this right in the Tentative Agreement document. (I typically include it *twice*.)
  - We want the Union committee members to remember and abide by it.
  - We want the employees to see it.
  - It is best to have it in writing if the vote fails.
3. Raise this at the right time – not too early or too late.
4. Depending upon the history, it may not be advisable to pursue this.







## GOAL: TENTATIVE AGREEMENT

The goal is to reach a tentative agreement between management and labor on a new collective bargaining agreement.

- The tentative agreement should:
  - Be reduced to writing.
  - Be labelled as “Tentative Agreement.” (It is *not* management’s proposal.)
  - Include the right contents. (*See below.*)
  - Signed prior to ending the meeting and parting ways.



## TENTATIVE AGREEMENT

### What should be included in the Tentative Agreement?

- 1) Introduction (names of parties and statement that a TA has been reached).
- 2) Statement that the Union's bargaining team is unanimously, favorably recommending ratification by the membership, if true.
- 3) All of the agreed-upon terms must be included
  - Language changes should be in redlined format, showing additions and ~~deletions~~.
  - Be careful and clear about effective dates of changes.
  - Is ratification by a deadline required for retroactivity?
  - Make sure that the effective and expiration dates are expressly stated.



## TENTATIVE AGREEMENT

### **What should be included in the Tentative Agreement?**

- 4) Statement that the Union is withdrawing pending NLRB ULP charges (by case number(s)), and will not file any additional charges related to the negotiations.
- 5) Signatures of the representatives of the parties.



## DIFFICULTY REACHING A TENTATIVE AGREEMENT

### MAKING A PROPOSAL THAT WILL BE VOTED ON BY THE MEMBERSHIP (IN THE ABSENCE OF A TENTATIVE AGREEMENT)

1. What do you call it?

Voting Proposal | Final Offer | Last, Best & Final Offer

2. What is the right time for making a Last, Best & Final Offer

- Just for the sake of bringing the negotiations to a head **????**
- It is impossible to reach a ***contract settlement with the Union***, but we believe that the LBF ***will be ratified***.
- After exhausting negotiations, and you're seeking to reach impasse and implement your offer. (*Rare today.*)

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## DIFFICULTY REACHING A TENTATIVE AGREEMENT

### MAKING A PROPOSAL THAT WILL BE VOTED ON BY THE MEMBERSHIP (IN THE ABSENCE OF A TENTATIVE AGREEMENT)

3. As for the terms that you're proposing:
  - Make ***retroactivity*** conditioned on ***ratification by a specified date***, and the first year increase doesn't go into effect until after ratification.
  - Include the ***previously-reached TAs*** as an "attachment" marked and identified as such, and indicate right on the proposal that the TAs are included.
  - Seriously consider ***omitting any remaining takeaways*** that you still have on the table.
4. Prepare the proposal document with the expectation and desire that it will be seen by the membership.

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## DIFFICULTY REACHING A TENTATIVE AGREEMENT

### MAKING A PROPOSAL THAT WILL BE VOTED ON BY THE MEMBERSHIP (IN THE ABSENCE OF A TENTATIVE AGREEMENT)

5. Assuming that you're planning to communicate with the membership, have that communication prepared and ready to go. (Don't wait until the proposal is made to the Union before you start preparing it.)
  - Consider how to handle the situation if a communications ground rule is in place.
  - The Union should be aware (from negotiations) of the terms of your proposal prior to your delivery of the actual, written proposal document to the Union. Provided that there is nothing new in the proposal, you can send it to the employees right after delivering it to the Union.



## DIFFICULTY REACHING A TENTATIVE AGREEMENT

**MAKING A PROPOSAL THAT WILL BE VOTED ON BY THE MEMBERSHIP  
(IN THE ABSENCE OF A TENTATIVE AGREEMENT)**



6. *If you call it your Last, Best, and Final offer, it better be precisely that.*



## MISCELLANEOUS TIPS





## DIFFICULTY REACHING A TENTATIVE AGREEMENT

### PATIENCE IS A STRATEGY



1. Patience *is* a strategy, especially when dealing with unreasonable proposals for excessive wage increases or other enhancements from the other side.
2. Sometimes, this is the ***best and only strategy.***
3. And this is a situation in which it may make sense to obtain assistance from an ***FMCS mediator.***



## DIFFICULTY REACHING A TENTATIVE AGREEMENT

### UNDERSTAND ALL OF YOUR MOVES

#### *Question:*

You're at \$2.00 \$2.00 \$2.00.

The Union is holding at \$5.00 \$5.00 \$5.00.

You're trying to get to \$2.50 \$2.50 \$2.50

*How many moves do you have from \$2-\$2-\$2 to \$2.50-\$2.50-\$2.50 (moving by a minimum \$0.25 increment).*





	Year 1	Year 2	Year 3
1	\$2 .00	\$2 .00	\$2.25
2	2.00	2.25	2.00
3	2.25	2.00	2.00
4	2.25	2.00	2.25
5	2.25	2.25	2.00
6	2.25	2.25	2.25
7	2.25	2.25	2.50
8	2.25	2.50	2.25
9	2.50	2.25	2.25
10	2.50	2.25	2.50
11	2.50	2.50	2.25
12	2.50	2.50	2.50

There is also the potential issue of *retro pay*.

This doesn't even take into account the possibility of *splitting the year* into two increases.



## GROUND RULES

1. The parties can agree to a set of ground rules. Neither party has the right to unilaterally dictate bargaining rules or condition bargaining upon agreement on any particular ground rule.
2. Common topics:
  - ✓ Process for confirming TAs
  - ✓ Deadline for introducing proposals
  - ✓ Start time, stop time, maximum time bargaining
  - ✓ Communications





## COMMUNICATIONS GROUND RULE

1. The management team may agree to a ground rule that restricts both parties' communications regarding the substance of the negotiations while bargaining is ongoing, but this is not required.
2. There are advantages to having such a ground rule – at least until the negotiations reach a critical situation where a vote is going to be held on a proposal in the absence of an overall agreement.





## COMMUNICATIONS GROUND RULE

### 3. Wording to consider:

- “The parties will not disclose the contents of the negotiations while the parties are engaging in the process of exchanging back-and-forth proposals.”
- “The parties will not disclose the contents of the negotiations until such time as the contractors make a comprehensive proposal that is intended for or will be voted on by the membership.”



- ### 4. Deciding to discontinue a ground rule is not a *per se* failure to bargain or ULP, but with respect to this ground rule, it is recommended that you advise the Union that you will be communicating with the membership, and make it a point to note that this is for the purpose of *trying to reach* an agreement.



## UNION PROPOSAL FOR RETROACTIVITY OF WAGE INCREASES

1. The Union may – as part of its initial proposals – propose that the wage increases should go into effect on the day after contract expiration (*i.e.*, the assumed effective date of the new contract).
2. Do not TA this proposal early in the negotiations, even if you are aiming for that to be the effective date of the year-one wage increase.
3. It is eminently fair and reasonable to use retroactivity to keep the Union in line, and to potentially use this as a bargaining chip later.
4. Then make retroactivity conditioned on ***ratification by a specified date.***





**EXTENDED**

## CONTRACT EXTENSIONS

1. It is better if *the Union* makes the request for a contract extension.
2. Otherwise: “We assume that the Union wants to extend the contract.”
3. Push back on Union attempts to rope-in retroactivity of the increase in wages.
4. Use a contract extension that is effective *indefinitely* where possible.





## AVOIDING NEGATIVE BARGAINING HISTORY

1. Bargaining history can hurt your grievance case down the line.
2. What you present as a proposal (both initially and as modified).
3. How you propose it.
  - “For purposes of clarification only,....”
  - “We already have the right to do this...”
4. How you withdraw it (if that’s what you do).
  - “That was for purposes of clarification only, and we did not and do not need it, so that’s not part of this comprehensive proposal.”





## SECURING THE WITHDRAWAL OF PENDING ULP CHARGES

1. If there are pending NLRB ULP charges against the association or the contractors alleging bad faith bargaining in any respect, you want to get the Union to agree to withdraw the charge(s) as part of the Tentative Agreement.
2. The question is how and when to bring this up.
  - Raise the issue at an opportune time during sidebar or through the FMCS mediator, if either option is possible.
  - If you need to make it a proposal in joint session, you must, but pick the right time to do it. (Note that this is a permissive subject of bargaining.)
3. Include language in the Tentative Agreement reflecting the Union's agreement to withdraw the charge(s).



## DEALING WITH A UNION THAT IS STUCK ON UNREALISTIC NUMBERS AND NOT MOVING

1. Don't reward the Union's bad behavior of starting out really high and not making any movement by trying to be the reasonable party.

“Our proposal of *abc* is in response to your proposal of *xyz*.”

2. Don't give away too much at home if you have Article X, Section 8. If there is a large gap in the parties' positions, and there is no realistic pathway to a tentative agreement, don't keep increasing your proposal based upon false hope that there is an agreement within reach.



## **#1 USE EFFECTIVE DATES STRATEGICALLY**

### **#2 MAKE SURE THAT PROPOSALS & THE TA DOC REFLECT THE INTENT**

1. The parties can agree that an enhancement or improvement doesn't go into effect right away.
  - Having a “delayed” implementation may benefit the contractors.
  - Proposing a “delayed” implementation may give you more moves.
2. If an enhancement or improvement is not intended to be effective on the first effective day of the contract, make sure that this is clear in the language.
  - This is especially important when negotiations go past the contract expiration date, raising a question about retroactivity.



## PAY CLOSE ATTENTION TO THE DETAILS ESPECIALLY AT THE END

1. Don't assume that a "minor" open issue will simply disappear when the parties are in alignment on the total package increases.
2. When making proposals and what-ifs / supposals, make sure to include your position on *all* open items.
3. Make sure that your position on *all* open items is clear, unmistakable, and known by the Union.
  - And if the Union doesn't identify where they're at on an open issue, get clarification and/or make it clear that your position is still your position.



## WHAT'S NEXT IF THE TENTATIVE AGREEMENT IS VOTED DOWN?

1. It is *the Union's responsibility to explain why the vote failed.*
2. *If you have Article X, Section 8, increasing your proposal or engaging in additional back-and-forth bargaining isn't going to help your case at the NJAB.*
3. **Adding \$** at this point sets a dangerous precedent for future negotiations.
4. **Moving \$ around** is less of a concern (but still not ideal).
5. It is possible for the parties to agree that the Union will **re-vote** the Tentative Agreement.



**QUESTIONS?**

**Thank you.**