

A Practical Guide to Collective Bargaining: Strategies, Obligations, and Best Practices for 2026

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Collective bargaining remains one of the most important processes governing labor–management relations in the United States. For organizations preparing for negotiations in 2026 and beyond, the key to success is understanding not only the legal framework, but also the strategy, preparation, and interpersonal dynamics involved.

This outline walks through the essentials of collective bargaining under the National Labor Relations Act (NLRA), along with practical techniques, negotiation tactics, and preparation tips drawn from decades of labor-relations practice.

What Is Collective Bargaining?

Collective bargaining is the structured process by which an employer and a union negotiate wages, hours, benefits, and working conditions of employees represented by the union. The outcome is a Collective Bargaining Agreement (CBA), a binding contract that sets those terms for a defined period.

The process is regulated by the National Labor Relations Act, which preempts state labor laws for private employers. Though every negotiation is unique, all follow a similar progression. Collective bargaining typically unfolds in several key phases:

- **Preparation** - Both sides analyze the existing CBA, gather economic and operational data, and develop proposals.
- **Negotiation** - Each party presents its proposals, discusses priorities, and responds to the other side's demands.
- **Agreement** - Once consensus is reached, the parties draft a written agreement or memorandum of understanding.
- **Ratification** - The union's membership votes on the agreement, and the employer formally approves it.
- **Implementation** - The new CBA takes effect, often retroactively if negotiations extend past the previous contract's expiration.

The Legal Duty to Bargain

Section 8(d) of the NLRA requires both parties to meet at reasonable times and negotiate in **good faith** over mandatory subjects such as wages, hours, and working conditions. Importantly, **neither party is required to agree to any specific proposal**, nor must they make a concession.

Types of Bargaining Subjects

Mandatory

Mandatory subjects are those that “vitally affect” wages, hours, or working conditions. Examples include:

- Compensation and incentive pay
- Pension and benefit plans
- Paid and unpaid leave
- Discipline and discharge
- Seniority
- Work rules
- Grievance procedures

Employers may **not** make unilateral changes to mandatory subjects without bargaining.

Permissive

Permissive subjects are relevant, but not central to working conditions. They include definition of the bargaining unit, internal union procedures, and terms for non-unit employees. Parties *may* negotiate these, but neither side can be forced.

Illegal

Illegal subjects are topics prohibited by law, and include closed shop provisions, hot-cargo agreements, and discriminatory clauses based on race, religion, sex, age, disability, national origin, or union activity.

Understanding these categories helps both sides stay compliant and focused on productive negotiation topics.

Good Faith vs. Bad Faith Bargaining

Good-faith bargaining is legally required and is the foundation of the negotiation process. It requires sincerity, openness, and a genuine desire to reach an agreement.

What Good-Faith Bargaining Looks Like:

- Meeting at reasonable times
- Making concessions and counteroffers
- Providing relevant information upon request
- Engaging in meaningful discussion
- Drafting written agreements when terms are reached

Importantly, good faith does **not** require either party to accept proposals or make concessions they find unacceptable.

Automatic Violations of Good Faith

Certain actions are considered violations regardless of intent:

- Making unilateral changes to mandatory subjects before the impasse
- Bargaining directly with employees instead of the union
- Refusing to meet or discuss mandatory subjects
- Refusing to sign a written agreement reached at the table

Other Signs of Bad Faith

The National Labor Relations Board may also infer bad faith from patterns of behavior, such as:

- Delaying tactics
- Unreasonable demands
- Withdrawing previously agreed-upon terms
- Failing to designate a representative with authority to bargain
- Attempting to bypass the union

Good-faith bargaining is not just a legal requirement—it is essential to building trust and reaching durable agreements.

The Duty to Provide Information

Under the National Labor Relations Act, both the employer and the union must provide information relevant to bargaining, resolution of grievances, or contract administration. Failure to provide information can result in:

- Unfair labor practice charges
- Conversion of an economic strike to an unfair labor practice strike
- Delayed or invalid impasse claims

Even vague or burdensome requests may need to be answered, and requests cannot be ignored simply because they involve confidential information.

Preparing for Negotiations

Preparation is the backbone of successful bargaining. Management's team typically includes:

- A chief spokesperson
- Financial and cost specialists
- HR representatives
- Operations experts
- A note-taker
- Decision makers with authority

The NLRA prohibits either side from interfering with the other's choice of representatives, and employers cannot limit the size of a union bargaining team.

Economic data collection is essential. Key sources include:

- Bureau of Labor Statistics (CPI, wages, employment data)
- Bloomberg Law contract settlement databases
- Local and industry CBA comparisons

Teams should identify desired changes, anticipate union demands, prioritize issues, and prepare arguments with supporting data.

Negotiation Strategies and Tactics

Collective bargaining is both a legal process and a strategic exercise. Successful negotiators understand the unwritten rules, anticipate the other side's priorities, and maintain discipline throughout the process.

Experienced negotiators follow unwritten norms, such as:

- Neither party expects to get everything it asks for
- Parties begin with broad proposals and refined goals
- Early progress often focuses on non-economic issues
- Major issues are typically addressed closer to contract expiration

Common Bargaining Styles

- **Auction bargaining** - High opening proposals lowered incrementally.
- **Trade-off bargaining** - Movement on one issue in exchange for concessions on another.
- **Blue-sky bargaining** - Unrealistic initial demands with slow movement.

Illegal Bargaining Styles

- **Boulwarism** - Presenting a single “fair, firm offer” and refusing to negotiate.
- **Surface bargaining** - Pretending to bargain with no real intent to reach an agreement.

Experienced and successful negotiators operate from a realistic, “give and take” perspective that often involves some of the following tactics.

- Acknowledge the other party’s views
- Use real-world examples
- Highlight points of agreement
- Ask open-ended questions
- Keep negotiations fair, calm, and professional
- Build trust, rapport, and momentum

Running Effective Bargaining Sessions

The first meeting sets the tone and bargaining climate. Each party makes an opening statement, establishes schedules and routines, and exchanges initial proposals.

Unions typically present more than they expect to receive, setting room for concessions.

At the next session— usually the second meeting— the parties clarify demands, understand priorities, and begin evaluating economic impacts. This is critical for setting expectations and building negotiation strategy.

For subsequent sessions as the deadline approaches sessions become more frequent, offers and counteroffers accelerate, committees may handle complex issues, and tentative agreements (TAs) are recorded clause-by-clause.

Best Practices: Tips, Tricks, and Traps

Collective bargaining has elements of skill. Skilled negotiators will recognize the other party’s perspective, provide clear explanations and supporting data, often ask open-ended questions, keep discussions focused and productive, and importantly remain calm and respectful.

The most effective teams are well-prepared, unified, and strategic in how they present and defend their proposals. Here are

some hints and tips:

- **Treat all early agreements as tentative** until the full contract is settled.
- **Document everything**—written summaries, session notes, and caucus discussions.
- **Never lose your temper**, even if provoked intentionally.
- **Avoid claiming you “cannot afford” a proposal**, which could obligate financial disclosure.
- **Caucus frequently** to regroup or strategize.
- **Build momentum** through small agreements.
- **Always preserve the authority and credibility of the chief negotiator.**

Advanced Negotiation Techniques

Certain techniques may be useful for resolving conflicts and finding common ground. These include: (a) caucuses, which are private discussions of each negotiating team that are used to refine proposals, assess costs, or cool tensions; and (b) so-called “sidebar” meetings, which are private meetings between lead negotiators to break logjams or explore sensitive options. Trust is essential.

If negotiations stall, the Federal Mediation and Conciliation Service (FMCS) can facilitate resolution by suggesting compromises, tradeoffs, or settlement formulas.

Understanding Impasse

An **impasse** occurs when good-faith negotiations no longer offer a realistic path to agreement.

When negotiations stall, executives and in-house counsel must navigate a complex landscape of legal standards, operational risks, and strategic considerations. Understanding impasse and mediation is essential to avoiding missteps that could escalate conflict or trigger legal exposure. After impasse is declared:

- Employers may implement their **last, best, and final offer**—but only positions already proposed before impasse
- Strikes and lockouts may occur
- The duty to bargain is suspended, not terminated

Impasse may be broken by events, such as new proposals, the passage of time, strikes, or changed economic conditions.

Business Decisions and “Effects” Bargaining

Employers must bargain over employment-related decisions such as layoffs or production quotas, but not over core entrepreneurial decisions like closing a business unit.

However, even when not required to bargain the **decision**, employers must bargain over the **effects** of that decision—timing, transition issues, severance, etc.—at a meaningful time.

Key Questions for Upcoming Negotiations

Collective bargaining is one of the most consequential legal processes an organization undertakes. It shapes labor stability, operational flexibility, cost structure, and long-term workforce relations. For executives and in-house counsel, the goal is not simply to negotiate a contract — it is to manage legal exposure, protect enterprise interests, and ensure compliance with federal labor law at every stage.

Below are some key questions that may help achieve these goals.

- What are the union's likely demands?
- Which CBA provisions are most problematic for management?
- What changes does the company desire?
- What internal or external constraints shape negotiation limits?

Final Thoughts

Effective collective bargaining is both an art and a science—grounded in legal requirements but shaped by preparation, data, trust, communication, and strategy. With thoughtful planning and disciplined execution, organizations can reach agreements that are fair, workable, and sustainable for both labor and management.