

UNISON Bargaining Support Guide

Local Bargaining

A guide for UNISON negotiators

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INTRODUCTION

Most UNISON branch officers, stewards and safety representatives will have to negotiate with management at some time.

In many workplaces where UNISON is organised there are national agreements which cover pay and conditions. In others pay and conditions are negotiated at local or company level.

Even where all main pay and conditions are agreed nationally, branch officers, safety representatives and stewards will still negotiate with management on issues relating to that employer or workplace.

Also the focus of bargaining is changing. UNISON stewards or branch officers are as likely to find they are negotiating on contracts, or issues such as PFI, market testing and Best Value, as on pay.

Negotiating is often seen as a game – a bit like chess where each side tries to win as much as possible from the other through a series of successful moves. Or like poker where the aim is to bluff the opponent without showing your own hand.

That is nonsense. Negotiating is not a game. It is the way in which branches can ensure that they protect and promote the interests of their members, and the keys to success are organisation, preparation and teamwork.

There are also no 'natural' negotiators. There are a wide range of different types of personalities, we also have different skills and strengths. A quiet thoughtful person can often be far more effective than someone who is domineering and loud. Being a good negotiator means developing the abilities we have and using them as part of a team.

This guide will hopefully introduce you to the basics of negotiating, give you some ideas of different styles and show how you can prepare for meetings and involve the members.

You will not become a confident effective negotiator through reading this booklet. That will come through training and experience. UNISON runs very good education courses for activists on how to negotiate. Details are available from your regional office.

ORGANISATION

Organisation is the key to effective negotiating. Before any negotiation actually begins, it is important to consult and prepare. Good organisation can help to solve the problem of having too much to do in too little time. The more people who are involved, and who can share the work, the better.

But whether you are part of a large team, or are operating in a smaller group don't forget to spend time on building and strengthening your organisation. That means recruiting, encouraging members to be stewards or safety reps, getting members along to meetings where this is possible and keeping everyone informed about what you and the union are doing for them in as many different ways as possible.

The basis of your strength at the negotiating table is the strength of the organisation of UNISON in your workplace and no amount of clever or aggressive negotiating will make up for a lack of strong organisation. Time spent on building up the organisation is never wasted: it will be repaid at the negotiating table.

For UNISON the three most important routes to good workplace organisation are:

- Recruiting as many members as possible into the union.
- Ensuring all workplaces, departments, work groups and shifts are covered by UNISON stewards and safety representatives.
- Ensuring all members are asked their views on workplace issues and kept informed on the progress of negotiations.

These are dealt with in more detail later in this booklet.

Good workplace union organisation will enable the negotiators to consult with their members and to represent their views effectively and properly.

Workplace bargaining and negotiating should be seized upon as a golden opportunity for creating a strong local union. Claims, and agreements are a great way of recruiting new members and also getting more members involved in the union.

Who do you negotiate with?

In workplaces where UNISON is recognised there will probably already be a recognition agreement.

This establishes procedures for negotiations between management and the unions, and facilities (such as time off) available to the unions. It also determines what issues the management must talk to the trade unions about, such as pay and conditions, health and safety, discipline, equal opportunities, training.

Under the 1999 Employment Relations Act unions have a right to recognition where there are 21 or more staff employed and a majority of those voting, and at least 40 per cent of all potential voters support it in a ballot. This gives you the right to bargain on pay, hours and holidays, but this list can be extended by agreement.

The law states that on certain matters the employer must consult. This is mainly on business transfers and collective redundancies. In these circumstances the employer must do this with a view to seeking an agreement. In practice, this is likely to mean the consultation process must be closer to negotiation than a mere information-giving exercise. There should be evidence the employer has attempted to reach agreement, even if agreement proves impossible.

On health and safety, if UNISON is recognised, then a joint safety committee must be set up if two or more safety representatives request it. Normally health and safety issues should be progressed through the safety committee where one exists.

Most recognition agreements will set up a formal way of negotiating with management. This may be at a regular joint committee where the composition from each side is laid down. Or it may simply be an agreement that UNISON can meet with management when required.

There are some advantages to having an agreement that regular meetings will be held. This means that issues are less likely just to be forgotten about. However, there should always be a right to meet management between regular meetings if either side think it necessary.

The recognition agreement should also make it clear what groups of employees are covered by the negotiating committee.

Who makes up the management side will depend on the type of employer. In some cases in the private sector, bargaining will be in a company wide forum, or in European Works Council (in large multinational companies), while in others it will be devolved to much smaller units, which may have the power to vary the application of particular conditions of service.

In local government it may be councillors who make up the employers side. In health it could be trust members and managers, in the voluntary sector members of the management committee, in schools the head teacher and some of the governors. But whoever it is, these people should be the ones who have the power to make a decision on the issues involved. That means that, with big employers, you are likely to need more than just employer-wide negotiations. There should always be the ability to negotiate with management at workplace or departmental level on issues that are only about that workplace.

Details of how to get recognition and negotiate a good agreement are available from the Bargaining Support Unit at head office.

Other unions

Where other trade unions have a significant membership and are also recognised it is in everyone's interests to negotiate together.

However that means that the bargaining team will have to meet together before any meetings with management. Where more than one union is recognised management may use it as a way of playing one part of the workforce off against another.

If any branch does encounter problems with other trade unions they should seek advice from their regional officer.

Who negotiates?

Even in the smallest establishment it is not a good idea to meet management alone. Always try to have someone with you, even if it is only to observe.

How many people should be involved will depend on the nature of the organisation. Three is a good number, but in big workplaces it may be considerably more. There is not necessarily an advantage in large numbers, although it does make it easier to ensure that there is a range of skills included. For major negotiations it is helpful to involve a regional officer.

A good negotiating side will operate as a team and everybody's views should be taken into account. However it is helpful to have a 'lead' negotiator to keep things together. It is also important to have someone to take notes. This role can sometimes be a way of helping new people gain confidence. When considering the composition of the team it is helpful to get as good a spread of members as possible, so that commitments to fair representation and proportionality can be met.

The team should:

- Meet prior to meeting management so that everyone is clear about the objectives and strategy and what each person's role will be.
- Ensure that once a position is agreed by the team, one person presents it. No one else should speak or interrupt, without prior agreement. If a team member disagrees with what the lead negotiator is saying, s/he should ask for an adjournment. Team members should never contradict each other in negotiations;
- Allow time to meet after a negotiating session, to form a view as to how the meeting went and to decide on next steps.

Acquiring negotiating skills

Within bigger branches there should be a core of experienced negotiators, who can help train other stewards. Many branches already have a wealth of negotiating experience, covering recognition agreements, grievance procedures, and health and safety. But stewards should also be encouraged to attend UNISON training courses, to help develop their negotiating skills.

Ensure that as many stewards as possible are given the opportunity to participate in negotiations; this will not happen if only the same three or four people go into every meeting with the employers. Stewards can also be encouraged to do research for a set of negotiations even if they do not yet feel confident speaking at meetings.

Opportunities may be spread around if stewards are given specific areas of responsibility; for instance if the branch is trying to negotiate a policy on family-friendly policies you will probably want to include the women's officer in the team. On the other hand, if the negotiations are about developing a smoking policy, the health and safety officer should be involved.

Relatively inexperienced negotiators may find that by 'pairing' or job-sharing they receive the encouragement and support necessary to develop confidence. It is important that the negotiating team develops a good supportive atmosphere and is tolerant of the mistakes that inevitably come with learning.

Training

Training is crucial for negotiators. UNISON's Learning and Organising Services Department provides a range of materials and courses designed to aid the negotiators at national and regional level. These are run regularly and details are available through your regional office.

The courses aim to develop negotiators skills and knowledge for bargaining at all levels. The employers should also be approached to provide training. This may be most fruitful during special employer initiatives such as job evaluation. If there is specialised training for managers and supervisors, stewards should ask to be included. Joint training should be a supplement, not a substitute, for trade union training.

Consultation with members

It is impossible to represent workers without understanding their views and concerns. The health of the union locally may be judged by the extent to which stewards are in touch with their members' aspirations. A good organisation and, in particular, a network of stewards will go a long way to meeting this requirement.

Some branches have found it very useful to conduct surveys of members to find out their concerns, priorities and aspirations. This can be a good way of deciding what issues should be raised with management. It also shows members that their union is listening to their views.

Where a formal claim is being presented, members should be consulted prior to drawing up a claim, at critical stages of bargaining and before agreeing to a settlement.

Members must be kept informed about matters that affect their employment. Before asking for their views of a management offer, negotiators should give the membership their view of prospects for further improvement and outline the options available to them.

A settlement changes the conditions of employment of the workforce and it is vital everybody has the opportunity to take part in the decision to accept or reject an offer.

Negotiators should always trust and respect their membership and that means giving them all the facts, explaining issues properly, and avoid trying to push your own agenda. We should always trust the judgement and opinions of the members and avoid playing games.

How to consult

There are many different methods. Choose the ones that work best for your workplace, or group of members affected, and the circumstances at the time

Meetings

Union meetings are a rare opportunity for workers to get together without being in the presence of their employer. The feelings of solidarity that result from a well-managed meeting make them a popular means of consultation. But meetings are not necessarily the best place for members to express their views, as not everybody has the confidence to speak in front of an audience, so think about backing them up with other ways of consultation.

If meetings are not held during working hours, they may be poorly attended. So ask management if meetings may be held in work time. Women, in particular, may find it difficult to attend union meetings held outside working hours. Many part time workers may have other commitments whatever time a meeting is called.

If you have shift workers in membership you will need to consider holding several meetings at different times so that everybody can attend. Also consider holding smaller departmental or section meetings, rather than meetings of the whole branch.

Ballots

These ensure that everyone has the opportunity of expressing a view and are often the best way to decide whether an offer is acceptable, but are limited as a way of getting information on priorities or more general issues that go beyond a simple 'yes' or 'no'.

Questionnaires

These can be a good means of consulting individual members: everybody can have their say. There is no reason why they shouldn't be used in conjunction with union meetings. They may be distributed and collected at work by stewards and safety reps or, if the workforce is scattered, sent directly to home addresses.

Surveys

Stewards and safety reps can talk to members individually and report back. This is less 'structured' than the questionnaire method, but stewards are given the chance to present some of the ideas and possibilities around any claim or proposals.

Noticeboards

The notice board is the easiest means of keeping members informed. It should be used to notify members of meetings or other events. The notice board is an ideal means of reporting back during the course of negotiations.

Newsletters and mail shots

Newsletters are more time consuming than notice boards, but in a large workplace where the union has facility time, they are an essential and effective means of raising issues and getting the union's message across. They also get to isolated workers. If your organisation has an e-mail system this can be an ideal way to get to everyone quickly and easily.

Checklist

- Is every worker covered by a steward and safety rep? If not, how can you recruit more?
- Do the stewards and safety representatives know who all their members are?
- Are all stewards trained?
- How might union organisation be improved?
- Are you using bargaining proposals or agreements to recruit new members?
- Do you have systems in place to get the views of members?

WHAT IS NEGOTIATING?

Most people think of collective bargaining in relatively simple terms: the trade union meets management and, after some argument, a pay rise is agreed. In practice most negotiations are not about money, but about changes to conditions or working practices, or safe working conditions. Often it will be management who want to make the change.

Most negotiations happen informally. No written claim is lodged, there are not a series of meetings, and the parties may not even think of the process as negotiating. However whenever UNISON representatives and management get together to discuss an issue it is a form of negotiating.

But before entering into negotiations it is worth being aware of what lies behind this process.

Negotiations are a process of exchange, of ongoing dialogue between the employers and the members. It is important to keep that exchange going if there are to be serious negotiations, and progress is to be made towards achieving the union's goals. It benefits both union members and employers that negotiations are carried out efficiently and for an acceptable agreement to be reached. If there is a genuine will to reach an agreement there will always be a need for movement by both sides. Although negotiations may become difficult, the framework for a possible final deal needs to be kept in mind.

The balance between local and national bargaining varies between the different services where UNISON has members. In some cases all pay and conditions are negotiated locally, in others there is national bargaining with pay and conditions agreed centrally. In some services there is a mixture of national and local bargaining.

However even where pay and conditions are negotiated nationally branches are still likely to be involved in discussions with their employer on the way these are implemented or on other issues not covered by the national agreement.

Approaches to negotiating

There are various approaches to negotiating. An effective negotiator will know when to use the appropriate approach, depending on the nature of the negotiations, and the relationship s/he has with the people s/he is negotiating with.

a) Positional bargaining

This is the traditional model that was used by employers and trade unions in the past, and sometimes is still used today. It is also known as win/lose. It is based on setting down a formal claim and defending it rigorously. This can entrench both sides position. Negotiations are seen as a battleground and concessions can be viewed as a sign of weakness. Settlement is usually achieved somewhere in the middle of the bargaining range, depending partly on the balance of power between the parties.

The type of tactics used often in this style of bargaining include:

- extending the time period for negotiations;

- misrepresenting positions or interests with posturing;
- withholding sensitive information such as any weakness in the case;
- making threats or engaging in bluff;
- digging in or walking out, then waiting for movement from the other party;
- never giving without getting;
- conceding little by little.

When negotiators use these tactics they develop methods of behaviour which almost become a game, and as such it is easy for branches to be caught up in this and to believe that this is what bargaining is all about.

Where compromise is reached it is common for it to be unworkable and to leave both parties feeling unsatisfied by the result. This is because neither party has got what it wants and there has been no real attempt to take on board the concerns of the other side.

b) Modernising style bargaining

This became popular in the 1980's and is identified with American management consultants. It is usually combined with attempts to bypass the trade unions. It has been attempted in some of the utilities and private companies where UNISON has members.

This approach is based on consultation rather than negotiations and talks a lot about common goals, reasonableness and common interests, while at the same time stressing the value of the individual. There are rarely hard and fast agreements covering the whole workforce. Often rewards are at management's discretion and can be withdrawn to counter uncooperative behaviour. In practice it is simply another method of management control.

c) Mutual gains/principled negotiating

This has become the accepted way of making real progress to solve problems and maximise the benefits that can be achieved through negotiation. This is also called the win/win approach.

Some experienced negotiators like to view the process of negotiation as being an exercise in mutual problem solving. Thus if the UNISON branch raises a bargaining proposal, the issues are viewed as a 'problem', which the two sides are jointly attempting to solve.

This approach bases itself on identifying as much common ground as possible between the two sides by looking at their interests rather than their formal positions. It also makes it easier to concentrate on issues rather than personalities. This is because it identifies the possibility of making progress on the basis of common interest and therefore stops each side tying itself to antagonistic positions.

By seeking common objectives it is possible to generate options and solutions that benefit both parties, so that any solutions are more workable. This style of bargaining gives much more scope for creativity.

An example might be a claim for more family friendly policies in a



workplace. Instead of simply submitting a list of demands to management, the UNISON negotiators would prepare a bargaining proposal that would highlight the problems that those with parental responsibilities were having, the effect it was having on the employer in terms of morale, staff turnover and sickness absence, and make proposals for a number of areas that should be looked at. While the negotiators will have a clear list of objectives by reconsidering all the issues jointly, more effective or imaginative solutions may be found that would have even better results for the members.

Principled negotiation adopts a more co-operative, problem solving approach which avoids inefficient game playing.

Negotiators seek to get a deal that can be established as a fair outcome which meets their real interests, or if possible, the interests of both parties.

It is not a soft option, but a practical approach which attempts to get achievable working solutions.

Negotiations are seen as a genuine problem solving opportunity. Outcomes that are most satisfactory on both sides are likely to be achieved and achieved at less cost to everyone.

It attempts to improve the outcome of negotiations by accepting what alternatives there are to a negotiated agreement. It gives a firm foundation for negotiating and provides a clear guide when negotiations should be terminated because a better result lies elsewhere. This can be through industrial action or using an outside body such as an arbitrator.

Principled negotiations are NOT about being nice to management, but about seeking to develop appropriate working relations with the people on the other side. Nor are they a weaker option. They lead to more practical results and are less likely to lead to a stalemate where the branch gains nothing.

However, every one's interests be accommodated all of the time. Also, even in the best principled negotiations, some competitive elements may be present. That is why it is important that the trade union side is working as a team to try to make sure that where problems arise, these can be identified and you can at least be aware of them.

Recognise and respond

It is highly unlikely that in a team bargaining situation any of the above approaches would be used in their pure forms. Nevertheless, the emphasis during a part, or even for the duration of a negotiating session, will be based on one of these approaches. Union negotiators should be able to recognise which approach is being used and respond accordingly

If you do have a management whose ideas of negotiation come from a 1950s film then perhaps confronting them with the limitations of their style and suggesting some management training might help produce a change.

Personal negotiating styles

Negotiating styles are as varied as the individual personality. Style is developed with experience, and no one style is necessarily better or superior to any other. A negotiating style should be appropriate to the

issues under consideration, the management negotiators are dealing with, and the circumstances of the negotiations.

Why negotiations fail?

Negotiations fail for a range of reasons, some of which are related to the strategies adopted by the negotiators. It is possible to play yourself into a stalemate with games and bluffs; refusing to make an offer as this may indicate weakness, waiting until the last moment or testing the other side.

However other reasons for negotiations failing include:

- Unrealistic expectations.
- Desire for revenge.
- Distrust of other party/other advisor or personality clashes.
- Failure to communicate interest in offers.
- Inability to decide if an offer is acceptable or has extracted maximum value from the other party.
- Inability of either management or the trade union to identify or resolve the real problems in their discussions.
- Playing games.
- Either the trade union side or the management side negotiators lacking the appropriate authority or feeling restricted by the brief they have been given.
- Focusing on threats of redundancies or industrial action, rather than the issues under negotiation.
- Genuine disagreement about facts, principles or rights.
- Failure by negotiators to keep the membership informed at every stage.

The essence of negotiation is communication and exchange, and it is at least as important to listen carefully and ask questions as it is to present your case well.

Always be aware of the consequences of failure – and make sure that management are aware of them.

Some traps

Although each negotiator should develop his or her own style, there are some common traps to be avoided:

Don't personalise

Taking negotiations personally is generally unhelpful, not least to your own peace of mind: a detached negotiator will achieve better results.

'Personalising' may be used as a 'dirty trick' to disrupt negotiations. Try to ignore personal attacks. You are representing your membership, and if you have consulted properly, personal attacks are an irrelevance. Also do not let your ego get in the way.

However, there is a subtle difference between 'personalising' and taking

account of personalities. Different managers may be amenable to different approaches and it is sensible, if possible, to adapt your style accordingly. Similarly, if the employers have dug themselves into an untenable position, small concessions that don't change the substance of the deal can clinch a good agreement.

Don't be aggressive

It is often thought that 'aggressive negotiating' is an essential ingredient to any good deal. Aggression can be counter-productive and it is much easier to negotiate successfully without using aggression at all.

Aggression is not the same as firm or hard negotiating. Quiet persistence, patience and insistent questioning are more effective than banging the table.

Employers may occasionally use aggression to disrupt negotiations or to attempt to intimidate the other side into agreeing to a bad deal. This tactic may be countered by refusing to meet unless the intimidation stops; or if it is a deliberate attempt to disrupt negotiations, by ignoring it, refusing to rise to the bait and persisting in your own approach. Remember, aggression can be a sign of weakness in negotiation.

Trying to be clever

The negotiating stories of union activists and officers may make good telling, but there is rarely a short-cut to a good deal. Any negotiator who likes to make managers look silly may be pleasantly surprised at how easy this is – but not at the results it produces. At best it is a waste of time and it often results in much greater resistance and problems for the future.

With experience, these dangers are more easily avoided.

Ten steps to effective negotiating

- Make sure what you know what your real objectives are.
- Recognise the different interests of the unions and the employers. Identify where those interests are mutual and start from there
- Try to work from the areas of common agreement and interests rather than on what divides you.
- Use a negotiating style that works for you. It is always better to be as natural as possible.
- Be well prepared. Make sure you are totally familiar with your bargaining proposals and the supporting arguments.
- Keep to a thread. Don't be side-tracked, or lose sight of your objectives. Employers may use 'red herrings' to avoid being pinned down or to prevent the union clinching a good argument.
- Don't get pinned down to an untenable position
- Ask one question at a time and wait for the answer. Asking several questions at once simply enables the employers to choose which one they will answer – and that will probably be the easiest.
- Use silence. Saying nothing is preferable to babbling, especially when attempting to pin down the other side. An embarrassing silence may tempt them into saying more than they intended.
- Really listen to what the employer is saying – not just the words but also the underlying message. Always try to address any concerns they have, or at least relate to them in your response.

THE PRACTICALITIES OF NEGOTIATING

Formulating proposals

Before raising an issue you have to know what you want. Traditionally this has meant drawing up a written claim.

In some circumstances this can be the best way forward as the process of drawing up a claim focuses the branch on what they want to achieve and provides a way of putting this to management in a clear way. The claim also will usually contain supporting arguments and facts. On an issue like pay a written claim can also be a way of highlighting the importance you put on certain issues, such as more help for the lowest paid. It can also help generate support among the members for any campaign you are running.

However a formal claim also restricts your ability to manoeuvre. By focussing on specific demands rather than issues you are often putting management in a position where they can only respond by knocking back your demands altogether, or, at best, trying to meet you half way.

Many negotiators are now moving away from the idea of drawing up standard claims based on a set of demands. Instead they are more likely to raise issues with management as problems that need to be solved, or come up with proposals which they see as a solution to a problem which management needs to address, such as staff retention, or high absenteeism. If management then agrees there is a problem then that becomes the starting point for joint working to resolve it, where you will be able to get your ideas considered. This can be the most effective way of pursuing an issue.

An example might be that your members are concerned over the lack of provision for childcare. You could prepare a claim, based on these concerns, for a workplace nursery. The claim could give all the arguments and management's response will focus on that. Possibly they will say that this is not possible on cost or space grounds and reject the claim.

An alternative approach would have been to lay down the concerns and the effect that a lack of childcare provision is having on staff and the problems this is creating for the employer. The union would then ask for some measures to deal with the problem.

While it is important for the union to have ideas of how the problem can be solved (for example, the workplace nursery) there is no real advantage in asking for this at this stage. Instead, unless the employers flatly deny that there is a problem, they are likely to come up with ideas, these might include childcare allowances or other proposals. Once they are on the table then the union can still raise the possibility of a workplace nursery, but, by getting the employer to look at the issue (the lack of childcare) rather than your proposals (a nursery), the employer is more likely to agree to some kind of solution to the problem.

Raising an issue and reaching agreement

Once the branch has agreed that they want to achieve something through negotiating with management then they have to consider how they will do it.

Often this can be done just by raising the issue at a regular meeting.

If a formal claim or proposal is lodged it is often best to give a verbal presentation outlining the main points and then give management a copy of the claim in writing. If possible the appropriate supporting facts or statistics should be attached. Presenting your bargaining proposals verbally gives the negotiators the chance to state the case clearly, emphasise those aspects they think important and to help clarify any points for the employers.

During formal negotiations, such as where a pay claim has been submitted, management may give a brief initial response and suggest a meeting date at which they will make their offer. An offer made immediately after the claim is suggesting that the employers have already made their minds up and have not really listened to the union at all.

Once the employers have made an offer or some other response, the real negotiating will begin: the two sides have stated their position and the task of reaching an agreement starts. Before responding to the first offer, it is wise to seek an adjournment – or even to agree another meeting altogether – to think carefully about the offer and to consider tactics.

Stages of negotiation

The initial stages of presenting a proposal and making a first offer, especially if it is a pay claim, will tend to be formal and should be characterised by careful listening.

Once these opening positions have been made clear, the real negotiating will begin. If the union simply responds by attacking the management or restating it's position then the negotiations are likely to be short. Instead listen and respond to their concerns.

Often it can be helpful if management do not respond immediately, but instead go away and think about your proposal. A considered response is less likely to amount to a simple 'no', so try not to force the pace unless there is a good reason to do so or you think management are trying to drag things out.

The process of negotiating could be a long process where there is lengthy debate and a lot of information exchanged.

It is essential:

- To take notes at all stages. These can be important later if there is a dispute about that was said or agreed.
- To be clear as to what is being offered or suggested
- To not agree to offers across the table – withdraw and think before reaching agreement over substantive issues. Before final agreement is reached, the members must be consulted.
- To ensure that the negotiators do not disagree with each other during negotiations.

If somebody thinks there is a problem an adjournment should be sought. This is a device whereby both sides withdraw to discuss developments among themselves. They provide an opportunity for a breathing space, for

the team to air any concerns or disagreements they may have among themselves and to assess the progress of the negotiations to discuss a response.

Working parties

This may be a good way of making headway on a problematic issue – but may also be a way of talking the issue away. It is therefore important to draw up the terms of reference and a time limit, to ensure that the working party recommends a solution to the perceived problem, rather than merely investigates it. Working parties may have the beneficial effect of raising expectations and putting pressure on management to deliver something.

Working parties work best when there is already agreement on the principle of how to move forward, but detailed work needs to be given to how it would work. An example might be an acceptance of the need to address equal pay issues through a job evaluation agreement, but a working party might be needed to discuss the implementation of this.

Agreement

In most cases, the final agreement will be subject to consultation with members for acceptance. But there will be certain (rare) occasions where the employers make an offer that is acceptable to the union, without reference back to members. Alternatively, the employers may make an improved offer on condition there is an immediate acceptance. In such circumstances, judgements about the best way to proceed will have to be made.

In any case, be absolutely clear what is being offered: get the main points in writing. It is particularly important to establish how it will be implemented and administered.

Once final agreement is reached, the union should monitor and observe its implementation.

Sharing the information

Once an agreement is reached, it should be reported to the local branch and the regional officer (if the regional officer is not involved in the negotiations).

Information on agreements should also be sent to the Bargaining Support Group at head office. The union's database of agreements can then be built up. By sharing information other members can benefit.

Agreement checklist

- Do not have meetings with management alone.
- Take notes at all stages.
- Be absolutely clear what has been offered, and what has been decided.
- Use adjournments before agreeing to major items.
- Get your members' endorsement before concluding a deal.
- Once the deal is concluded, report it to your regional officer (if the regional officer has not been involved in the negotiations).
- Keep a copy of the agreement on file.

Where no agreement is reached

Sometimes, however good a negotiator you are, the negotiations are clearly heading for a breakdown. If this occurs, it may be helpful to get the regional office involved (if they are not already).

If a stalemate is reached, the stewards may consult the members on the employers' latest position and recommend a rejection of it. However be sure to consider what the consequences of rejection are.

It is always best to avoid a fight that you cannot win. There is no point in posturing or making empty threats. Instead, attempt to negotiate on the merits of the argument or principles. Try to develop sympathy from the users of your services, local politicians and the local press.

Be clear what your alternative is to a negotiated settlement. On the basis of this alternative, have a clear minimum position – this will avoid bad deals.

In other cases the employers will simply refuse to negotiate. The employers should be asked to justify their position. The negotiators can then consider ways of overcoming the objections. If ways round their objections can be found, it will be very difficult for them to still refuse.

Alternatively, the employer may not be able to give a good reason, but stubbornly refuses to give ground. This may indicate that they have not thought out their position and is a sign of weakness. The best response is persistence: by refusing to let the matter drop, the employer will be forced to realise that it will not simply 'go away' and will have to give more thought to their position.

It is important not to simply attack the refusal directly but to explore the reasoning (or lack of it) behind it. Questions will generate answers – simple attacks on the employer's position (however silly it may be) will simply generate resistance.

Scare tactics

A typical response to a pay and conditions claims is that 'any pay rise this year will mean redundancies', or even a threat to close the company down. In the public sector, there may be a threat of contracting the work out.

Such threats may undermine the resolve of both the negotiators, and the members.

The negotiators will have to evaluate the threat, and may ask the management to produce the necessary information to support their statement. One response is to make a great show of concern for the state of the organisation, and make a request for a detailed briefing.

It is particularly important to address the concerns of the membership, who may be alarmed at the threat to their jobs:

Prepare the membership in advance (if possible) for a scare: it may then be met with derision if it has no real basis.

Evaluate the seriousness of the threat: how closely is it connected to the union's claim? Will there be redundancies anyway? Employers may make efforts to 'incorporate' the negotiators into their way of thinking or to reach informal understandings with them. The dangers of this, quite apart from any effect it may have on the negotiators resolve to get the best possible deal for their members, are that it may fatally undermine the members' confidence in their representatives.

Informality

'Corridor meetings' and informal discussions, where the lead negotiators carry out informal talks away from the rest of the team are often a very useful part of the whole negotiating process, especially if talks have got a bit heated or you have reached a stalemate.

Informal meetings can be invaluable in laying groundwork and learning more about the other sides position in a more relaxed environment. But agreement should not be made on an informal basis and any individual negotiator who does meet management in this way should report the details to the main negotiating team.

Don't get drawn into carrying on negotiations in social settings, such as over meals or in a bar. Negotiating and alcohol do not mix.

Late night meetings

Whenever possible, there should be a pre-agreed negotiating timetable, together with jointly agreed arrangements for the timing of meetings. Try to avoid late night meetings. Stop or adjourn, if negotiators get tired. And take proper natural breaks, such as meal times. Remember that some of your team may have childcare or other commitments.

Threats to withdraw the offer

As a way of putting pressure on the union, employers may threaten to withdraw the offer unless it is quickly agreed to. This threat is almost certainly hollow, because once an offer is made, it is clear the money or resources are there to meet it.

Do not agree to an offer until you fully understand it. Deadlines should be resisted, unless the management can give very good reasons for imposing them.

'You must recommend it'

Sometimes managers make offers on the condition that the union negotiators recommend it to their members. There is nothing wrong with

this, but it should only be agreed to if the negotiators think it is the best possible deal they can get. Do not recommend a poor package just in order to get one concession out of management.

Conversely, if the negotiators feel they are near agreement, they may seek to improve the offer slightly by offering to recommend it if it is increased – ‘make it an extra half per cent on pay and we’ll recommend acceptance’.

Divide and rule

This may be attempted either across the negotiating table, or by attempting to buy off sections of the workforce at the expense of others.

Dividing the negotiators. A negotiating team should never disagree between themselves in front of management – differences should be thrashed out in adjournments. Managers may seek to appeal to one or two negotiators and to isolate others. It is common-sense that they should not be allowed to succeed.

Buying off sections of the workforce. If an employer is suffering recruitment/retention difficulties within one section of the workforce, s/he may seek to improve their pay or conditions ahead of other workers. The union should attempt to get any benefits extended to the whole workforce, and refuse to agree to deals which favour one section. This may require a lot of work to persuade that section that if the union stands firm, the benefits can be extended to the workforce as a whole. The recent rise in ‘flexible pay systems’ are designed to give managers the power to increase the pay of problem groups in isolation. These often break equal pay laws.

Sometimes the employers will introduce a proposal that will have a detrimental effect on a minority of members as part of a package which benefits the majority. It is important that negotiators try to separate the two issues. We have a responsibility to try to ensure that employers do not reduce the conditions of one group by trying to offer sweeteners to the majority.

But don’t rule out deals with extra money for the low paid, or other disadvantaged groups. Negotiators may wish to include proposals designed to particularly benefit the low paid, or other disadvantaged groups, in their claim.

Playing one union off against another. The divide and rule tactic may be used particularly in a multi-union environment. Relationships with other unions should be carefully cultivated. It is folly to sabotage goodwill for the sake of a small short-term advantage.

It is particularly important that the multi-union negotiating team follow the rules of holding pre-meetings and presenting a united front during negotiations.

Checklist

- Do not agree to a deal unless you have understood it fully.
- Do not give in to negotiating deadlines, unless there is a very good reason for them.
- Never recommend anything less than the best deal possible.

WHEN NEGOTIATIONS FAIL

It may be that, on occasion, no agreement can be reached. Where this happens, you need to have another look at your position. Do you want to withdraw the proposal meanwhile and perhaps revisit it later? Alternatively you might decide to completely rethink and modify the proposal and then resubmit it. Or you may want to look at the other options available to you.

Disputes procedures

Where it is simply impossible to reach agreement, reference may then be made to a disputes procedure. This may be part of the recognition agreement or may be an agreement in its own right. This will involve registering a 'failure to agree' and may be applied equally to unresolved grievance or disciplinary cases, as well as collective negotiations.

Failure to agree

The options in a disputes procedure are likely to be:

- Further negotiations, perhaps involving full-time officers and /or more senior managers.
- Mediation or arbitration involving a third party,
- Sanctions – such as industrial action by the workforce, or a lockout by the employer, or unilateral changes to terms and conditions by the employer.

Arbitration and mediation

A disputes procedure may include the possibility of inviting an independent third party to assist. This may be a compulsory part of the procedure; or can be adopted if both sides are willing; or is invoked if one side demands it.

There are three main types of outside intervention.

Arbitration

The third party considers the union claim and employer proposals, and makes a recommendation which the parties may be bound to accept. By its nature, arbitration tends to fall between the last two positions adopted by the sides. The arbitrator will be bound to take note of any action taken since this will be indicative of the strength of feeling of the workforce.

Mediation

A mediator will help clarify the issues and may liaise between the parties. The mediator may take an active role in suggesting ways in which the dispute might be solved, but final agreement lies with the two parties.

Pendulum arbitration

An interesting variation on arbitration requires the arbitration not to make a recommendation of their own, which by its nature is likely to be somewhere between the final positions adopted by the two sides. Pendulum arbitration requires the arbitration requires the arbitrator to choose either the employer's final offer or the union's last claim. This, it is argued forces the

two sides closer together, since both sides will seek to be reasonable in order to win arbitration.

If there is no disputes procedure, the union side may suggest calling in a third party, if there is a complete failure to agree.

The most common source for such help is ACAS, an independent body funded by central government. However branches are strongly advised to contact their regional office first.

Industrial action

If negotiations break down, and the possibility of taking some form of industrial action is being considered, it is essential stewards contact their regional office immediately. The regional office will be able to provide appropriate advice both on the various options and the procedures which need to be followed.

Bottom Line

Sometimes however negotiations fail completely and there is no possibility of any further action. These situations are very rare, and by using this guide branches can help avoid this happening.

However a total failure to agree must always be seen as a possibility and it is important, at every stage of negotiations, to look at the consequences of a failure to agree – and make sure that management are also aware of them. Often it means that the members get nothing, relationships with management are soured, and the problems which could have been resolved are still there.

Remember!

- Be persistent-never take 'no' on its own for an answer.
- Find out the reasons behind the refusal.
- Attempt to find ways of meeting those objectives.
- Be aware of the disputes procedure – or the absence of one.
- Ensure that the regional office is aware of any likely breakdown in negotiations.

APPENDIX

THE ORGANISING APPROACH

The organising approach means that we work towards building a union which is founded on membership participation, which has high levels of union activity within workplaces, and which focuses on doing things with members rather than doing things for them.

Organising therefore includes:

- members involved in identifying issues, finding solutions and dealing with problems
- many more active, confident and trained stewards who are local to the workplace and properly representative
- working collectively, where representatives say ‘what can we do about it’ rather than ‘leave it with me and I’ll sort it out’.
- a much greater proportion of problems dealt with in the workplace or locally because they are picked up before becoming a major issue
- members who recruit because they feel good about the union
- more effective negotiation and representation because of our collective strength
- branches which establish policy and take decisions based on the views of the members
- trade unionism that has a political consciousness and is grounded in collective action and not individual and/or legal action.

THE ORGANISING BRANCH

- develops collective organisation amongst all its members – it puts members and their interests at the heart of everything it does and works with its members rather than does things for them.
- belongs to its members – it reflects the priorities and concerns of the majority, listens to its members, and actively seeks their views through workplace contacts, discussion and regular communication.
- knows where its members are – it maps its members according to employer, workplace, department, shift and broad occupational group, and can estimate recruitment potential and members of other unions according to the same criteria.
- involves its members in collective bargaining – it puts members concerns at the top of the negotiating agenda, keeps them informed about negotiations and discussions with its employers, explains the process and advises about options, consults on the union's responses, and takes the members wishes into account.
- builds membership and organisation – it improves its membership density at workplaces and with employers where we currently organise, and recruits and secures recognition with new workplaces and employers, including those in the private, charitable and voluntary sector.
- organises an effective team of stewards and workplace representatives – it aims to have an elected, trained, accredited steward in every department, workplace and employer where there are members, (and for defined groups of members in larger departments and workplaces), and to have an effective network of safety representatives.
- supports its stewards and elected officers – it offers regular training and mentoring, provides access to advice, information and opportunities to check out ideas, and facilitates team working.
- develops the next generation of stewards, officers and safety representatives – it actively identifies and develops potential stewards and officers by encouraging them to play small but valuable roles in their workplace or in the branch, enabling them to develop these, giving support and advice, and taking time out to explain, train and mentor.
- supports members in resolving individual problems at work – it trains stewards in grievances and disciplinary matters and encourages them to involve members in the process by explaining procedures, advising on options, assisting them in expressing themselves clearly, and helping them in taking effective decisions.
- promotes a participatory democracy – it keeps members regularly informed of the internal decision-making process within the branch, seeks to maximise the numbers of individuals holding elected positions, enables as many members as possible to participate in elections and actively seeks members views when establishing policy or taking decisions.

FURTHER INFORMATION

UNISON's Bargaining Support Unit produce a number of guides and information sheets on negotiating issues. It also publishes a monthly newsheet called 'Bargaining Update'. This gives information and statistics that are likely to be of use to local negotiators. To get on the mailing list please write to: Bargaining Support Group, UNISON, 1 Mabledon Place, London WC1H 9AJ giving your address and membership number.

Much of this information can also be found on UNISON's website **www.unison.org.uk**

For information on training courses on negotiating and other related issues please contact your regional education officer.

If you have any specific problems where you need help or advice then your branch secretary should contact your regional officer who may be able to assist.

And do not forget UNISON Direct – UNISON's phone line service specially dedicated to providing an information and advice service for members. It has a special stewards help-line which can be contacted on 0800 0923 924 between 6:00am and midnight Monday to Friday and 9:00am to 4:00pm on Saturday.

Your comments

UNISON welcomes comments on this booklet.
Please either write to

The Bargaining Support Group
UNISON,
1 Mabledon Place, London
WC1H 9AJ or

e-mail: bsg@unison.co.uk

For help when you need it call
UNISON *direct* FREEPHONE
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