

Section 5: Collective Bargaining

Overview

In this section, you will learn:

- the nature and variations of collective bargaining
- what workers and their employers negotiate
- the stages involved in the collective bargaining process
- the meaning of the following terms: arbitrator, collective bargaining, common law, conciliator, cost of living allowance, grievance procedure, lockout, recall procedures, seniority, statute law, work to rule

Who will negotiate?

When labour organizes itself into a union, workers usually delegate their bargaining power to their elected representatives who form the union executive. This is not always so. Ten years after Ted Lindsay's attempt, hockey players eventually succeeded in forming a union – the National Hockey League Players' Association (NLHPA) – in June of 1967.



Hockey Star Wars Episode 3: Orr and the Eagle

Prologue: Individuals may bargain individually in the labour market, or they may join a trade union and bargain collectively as one. A third option exists: hire an agent to bargain for you with your employer. Bobby Orr was the first to do this in 1963. It brought revolutionary change to the sport.

It was said of him that there were many players in the NHL who couldn't pass the puck as well as he could. In fact, Boston Bruins General Manager Lynn Patrick maintained he could have played for the Bruins that year without embarrassing himself at all. He was referring to a 12-year-old boy by the name of Bobby Orr.

In 1962, Boston signed Orr to a standard C-form contract at the age of 14. His signing bonus of \$2,800 included a \$900 stucco job on the family house. It meant he was Boston's property for the rest of his playing days. The next summer, Orr's father met Allan Eagleson, a Toronto lawyer, who did a lot of legal work for many Leaf players. He asked him

for advice about his son turning pro. Eagleson agreed to represent him, and so began a relationship that helped change the game of hockey into the business of hockey.

In 1965, Orr made the cover of *Maclean's* magazine before he played a game in the NHL. Toronto unsuccessfully offered the Bruins \$1.5 million for his professional rights. Despite his obvious skill, Boston only offered him a two-year contract at \$10,250 — including bonuses. Eagleson was outraged. He announced Orr would likely be attending university and play for the Canadian Olympic team rather than turn pro. The fans and media in Boston went ballistic, and by September, the Bruins had come up with a more appealing figure: a \$25,000 signing bonus, \$25,000 the first year, and \$30,000 for a second year. No rookie had ever received such a generous package.

Until Orr came along, Eagleson had done legal work for hockey players but had had little success negotiating contracts. He lost no time turning Orr into a corporation, Bobby Orr Enterprises Ltd., and negotiated sponsorship contracts with Standard Brands, Coca-Cola, General Foods, and General Motors. No longer would most hockey players run their own business affairs and bargain for themselves. The player-agent relationship had come to hockey.

Eagleson's hockey-playing friends in Toronto, in particular Bob Baun, Carl Brewer, and Bob Pulford, had been spending hours with Eagleson and his law partners discussing unions and how to form one. Eagleson's association with Bobby Orr opened many doors for him with other players. By early 1967, he was criss-crossing North America selling the idea of resurrecting the players' association. The players didn't need much selling. He pledged the players to secrecy, and within a few months Eagleson was able to negotiate with the League on behalf of all but a handful of the 120 players in the NHL. In June of 1967, 10 years after Ted Lindsay had tried, Eagleson announced the formation of the National Hockey League Players' Association. This time it met with little resistance from the owners, who claimed they knew what was going on all the time and had just decided that its time had come.

Source: Adapted from *Net Worth: Exploding the Myths of Pro Hockey* by David Cruise and Alison Griffiths. Toronto: Penguin Books, 1991.



Activity 5.1

1. What would be the advantages and disadvantages of completely turning over one's business affairs to someone else as Bobby Orr did with Alan Eagleson?
2. Create a list of hypotheses to explain why the owners accepted the NHL Players' Association in 1967 when they fought against it so fiercely just 10 years before. [Note: A hypothesis is a possible explanation or theory that one tries to prove or disprove. Its purpose is to help guide clear and careful examination of the truth. A hypothesis is not considered to be true from the beginning.]

As members of the NHLPA, individual players retained the right to improve upon the minimum salary negotiated by the Association. This arrangement allowed those who were thought to be the “superstars” to negotiate for more. At the same time, the salaries, working conditions, and benefits of the majority were protected.

For the members of most unions, salaries and conditions of work apply to all members equally. Individuals cannot bargain for different treatment from their employer. This does not mean that everyone receives the same wage or salary. It does mean that everyone’s salary is based on easily compared criteria such as qualifications, years of experience (**seniority**), or position held.

How does collective bargaining work?

Upon the formation of a union, elections are held to form the bargaining unit’s executive that will be responsible for negotiating a contract. The executive may appoint a bargaining committee or hire professional negotiators to assist, but control remains with the executive and union members. The executive and its negotiators will prepare a “brief” or set of proposals that the employer must discuss but need not accept. What they bargain for will depend on many things: the needs of the members they represent; what others doing a similar job receive; the profitability of the company they work for; general economic conditions; and so forth. The union and employer exchange proposals and negotiations begin.

The law requires the employer to meet with representatives of the group but not necessarily to agree to anything in particular. The employer may offer a counter proposal or simply nothing. In fact, in the highly competitive global economy, employers may use **collective bargaining** to attempt to reduce wages or change benefits or working conditions to cut costs to remain competitive. The old conditions of employment usually remain in place until the new contract is signed.

Both sides continue to meet to try to achieve compromises that will form the new agreement. The law requires them to bargain “in good faith.” This means there must be a full and honest discussion of all the issues in dispute. Employers are not permitted to take any action against anyone who supports the union position. Employers cannot change existing wage rates or conditions of work while bargaining continues. Workers must not use violence or work slowdowns to apply pressure on the employer.

If the two sides cannot reach an agreement, the law usually requires them to use the services of a third party. A **conciliator** will identify issues and propose alternatives to help the parties get an agreement. Alternatively, both parties could agree to give the power to resolve issues to an **arbitrator** who makes a decision both sides must accept.

Instead of arbitration, either side has the power to stop production. The employer can do it by a **lockout**. Employees are literally locked out of the workplace. Union members can use different tactics ranging from **work to rule** or work slowdown, where only work specifically specified by contract is done, to a full strike, where all union members refuse to perform any work.

What may be negotiated?

Collective bargaining begins with the assumption that only the law limits the employer's decision-making power. This includes laws that apply to the collective bargaining process and **common** and **statute laws**, such as employment standards legislation, that apply to all workers. Collective bargaining attempts to improve on these minimum acceptable wage rates and conditions of work. In doing so, it limits management's right to make decisions. Most collective agreements contain a Management Rights clause that reserves for management the right to decide on all matters not agreed to in the negotiated settlement.

Items that labour tries to negotiate with employers include:

- wages and salaries, which include a schedule of increases based on position and experience (a **cost of living allowance** that automatically increases wage rates when there is inflation may also be negotiated)
- protection against unjust discipline or dismissal
- a **grievance procedure** that will allow workers who feel they have not been treated fairly by the company or union to voice a protest or defend themselves
- hours of work and overtime policies and remuneration
- workload and the rate at which the work is to be done
- seniority clauses that detail promotion, layoff, and **recall procedures**
- health and safety conditions
- harassment policy and procedures
- allowances for weekend shifts and jobs with additional responsibility
- transfers and promotion policy, which determines the power the worker has to seek or refuse a transfer and the degree to which transfers and promotions are based on seniority or other factors

- policies that relate to the employer's willingness to grant absences from work with or without pay for things such as union activities, retraining programmes, conventions or conferences, or personal reasons (for example, parental leave or death in the family)
- lunch and rest periods
- vacation, including number of weeks and rate of vacation pay
- tools, licences, and clothing whose cost may be paid by either the worker or employer or some combination of the two
- benefits package that could include partial or total payment of things such as premiums for health, life, and disability insurance; and pension and dental plans



Activity 5.2: Collective Bargaining Exercise

The following activity will give you a sense of what the collective bargaining process can be like. The exercise may be completed alone or in a group. Since it is intended to give you an experience of a process, don't read ahead before making your decisions. Take it step by step the first time, and if you think you've learned how to do it better, go through it a second time from the start.

Background

Assume that you are a negotiator for your union. The 100 workers you represent are, on average, 34 years of age, 60% are male, 75% are married, and 70% have children. The company you are working for has done reasonably well in the past year in terms of profit, and the general economy and the future look good and inflation is low. The company has several competitors producing similar products.

Your present contract, which is due to expire in three months, pays, on average, \$14 an hour with overtime at \$21 per hour after 40 hours of work per week. It provides a half-hour lunch period plus two 15-minute breaks for each eight-hour shift. You get two weeks paid vacation per year, which increases to three weeks after 10 years of service, and your employer pays half the cost of your health, dental, and life insurance. The current contract cost to your employer for wages and all other benefits averages \$20 per hour worked. In the year since you signed your last contract, inflation – the general cost of living – has increased 2%, and the increase in the total cost to competitors in your industry of collective bargaining agreements has averaged 3%.

Before you draw up your initial bargaining position, you survey your membership to determine the changes your membership would most value.

As they are relatively young, married, and with families, their greatest need is income and next is health and life insurance. Other items would be welcome but are less significant. Some items will be harder to negotiate since they cost more; others may be very popular with your members but actually cost the employer little. Negotiators who are able to accurately identify highly popular but low-cost items have the best chance to negotiate the best contract.

You can try to negotiate a change in any of the provisions in Figure 5.1. In doing so, you should try to maximize the gain for the workers you represent. The second column of Figure 5.1 gives the employer's cost in dollars per hour worked of each negotiable item. It will help you determine what will be harder or easier to negotiate and the total cost of the agreement to your employer. The two right-hand columns of Figure 5.1 have been completed as an example only, not to suggest an opening bargaining position.

Figure 5.1: Increased hourly cost to employer: An example			
Negotiable item	Cost/hour to employer	Change sought	Increased cost/hour to employer
Wages	whatever is negotiated	\$2.00	\$ 2.00
Overtime	1/2 of hourly increase	\$2.00	1.00
Lunch/Breaks	1 cent/ minute	15 min.	.15
Vacation	10 cents/extra day	2 days	.20
Insurance	5 cents/hour for each percentage point increase	5%	<u>.25</u>
Increased hourly cost to employer			\$3.60

Step 1: Prepare your Bargaining Position

You can ask for any change you like; however, the greater the cost of your position to your employer, the less likely it is that an agreement will be achieved. Decide your position and work out its Increased hourly cost to employer using the information in Figure 5.1. Then use the following formula to determine the Percentage increase to employer of the results of your bargaining position. The numbers from the example in Figure 5.1 have been used to illustrate the calculation:

$$\frac{\text{Increased hourly cost to employer}}{\text{Present labour cost/hour}} \times 100 = \frac{3.60 \times 100}{20} = 18\%$$

Step 2: Determine the Results of Bargaining

The following process will interpret the results of negotiations based on the calculation you made. It simulates the risk and logic involved in labour negotiations. The more you seek, the greater the risk of work disruption with its costs.

- a) If the Percentage increase to employer is more than 15%, you and your employer are so far apart that when your old contract expires your employer locks you out for two weeks for each percentage point your bargaining position exceeds 15%. To determine the length of a lockout (or a strike), always round up the Percentage Increase to the Employer. (For example, had the increase been 17.01%, you would round up to 18%.)

In our example, 18% means a six-week lockout or strike. After the lockout, both sides agree to appoint an arbitrator to resolve the dispute. In so doing, both sides expose themselves to a certain amount of risk since they must accept the arbitrator's decision. That risk is represented in this exercise by rolling a die. If a 6 is rolled, roll again, then use the Settlement Table to determine the cost of the settlement to the employer.

Figure 5.2: Settlement table	
Roll a.....	You get this percentage of your position.
5.....	100%
4.....	80%
3.....	60%
2.....	40%
1.....	20%

Had you, for example, rolled a 3, the cost of the settlement to the employer (or gain to employees) would have been 60% of 18%, which is 10.8%.

- b) If the Percentage increase to employer is between 10 and 15%, your employer offers to settle for a 2% increase distributed between the negotiable items any way you wish. A conciliator is called in to try to help the parties negotiate an agreement. Unlike an arbitrator, a conciliator does not have the power to impose a settlement. In this case, she cannot help you reach a compromise, and your members go on strike for one week for each percentage point your offer exceeds 10%. (Remember to round up!) After the strike, you and your employer agree to appoint an arbitrator with the power to establish a settlement by rolling a die and applying the Settlement Table.
- c) If the Percentage increase to employer you propose is less than 10% but more than 5%, you strike for one day for each percentage point your offer exceeds 5% but then agree to a settlement that is worth 5% + (Percentage increase to employer - 7%). For example, if your Percentage increase to employer is 9% (as calculated in Step 1), you would strike for four days to reach a settlement worth an increase of 5 + (9-7) = 7%.
- d) If the Percentage increase to employer is 5% or less, the employer agrees, and you do not need to roll the die.

Step 3: Calculating Benefits and Costs

a) Net Gain/Loss Per Employee

The benefits from negotiations depend on the increase in value of the contract you negotiated in Step 2. As stated in the Background at the beginning of this activity,

“The current contract cost to your employer for wages and all other benefits averages \$20 per hour worked.” Assume the average full-time employee worked the equivalent of 2,000 hours and, therefore, received \$40,000 in wages and benefits before negotiations began. Calculate the total benefit of the settlement per employee by multiplying \$40,000 by the increase you negotiated in Step 2. Using the previous example, you sought an 18% increase that resulted in a six-week work disruption and a final settlement of 10.8%. The benefits of your new contract over its first year are:

$$\$40,000 \times 10.8\% = \$4,320$$

Now you have to determine any costs of negotiation. The cost of negotiations consists of income lost from a lockout or strike. This cost is equal to your labour cost/hour before negotiations (\$20) multiplied by the length of time you were out. Assume each employee loses 40 hours of work for each week of work disruption. In our example, the cost of a six-week strike to each employee would be:

$$40 \text{ hours/week} \times 6 \text{ weeks} \times \$20 = \$4,800$$

Deduct total costs from total benefits of negotiation to determine Net gain/loss per employee:

$$\$4,320 - \$4,800 = \text{loss of } \$480$$

b) Net Cost to Employer

Since the activity indicates that you were bargaining for 100 employees, calculate the increased cost of the new contract to the employer using this formula:

$$\text{Original cost/employee} \times \text{the negotiated increase} \times 100$$

In the example used, this would work out to be:

$$\$40,000 \times 10.8\% \times 100 = \$432,000$$

It should be noted that this cost does *not* include any costs associated with lost production, which may even exceed the increase in labour cost.

c) Long-Term Costs and Benefits

If your negotiations, like the example, included a work stoppage of any type, costs may exceed benefits for both the employer and the employee. Why then would workers strike? The improved wage and benefit levels won by a strike most often become the starting point for future negotiations. The benefits, at least for the employees, are long-term, whereas the costs are short-term. Employees and employers may also try to avoid the costs of a work stoppage by negotiating multi-year contracts.

Calculate the long-term net gain per employee if the contract you negotiated lasted not just one but three years. Using our example, this would work out as follows:

$$(\text{loss } \$480) + \$4,320 + \$4,320 = \$8,160$$

Glossary

Arbitrator: A third party who is appointed and given the power to resolve a labour dispute by determining what the settlement will be.

Collective bargaining: The process in which a union negotiates the terms and conditions under which its members will work for an employer.

Common law: Usual legal practice as determined by centuries of use based on judicial interpretation of cases.

Conciliator: A third party who is appointed to help labour and management resolve their differences to successfully negotiate a contract.

Cost of living allowance (COLA): Some collective agreements include this item, which is designed to protect workers' income from inflation by automatically increasing wage rates by the rate of inflation.

Grievance procedure: The process for resolving disputes between the union and the employer, between employees, or between the union and its members.

Lockout: When a labour contract has expired and the employer closes the place of work to bring pressure on employees to sign a new contract. It is the equivalent of a strike against employees by the employer.

Recall procedures: Rules that determine the order in which employees who have been laid off shall return to work.

Seniority: Years of service as measured by length of employment that is often used to help determine salary, benefits, promotions, and so forth due to the worker.

Statute law: Law made and subject to constant revision by legislatures. Although it must respect constitutional and human rights legislation, it is most dependent on political and ideological pressures.

Work to rule: A negotiating tactic used by workers that involves doing only what is demanded in the work contract. Since no work contract can detail ahead of time all the specific work to be done, work to rule usually means a work slowdown or some work will not be completed.

