



## **31.1 PAST NEGOTIATIONS INFORMING FUTURE NEGOTIATIONS**

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Wesley B. Rayner, Mike Rayner, James G. Knight, and Brian P. MacDonald

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#### **Chapter 31 Preparing for the Next Round of Collective Bargaining**

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Effective negotiators both employers and unions will maintain well organized files from each round of bargaining. The files should particularly focus on two aspects of bargaining. First, in terms of language that is in the collective agreement, whether longstanding or newly negotiated, there should be careful notes kept of any representations made during the course of bargaining or any examples that were discussed at the table. In the ensuing interpretation and application of the collective agreement, such ancillary information should be useful from at least a practical standpoint in resolving issues that arise. It may also prove to be important from a legal standpoint in support of arguments related to ambiguity and estoppel. As well, if there are issues with the language, what was said at a previous round of bargaining will inform bargaining at the ensuing round.

The second aspect worthy of focus in a negotiation file concerns proposals that were advanced but either not accepted or significantly modified. The focus should be on proposals made as well as proposals received from the other party. Proposals that are unsuccessful in one round should be pursued in subsequent rounds of negotiations, assuming they were representing true bargaining objectives and were not simply advanced for tactical reasons.

As such, even as a party is working on the details of negotiating an agreement or implementing an agreement once negotiated, it should keep in mind important points that will make the process better and easier or at least more effective the next time around.

First, based on the experience of the current negotiations, each party should have in mind what it needs to do at an early stage and throughout the operation of the newly negotiated collective agreement to prepare for the next round of bargaining.

Second, a de-briefing session about process is helpful immediately following the conclusion of the negotiations to determine what went well and what should be improved. Depending on the extent to which the parties are acting in a cooperative manner, the de-briefing session may be particularly useful if it is a joint meeting. Almost any bargaining process can be streamlined and made more effective. A better process likely will lead to a more satisfactory result for both sides. This may be the best time to consider whether the parties could move away from traditional positional bargaining and more towards mutual gains bargaining.

Third, in addition to examining process, the parties should closely examine the substantive results that were

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achieved again at least internally and perhaps working cooperatively together. Both in terms of proposals that were successful and perhaps more importantly with proposals that failed to gain traction, it is helpful to understand what leads to a successful resolution and why some proposals fail, especially if they are reasonable and should have a positive impact.

A critical examination of negotiations shortly after conclusion should assist both parties in helping to ensure that the next round of collective bargaining is more productive from a process standpoint and leads to more favourable substantive results.

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