

# 美国集体协商的合法程序

## The Legal Process of Collective Bargaining In America

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# U.S. National Labor Policy

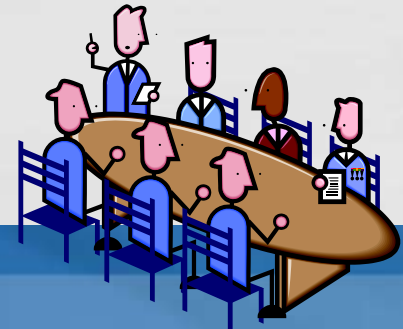
## 美国劳工政策

- Protect Union and concerted activity  
保护工会和协调行动
- Promote harmonious labor relations  
促进和谐的劳工关系
- Promote collective bargaining  
促进集体协商谈判
- Discourage work stoppages/slowdowns  
阻止工人停工和怠工
- Promote resolution of day to day disputes through:  
促进日常纠纷的解决通过以下途径：
- Negotiation  
协商
- Mediation  
调解
- Arbitration  
仲裁



# History of Collective Bargaining (美国集体谈判的历史背景)

- Collective negotiations have existed since the rise of trade unions during the 1700s. 自从18世纪以来，集体谈判存在。
- The term “collective bargaining” was first used in the middle of 1891 by economic theorist Beatrice Webb. 1891年，Beatrice Webb，一位经济理论专家，杜撰出了“集体谈判”这个专门术语。
- Collective Bargaining legislation was enacted for private sector employees in 1935 and Public Sector Employees in 1947。集体谈判权立法1935年（保护私利行业工人的权利）被发布了，1947年，国营的工人得了同样的保护。



# The Dynamics of Collective Bargaining

## 集体谈判的动态

- When an individual negotiates with an employer he/she: 一位工人独立地和雇主协商的时候：
  - Lacks the bargaining strength with financially powerful employer 会碰到“缺乏谈判实力”的问题
  - Lacks the same negotiation knowledge of the employer 会碰到知识差距的问题
- When a Union collectively bargains on behalf of all employees: 工会代表工人的时候：
  - They have greater bargaining power 谈判实力强大
  - They have greater negotiating skills 协商能力更明确

# The Roles of Management Unions and Government In Collective Bargaining

## 集体谈判：政府，资方，和劳方的角色

- Management, Labor and Government act independently of each other : 资方，劳方，和政府相互独立：
  - Unions sole responsibility is to represent the workers。工会为一个目标是带包工人。
  - Employers sole responsibility is to maximize productivity and profits。雇主针对利润的最大化。
  - Government acts as referee between the Union and Employer by: 政府作为“裁判”。
    - Enforcing the laws governing employer/union conduct 执行有关法规。
    - Overseeing elections when a union seeks to represent employees 负责工会领袖的选举管理。



# Employee Protection Under Laws vs. Worker Protection Under a Collective Bargaining Agreement

## 工人维权：法律 vs 集体谈判

- Advantages of Labor laws 劳动法的好处。。。
  - Protect employees uniformly 均匀地保护工人权利
  - The laws are enforced in Courts and Government Agencies 法律被法院，政府有关部门执行
  - Unions can enforce labor laws on behalf of workers 工会也能执行有关法规



# Employee Protection Under Laws vs. Worker Protection Under a Collective Bargaining Agreement

- But...但是。。。
  - It takes years to enforce laws in court, but only a few months in arbitration 执行法律的过程很长。
  - Union contracts cannot be changed without further negotiation. 工会合同不可改变（工人，资方都要重新通过集体谈判）。
  - When unions negotiate worker protection it unifies and educates the workers 工人通过集体谈判的过程能得到新的知识，这个过程也能提高他们的团结性。



# DUTY OF FAIR REPRESENTATION

公平代表的责任





# Duty of Fair Representation Defined

## 公平代表的定义

When a Union secures the right to represent a group of employees, the law imposes an obligation on the Union to treat all their members equally and not to show favoritism or discriminate based on any individual employees' race, sex, age and or religion

当工会获得代表保护一群员工的权利时,在法律规定的义务下,工会需平等对待所有成员,不偏待或歧视任何员工的种族、性别、年龄、或宗教



# Components of the Duty of Fair Representation 公平代表责任的构成

➤ The Union must fairly represent all employees

工会必须公平代表所有雇员

➤ In contract negotiations

在合同协商中

➤ Grievance negotiations

在申诉协商中

➤ In carrying out their responsibilities they cannot act arbitrarily, capriciously, discriminatorily or in bad faith

在履行他们的责任时他们不能采取行动随意、任意、歧视地或不诚实

# DUTY TO BARGAIN IN GOOD FAITH

真诚协商的责任



# Bargaining In Good Faith Defined

## 真诚协商的定义

Good faith negotiations means to meet at reasonable times and places, for the purpose of discussing wages, hours, and other conditions of employment, with a bona fide intent of reaching an agreement if an agreement is possible. Good faith bargaining does not necessarily require either party to make concessions, but failure of a party to make any concessions is suspect.

真诚协商意味着满足合理的时间地点,以讨论工资、工作小时和其他雇佣条件为目的,在有可能达成协议的基础上真正意图去达成协议.真诚协商不一定要任何一方作出让步,但失败的一方作出的任何让步是不可信的。

# Components of Good Faith Bargaining

## 真诚协商的构成

**The Employer and Union must:\***

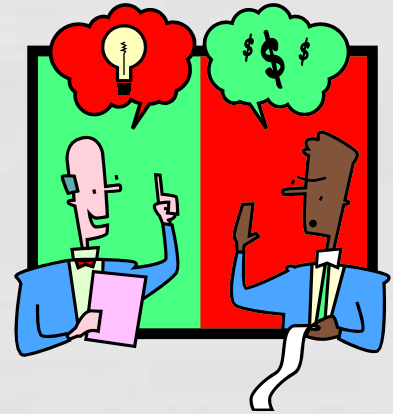
**雇主和工会必须**

- Discuss mandatory subjects  
讨论强制的主题
- Meet at reasonable times and locations  
在合理的时间和地点进行会议
- Provide information needed by union to negotiate  
提供给工会进行协商所需要的信息
- Execute contract when agreement is reached  
当协议达成时,执行协议



# Mandatory Subjects of Bargaining\*强制的协商主题

- Wages  
工资
- Hours  
工作小时
- Working Conditions  
工作条件
- For current employees  
对现任雇员



# Examples of Bad Faith Bargaining


## 不真诚协商的例子

- Failing to disclose, or delay provision of, requested information.  
没有透露,或者拖延所需要提供的信息。
- Imposing preconditions on the willingness to meet and negotiate  
强加于愿意满足和谈判的前提条件
- Failing to meet at reasonable times (and locations), including delaying tactics designed to force an impasse  
未能在合理的时间 (和地点)进行会议, 包括采用拖延战术造成谈判僵局
- Presenting new proposals after the negotiations have commenced  
在协议达成后再提出新的提议推翻协议



# Examples of Bad Faith Bargaining

## 不真诚协商的例子

- Submitting new issues after the parties have reached agreement  
在双方都达成一致后提出新的问题
- Reneging on commitments or agreements reached in the course of negotiations  
违背承诺或协商时所达成的谈判
- Rejecting proposals without explanation  
拒绝提案并不提供任何理由 
- Failure to make even one concession  
失败地做出至少一项让步



# Examples of Bad Faith Bargaining

## 不真诚谈判的例子

- Proposals to give the employer unfettered discretion to determine all wage and benefit increases;  
提出建议给予雇主不受约束的自由裁量权来决定所有工资和福利的增长
- Bypassing the union in negotiations and dealing directly with the employees; and  
在谈判中绕过工会直接与员工进行接触
- Committing unfair labor practices during the negotiations or otherwise demonstrating animosity against the union.  
在谈判期间进行不公平劳工行为或者表明反对工会的敌意



# Beginning The Bargaining Process

## 谈判过程的开始



# When Collective Bargaining Commences

## 当集体谈判开始时

- The parties must be represented in negotiations by persons with authority to execute a contract.

双方都被要求提交他们的提议 ( 最好是书面形式 )

- The parties must be willing to meaningfully discuss any topic related to wages, hours and working conditions.

双方必须愿意真正讨论任何相关的工资、工作时间和工作条件等话题。



- Each side has an obligation to explain and justify their proposals, and, be afforded an opportunity to respond to the other's proposals.

每一方都有责任来解释和证明他们的提案,而且提供一个机会来回应对方的提案。

# When a Contact Has Been Reached

## 当合同达成一致的时候



- When a final agreement is reached the contract must be executed in writing  
当最终协议合同达成必须以书面形式执行
- Copies of the executed agreement must be distributed to each employee  
执行合同的副本必须分发给每个员工

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