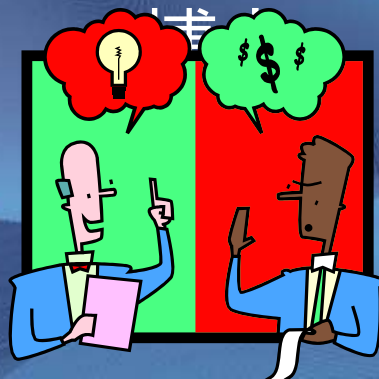


2013海外法律论坛第三十讲

U.S. Collective Bargaining and Negotiation Laws - What works and what doesn't...

主讲人：Joshua E. Bienstock, Esq.

主持人：吴文芳 上海财经大学法学院讲师



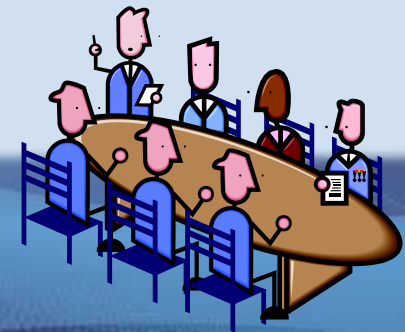
Our National Labor Policy 我们国家的劳工政策

- Protect Union and concerted activity 保护工会和协调一致的活动
- Promote harmonious labor relations 促进和谐劳动关系
- Promote collective bargaining 促进集体谈判
- Discourage work stoppages/slowdowns 减少停工/减速
- Promote resolution of day to day disputes through: 促进日常纠纷通过以下解决:
 - Negotiation 协商
 - Mediation 调解
 - Arbitration 仲裁



Preface前言

- The laws are intended to promote union organizing and collective bargaining 法律的目的是促进组织工会和集体谈判
- Practical Considerations.. 实际问题. .
 - The process depends on the goodwill and cooperation of both sides; For the most part the process works! It becomes a more difficult process when one or both sides fail to live up to the spirit of the laws of collective bargaining. 这个过程取决于双方的友好与合作;在大多数情况下这个过程起作用了!当一方或双方未能履行集体谈判的法律的精神时, 这会让这个过程变得更艰难。
 - The Government (National Labor Relations Board) and the courts do intervene in those cases where one or both parties are bargaining in bad faith and they do effectively enforce the laws!当一方或双方在不真诚的情况下进行谈判时, 政府(国家劳工关系局)和法院必须做干预让他们有效地执行这些法律!



Section 1第一节

Principle of Good Faith Bargaining and Obligation to Disclose Information 真诚谈判和披露信息的义务



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

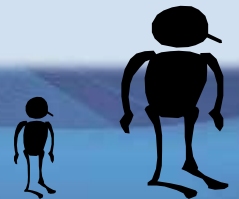
- The Employer is required to supply information/data needed to negotiate a labor contract 雇主必须提供需要协商劳动合同中所包含的信息/数据
- The parties are expected to present proposals and to explain them to the other party 双方预计将提出建议和向另一方解释
- Practical Considerations...实际问题...
 - There can be delays before the employer provides the information. 在向雇主提供这些信息以前这些信息可能延迟
 - Usually employers comply with information requests because it is in their interest to facilitate the negotiations 通常雇主会遵守这些信息的请求因为这与他们的谈判利益相一致



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- Parties must meet at reasonable times and locations
双方必须在合理的时间和地点会见
- Practical Considerations...实际问题...
 - There are disagreements about scheduling and location of the meetings, often causing delays in negotiation. 关于会议的时间和地点的安排有分歧会经常导致谈判的拖延。
 - But in most instances the parties agree to meet at their respective facilities on an alternating basis or at a neutral location 但是在大多数情况下,各方同意在交流的基础上或在一个中立的位置双方选择一个他们方便的时间和地点



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- Parties must meaningfully discuss wages hours and working conditions 双方必须有意义地讨论工资小时和工作条件
- Practical Considerations...实际问题...
 - The employer is not required to discuss the rights and interests of retired employees. 雇主不被要求讨论已退休员工的权利和利益
 - The parties must discuss the issues in a meaningful, positive and constructive way. 双方必须在一个有意义, 积极和有建设性的方式上讨论问题
 - There is no requirement that the parties reach agreement on anything. 没有要求让双方要达成任何协议



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- The law requires that the employer disclose their financial records to the union if they assert that they “cannot afford to pay the union demands” 法律要求雇主要提供他们的财务信息给工会，如果雇主坚持称他们无法支付工会所提出的要求
- Practical Considerations...实际问题...
 - The employer can point out that 雇主可以指出
 - other employers have gone out of business paying such demands, 其他雇主支付这样的需求已经破产了
 - they feel the demands are excessive and could imperil the business, 他们觉得这样的需求超出了他们的能力，会影响到他们的生意
 - in their “opinion” or in their preference the unions economic demand are unrealistic. 在这样的意见下，他们认为工会的经济需求是不现实的



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- The union and employer must maintain the status quo during the negotiations 工会和雇主谈判期间必须保持现状
- Practical Considerations...实际问题...
 - From time to time the employer makes surreptitious wage and benefit increases to employees during negotiations. 不时会有雇主在谈判中秘密地增加员工的工资和福利。



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- Employer cannot threaten to close the facility 雇主不能威胁和关闭设施
- Practical Considerations...实际问题...
 - The employer can close the facility. 雇主能够关闭设施
 - The employer cannot move its facility to avoid the union 雇主不能移动设施去阻止工会



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- The Employer cannot engage in “surface bargaining” (going through the motions of negotiating with no intent to reach an agreement)
- 用人单位不能参与“表面讨价还价”(在走过场的谈判没有意图达成协议)
- Practical Considerations...实际问题...
 - The Employer can bargain “hard” (refusing to make any concessions as long as their intent is to reach an agreement if the union fully acquiesces). 雇主可以“硬”谈判(拒绝做出任何让步,只要他们的目的是达成协议,并让工会完全默认)。



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- The Employer is not allowed to engage in spying or surveillance of union activities 雇主不允许从事间谍活动或监视的工会的活动
- Practical Considerations...实际问题...
 - Often the employer uses employees loyal to them and disloyal to the union to spy. 有时雇主会利用雇员对他们的忠诚去工会做间谍



Section 2 第二节

Collective Bargaining Representatives 集体谈判代表

U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- The Employer is required to recognize the Union if 50% plus 1 employee wants a union 雇主需要认可工会如果50%加1的雇员需要工会
- Practical Considerations...实际问题...
 - The Employer can lawfully insist on a secret ballot election, 雇主可以依法坚持无记名投票选举,
 - Occasionally the employer try to interfere with the outcome (although it is illegal). 有时候雇主试着干预结果 (尽管这是违法的)



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- The Union has the right to appoint or elect members of the negotiating committee 工会有权利去指定或选举成员参与谈判委员会
- Practical Considerations...实际问题...
 - Sometimes political opponents and single issue individuals get on the committee causing disruption and dysfunction. 有时候政治对手和单一问题个人委员会造成破坏和功能障碍。
 - Occasionally different people on the committee have separate goals and interests, i.e. older workers want improvements to health care and pensions, while younger workers want higher wages in their paycheck 偶尔委员会中不同的人会有不同的目标和利益,即老员工想要改善健康保健和养老金,而年轻员工则希望他们的薪水更高



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- The union is prohibited from pressuring or striking businesses that conduct commerce with the employer 工会禁止施压或引人注目与雇主做交换
- Practical Considerations...实际问题...
 - The union can still pressure the employer through public appeal, customer appeal, media campaigns, appeals to governmental officials 欧盟仍然可以向雇主施压, 通过公众展示顾客展示, 媒体宣传, 呼吁政府官员等
 - And from time to time the union will employ illegal pressure tactics during negotiations on businesses that conduct business with the employer. 不时, 工会谈判时会雇用非法压力策略运用于与用人单位开展的业务上。



U.S. Collective Bargaining

What Works and What Doesn't Work 美国集体协商谈判-什么可行,什么不可行

- Parties committees are supposed to negotiate directly 双方委员会应该要直接协商
- Practical Considerations...实际问题...
 - On some occasions the employer will attempt to circumvent the union committee by communicating directly with their employees. 有时候雇主会企图绕过工会委员会直接和他们沟通
 - The union should have a organizing committee which works with the bargaining committee to keep workers informed as to the progress of the negotiations; the organizing committee will prevent the employer from disseminating misinformation 工会应该要有一个组织委员会和谈判委员会一起工作这样可以使工人时刻在谈判的进程中了解信息；组织委员会还应该防止雇主传递错误信息。



Section 3 第三节

Initiation of Collective Bargaining 集体谈判的开始

Section 4 第四节

Preparations for Collective Bargaining 为集体谈判做准备

Section 5 第五节

Collective Bargaining Meetings 集体谈判会议

U.S. Collective Bargaining

What Works and What Doesn't Work 美国 集体协商谈判-什么可行,什么不可行

- The employer is required to respect the representatives designated by the union to be on the bargaining committee
- Practical Considerations...实际问题...

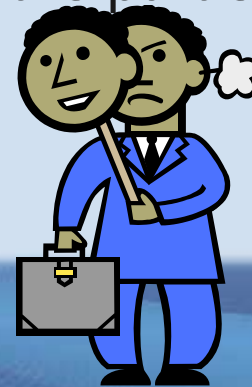


- Committee members are employees and occasionally they are subject to pressure by the employer who will remind them that to maintain good will with the employer, they are expected to accept agreements more favorable to the employer. 委员会成员的雇员，偶尔他们受到压力由雇主会提醒他们要与雇主保持良好的意愿，他们预计将接受协议向雇主更加有利。

U.S. Collective Bargaining

What Works and What Doesn't Work 美国 集体协商谈判-什么可行,什么不可行

- During negotiations the parties are expected to treat each other respectfully, not using profanities, threats, or inappropriate inducements etc. 在谈判期间各方预计恭敬，对待彼此不使用亵渎、威胁或不恰当的奖励等。
- Practical Considerations...
 - Often negotiations get heated threats are made and profanities are used.
 - But when negotiations are completed the parties reconcile.



U.S. Collective Bargaining

What Works and What Doesn't Work

- The parties are not permitted to maintain their own formal records of the negotiations
- Practical Considerations...
- If both sides agree meetings can be recorded by video, audio tape or stenographic record.



U.S. Collective Bargaining

What Works and What Doesn't Work

- Parties are not allowed to threaten or coerce the other side
- Practical Considerations...
- Parties are allowed to express their “opinions” about the negotiations, and from time to time serves as a vehicle to threaten the other side by labeling their “threats” as “opinions”



U.S. Collective Bargaining

What Works and What Doesn't Work

- Lead negotiators are not authorized to have private meetings with each other to discuss the negotiations
- Practical Considerations...
- Lead negotiators meet in private meetings called caucuses and to break deadlocks in negotiations and to reach an agreement.



Section 6

Review of the Draft Collective Agreement and Implementation of the Collective Agreement

U.S. Collective Bargaining

What Works and What Doesn't Work

- When an agreement is reached:
 - The agreement must be executed in writing
 - The members of the union must review the agreement and ratify its terms
 - The union must distribute written copies of the agreement to its members
- Practical Considerations
 - If the members are not fully educated on the terms of the agreement:
 - The agreement should be in simple clear and enforceable language
 - Dissidents within the group may misinform the members as to the contents of the agreement
 - The members may reject the agreement



Section 7

Settlement of Deadlock in Collective Bargaining

U.S. Collective Bargaining

What Works and What Doesn't Work

- A very small portion of public employers are required by law to mediate and arbitrate to resolve labor negotiations
- Practical Considerations...
 - Unresolved negotiations that get “settled” through union strikes and slowdowns or employer lockouts are inefficient and wasteful; employees lose wages and employers lose profits
 - The resolution of unresolved negotiations through mediation and arbitration:
 - Is an effective tool in resolving negotiation
 - The result is fewer slowdowns and strikes
 - The process improves the relationship between the parties



U.S. Collective Bargaining

What Works and What Doesn't Work

- The law permits most employees to strike to put pressure on the employer to agree to their wage and benefit demands
- Practical Considerations...
 - Employees can be “permanently replaced” while out on strike, and their right to return to work when the strike is over is within the sole control of the employer.
 - Strikes are costly to the workers in lost wages and benefits; most unions look to other successful alternatives to the strike



U.S. Collective Bargaining

What Works and What Doesn't Work

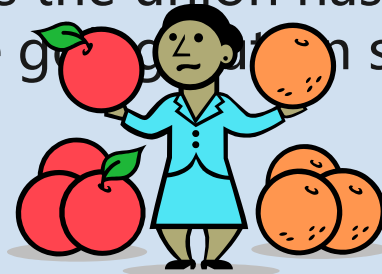
- It is illegal for employees to engage in mass picketing, violence or sabotage of employer equipment
- Practical Considerations...
 - From time to time incidents of violence or vandalism occur; Often after the strike is over those employees are granted amnesty by the employer.



U.S. Collective Bargaining

What Works and What Doesn't Work

- In the health care industry unions must provide employers with 10 days notice before a strike
- Practical Considerations...
 - Patients and health care institutions are thus afforded time to prepare for the effects of the strike and to insure the wellbeing of the patients are protected
 - In all other industries the union has no obligation to notify the employer before going on strike.



Section 8

Supplementary Provisions

U.S. Collective Bargaining

What Works and What Doesn't Work

- The National Labor Relations Board (a federal agency) and Courts oversee compliance with laws governing collective bargaining
- Practical Considerations...
 - It takes as much as 3 years to conduct and complete an investigation and to get a final decision.
 - Most labor/Management negotiations get resolved without agency intervention
 - Agency intervention is generally used as a last resort where the employer is blatantly disregarding the laws related to good faith bargaining
 - When the agency and courts finally rule, they do issue very effective remedies, fines, bargaining orders, etc.



Dispute Resolution Institute of New York



Contact Information:

85 Choir Lane

Westbury, New York 11590

516-307-8210

516-307-8209 Fax

DRINY1234@gmail.com E-mail

Prepared By: Professor Joshua E. Bienstock
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