



Labor Relations Best Practices

FROM THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

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Negotiating the Roadblock: Navigating Impasse in Collective Bargaining

Collective bargaining flourishes on collaboration to reach a settlement, but even the most seasoned negotiators bargaining in good faith can encounter a daunting obstacle: **impasse**. This point of deadlock, where agreement seems to be a distant mirage, demands a shift in strategies to navigate the complexities of both labor relations and legal implications.

The National Labor Relations Act, 29 U.S.C. §§ 151-169 (NLRA) provides employees the right to “bargain collectively through representatives of their own choosing”. Once employees have elected a union to represent them, the employer must bargain collectively with the union “in good faith” but “such obligation does not compel either party to agree to a proposal or require the making of a concession.” Additionally, the duty to bargain doesn’t require the employer to “engage in fruitless marathon discussion at the expense of frank statement and support” of the employer’s position (NLRB v. American Nat’l Ins. Co., 343 U.S. 395, 404 (1952)).

Impasse is reached when:

- After full and good faith bargaining is exhausted;
- Irreconcilable differences between the parties’ position remain over mandatory subjects of bargaining;
- No realistic possibility that continued discussion will bring about a resolution.

Defining the Deadlock: The National Labor Relations Board (NLRB) sets the bar for determining a genuine impasse, emphasizing a totality of circumstances approach. Some of the factors they consider are:

- The good faith of the parties at, and away, from the bargaining table;
- The number and length of meetings;
- The importance of the issue(s) as to which there is disagreement.

Charting a Course Beyond the Blockade: Impasse is not a permanent state of negotiations. Strategies for re-engagement and movement exist:

- **Formal Acknowledgement:** Both parties openly recognize the impasse and its implications, allowing for a strategic pause and recalibration. Sometimes, a cooling-off period is helpful to reset the bar and “start fresh” on open items.
- **Neutral Intervention:** A mediator, in most cases the CIR process, can help the parties traverse disagreement and identify paths to agreement. Note that not every CBA has CIR as a neutral third party. In CBAs that have standard CIR, CIR will assign a NECA Representative and IBEW Representative to hold an Interim CIR meeting. Federal mediation and Conciliation Services ([FMCS](#)) may also be utilized
- **Last Offer:** The employer may implement their final pre-impasse offer, a legal tightrope walk with possible legal challenges.
- **Pressure Tactics:** NECA-IBEW agreements that have Modified CIR language may experience agreement termination notice being served leading to strikes or lockouts.
- **Reopened Dialogue:** Shifting circumstances or pressure from stakeholders can prompt a revisiting of negotiations.

While Impasse signals a negotiation breakdown, it does not grant carte blanche for unfair practices. The NLRB closely monitors allegations related to impasse:

- Investigate Unfair Labor Practices: Did someone deliberately sabotage the process? The NLRB may impose remedies and require a return to good-faith bargaining.
- Interpret Disputed Contract Clauses: Impasse history can play a role in how arbitrators interpret ambiguous contract clauses, making past stumbles relevant ghosts in the present.

Remember: Impasse is not a dead end. Like any complex problem, it presents an opportunity for strategic thinking, innovative solutions, and ultimately, progress. By maintaining good faith, employing effective strategies, and understanding the legal landscape, the parties can emerge from the impasse and find their way back to the table, paving the way for a mutually beneficial agreement.

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