CAUT Collective Bargaining Manual

CAUT
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Contents

1. Introduction

This Manual introduces the reader to the fundamentals of collective bargaining. It serves as a guide to best practices for novice negotiators and a resource guide for experienced bargainers.

The Manual is best used in conjunction with other CAUT bargaining resources that include bargaining advisories, model clauses, on-campus workshops, collective bargaining conferences, an annual chief negotiators forum, and expert advice on all aspects of collective bargaining.

The product of collective bargaining is the collective agreement in unionized settings, and the handbook, special plan or memorandum of agreement in non-unionized environments. This Manual uses the term "agreement" to refer to the document resulting from bargaining in both unionized and non-unionized situations. When the term "collective agreement" is used, it is only with reference to contracts in unionized situations.

The agreement provides the framework for working conditions and contains the details of members' rights, compensation and benefits. The agreement also regulates how the parties must follow the provisions, and deal with violations of the terms.

Collective bargaining is considerably different from academic staff members' day-to-day activities. The Manual provides a navigational tool for taking on all the necessary tasks and mastering the challenges they pose. The reader is encouraged to use the Manual as a guide to preparation and a reference during bargaining.

The Manual can be helpful to all association members, regardless of the role they play in collective bargaining. It describes what collective bargaining means to the entire association and details the relationship the bargaining team has to the executive, to the membership as a whole, and to the various support committees upon whose work the team will depend. Collective bargaining gives the association a unique opportunity to involve and engage the entire membership, and

to increase levels of participation from those previously on the periphery of the association. This Manual will help member associations reflect and act on these opportunities.

The Manual is designed for use by all member associations, unionized or not. The main principles of collective bargaining apply regardless of local circumstances and the legal status of the association. Academic staff associations have a duty to represent the interests of their members, and collective bargaining is the best way to meet this duty.

Like any collaborative undertaking, collective bargaining depends on preparation. The Manual follows the cycle of collective bargaining with an emphasis on preparing for each phase of the cycle. The section dealing with face-to-face negotiations comes only after discussion of the key tasks that are necessary before the association gets to the bargaining table: setting up key committees; consultation with the membership; mobilizing the association; research; and drafting proposals. The Manual also covers bargaining strategy, protocols and discussion at the bargaining table, considerations for reaching a deal, and preparation for the possible breakdown of negotiations.

The Manual uses an approach usually termed positional bargaining. From time to time CAUT receives queries from member associations about interest-based or mutual gains bargaining. CAUT advises strongly against this form of negotiation. The reasons are listed in Appendix III: *Interest-Based or Mutual Gains Bargaining*.

2. What Is Collective Bargaining?

Collective bargaining is a structured process for identifying and resolving conflicts over the terms and conditions of employment. It is a formalized conversation about what academic staff really do, and about how their work should be recognized and compensated. At the bargaining table, the association's team represents the interests of the members, and the administration team represents the interests of the employer. Some interests

overlap and some do not. Each brings to the table a specific set of proposals reflecting priorities set by their principals — the association membership and the employer.

The association's strength is based on collective organization. The employer must respond to collective demands more seriously than it would to requests from individuals or small groups. The association must fairly represent the interests of its collective membership.

Each party presents written proposals at the bargaining table. Issues that are easy to resolve should be identified and settled first. Bargaining then proceeds to address the more difficult and contentious matters. Discussion and creative compromise eventually lead to a final settlement.

Each team must have the authority from its principals to modify its proposals as appropriate. The teams should focus on the substantive issues in a climate of mutual trust and respect. Good negotiators concentrate on solving conflicts over issues and prevent personal conflicts from interfering with the bargaining process.

Collective bargaining in universities and colleges typically follows the pattern of collegial self governance in this sector. Collective agreements contain provisions on tenure, academic freedom, and peer procedures for promotion. Academic staff negotiate through their association, rarely using outside professional staff on their bargaining teams. Academic staff associations encourage and support training and development for their bargaining team members. Resources like those provided by CAUT enhance rather than replace the skills and self-governance of academic staff.

2.1 Balancing Priorities

The successful negotiator recognizes that members' priorities vary with the positions that are at stake. Widespread membership support is common for issues such as protecting academic freedom and tenure, the right to do research and the quality of

education. Support for other issues vary by constituency. They may be unique to specific disciplines or faculties, or vary by working conditions such as those for full-time faculty and librarians, and full-time and contract academic staff. Specific proposals may be necessary to meet the needs of members in equity-seeking groups. Concerns about compensation may vary by age, rank, discipline or gender. Negotiations must always be balanced, to ensure the broadest membership support for the bargaining package. The association must ensure that the membership is informed on the bargaining issues and the negotiators know the priorities that members assign to them.

To prepare for bargaining, the negotiators must shape a comprehensive package that fairly reflects the range of member priorities and is suitable for presenting to the other side at the bargaining table. This involves an artistry that requires working collectively to educate members, consult with them, and produce a package that represents the association's interests and maintains consistency in the face of the employer's priorities. Having an appropriate package is a key ingredient for ensuring strong member support throughout the negotiations process. Members will support a package when they feel that their interests were fairly presented at the table, and that the team is *their* team.

2.2 A Power Relationship

Collective bargaining is fundamentally a power relationship. Terms and conditions of employment are determined through negotiation rather than the employer's discretion. Without collective bargaining, the employer would have full authority, within the limits of the law, to determine all aspects of the workplace, including hiring, firing, promotion, tenure, wages and benefits, and hours and location of work. Collective agreements transfer management rights to the academic staff association, and provide the means for academic staff to

participate in the governance of the institution, and to define their work.

A unionized association is legally certified as the members' exclusive agent to negotiate with the employer. The union's power derives from its right to compel the employer to negotiate. Regardless of how reluctant it is to cede a management right, the employer is legally required to bargain in good faith with the union.

Non-unionized associations lack the legal authority to require the employer to negotiate. But they still have considerable power, because their members perform the essential work of the university or college: as teachers, researchers, librarians, administrative, professional and support staff. The employer needs the active cooperation of academic staff association members to run the university.

Let's look more closely at the differences between unionized and non-unionized associations.

2.3 Unionized Associations

Unionized associations are certified under provincial or federal labour law and represent a bargaining unit defined by the provincial labour relations board. The process for defining the bargaining unit is similar in all provinces, with the exception of Alberta. The association must sign up more than a minimum required proportion of members and, if necessary, obtain the required majority of votes in an election held by the labour board. The board determines the positions that are included in the bargaining unit. The employer may contest which positions are included, but the board makes the final determination.

Unionization marks a significant shift in the balance of power. It removes the employer's unilateral right to determine the terms and conditions of employment and the nature and scope of the unit with which it must negotiate.

In Alberta academic staff collective bargaining falls under the *Post-Secondary Education Act*, which prohibits strikes and allows

the employer to determine who is included in the bargaining unit, after consultation with the academic staff association.

One of a union's key rights is to act as exclusive bargaining agent for its members. The employer must negotiate only with the union on terms and conditions of employment. The employer cannot have separate deals with individuals or groups of members unless they are sanctioned by the union. The union must exercise this right fairly. Termed the duty of fair representation, it prohibits the union from representing its members in a manner that is arbitrary, discriminatory, or in bad faith.

Every collective agreement must include provisions for grievance and binding arbitration of disputes arising from the operation of the agreement ("rights arbitration"). Provincial labour relations acts provide default clauses for grievance and arbitration. The parties to a collective agreement may improve on the default clause, but cannot agree to a lower standard. Grievance and arbitration submits the final resolution of a dispute to an impartial third party rather than to the employer's board or its senior officers.

Labour law also gives a union the right to strike and the employer the right to lock out members. Before exercising its legal right to strike, a union must carefully follow the steps set out in the provincial labour relations act. For a summary of the requirements, consult a separate CAUT publication on *Collective Bargaining Legislation*.

A few unionized associations have negotiated binding arbitration ("interest arbitration") in lieu of the strike option. Settlements imposed by a third party involve some risk. The arbitrator may impose conditions that are awkward in the academic setting. Arbitrators may rule on complex academic matters that are best decided through negotiation. Arbitrators usually seek a reasonable middle ground between the parties' positions, and seek precedents from other settlements. Hence, an association can rarely break new ground or establish higher

benchmarks than its comparator institutions. For further discussion, see section 8.3 on Arbitration.

Surrendering the right to strike may have unforeseen and complex consequences. Unionized associations contemplating such a move should consult with CAUT before making a decision.

Unions require members of the bargaining unit to pay dues to allow the association to do its work on behalf of the members. The employer must collect the dues and remit them to the association.

Unions are also protected when a collective agreement expires before it is renegotiated. Labour legislation allows the expired agreement to remain in effect until it is replaced. In such cases, it is common for the parties to agree that the main monetary provisions of the new agreement apply retroactively to the date of expiry of the previous agreement.

When they prepare for bargaining, unions have the legal right to receive information they require about their members. Check with CAUT if the employer is not forthcoming with the information you need. Sometimes it is just necessary to remind the employer of its legal obligations. Further research may be necessary if the employer objects because of changes in privacy legislation

Labour legislation sets out requirements for providing a "notice of intent" to renew a collective agreement. Typically, there is an obligation to notify within a prescribed number of days before the expiry of the existing agreement. Make sure you are familiar with these requirements.

2.4 Non-Unionized Associations

Non-unionized associations operate very much like unionized ones. They have similar commitments to the collective process, and the corresponding obligation to fairly represent their members. Even though they do not have the legal right accorded to unions to collect dues from the entire bargaining unit,

most non-unionized associations have negotiated a similar procedure.

The main differences between unionized and non-unionized associations are in their legal standing. Employers are not legally required to bargain with non-unionized associations. The structure, tone and the content of negotiations can differ considerably from unionized settings. In place of collective agreements, non-unionized associations have special plans, handbooks or memoranda of agreement. Some are quite similar to unionized collective agreements. Others provide the basic framework for relations between the association and the employer, and refer to employer policies for the content. The associations may either negotiate changes to the policies or just be consulted.

Agreements in non-unionized settings do not enjoy the legal status of a collective agreement. Unlike a collective agreement, they are not legally binding contracts. The association has no legal recourse against an employer that decides to unilaterally change a policy, or abrogate a handbook, special plan, or memorandum of agreement.

Unlike in a unionized setting, there is no requirement for binding arbitration of grievances. When a member feels that their rights under the special plan or handbook have been violated, the president or board of governors may make the final decision rather than a neutral arbitrator.

Access to information is more difficult than in unionized situations. For example, unions usually obtain lists from the employer of individual salaries, with rank, age, date of appointment and years since highest degree. Non-unionized associations find it more difficult to obtain these detailed lists.

Without the legal right to strike, non-unionized associations do not have the means to resolve an impasse. They must rely on the employer's agreement to use interest arbitration to settle bargaining impasses.

3. Preparing For Negotiations

Before going to the bargaining table, the association must be fully mobilized and prepared for all contingencies that may arise throughout the bargaining process. The main focus of bargaining is on the relationship between the association and the employer. But the association's primary concern must be internal. There must be good information, consultation and mobilization for the membership. Fundamental principles of preparation are similar for all institutions and associations. The way associations prepare for bargaining may vary by size and nature of institution, the types of academic programs, and the work performed by bargaining unit members.

The executive has the authority and responsibility to manage all aspects of bargaining on behalf of the membership. This entails the following duties:

- to put in place an appropriate bargaining organization structure with clear lines of authority and responsibility
- to select and support the chief negotiator and bargaining team, ensure that it is adequately prepared, and that it carries out the mandate approved by the membership
- to ensure that members of the bargaining team have appropriate release time from teaching (see Appendix II)
- to ensure that all necessary research is done before preparing the priorities
- to ensure that appropriate processes are in place for consultation
- to prepare a comprehensive bargaining strategy
- to maintain continuing, productive communication between the bargaining team, the executive, and the general membership
- to ensure that the association is prepared for all eventualities during bargaining, including the possibility of a breakdown in negotiations
- to propose a tentative agreement, for ratification by the membership

Associations must reject any attempt by the employer to limit or prevent communication with the membership during negotiations. Such a restriction serves the interests of the employer, and frustrates the interests of members. For further discussion of this issue, see section 6.1 on Protocol.

3.1 Organization

The executive must establish the structures and processes to deliver a good collective agreement and ensure maximum member participation. Good organization relies on having appropriate committees with clear lines of authority and responsibility. While the membership is the highest authority of the association, it delegates the strategy and the day-to-day management of negotiations to the executive. Some associations have a broader council to which the executive reports between membership meetings.

The executive is accountable to the membership for all aspects of collective bargaining. The executive should appoint the bargaining team and any other necessary committees, and should have authority over them. This arrangement is preferable to the team reporting directly to the membership. If your constitution has the latter type of arrangement, check with CAUT for advice on how to manage it.

Since the executive is ultimately responsible for recommending a new collective agreement to the membership, it must be closely involved with bargaining. Each executive meeting should include a report by the chief negotiator. The executive should provide direction to the bargaining team throughout negotiations, and ensure that the membership receives up-to-date report, and, when necessary, the opportunity to provide input through special meetings.

3.1.1 The Chief Negotiator

The executive should appoint the chief negotiator first and then involve the chief in recruiting and selecting the rest of the team. The chief negotiator orchestrates the work of the team from start to finish. This person must maintain an overview of the entire package and a clear focus on all of its parts. The chief negotiator should normally be a member of the bargaining unit unless the association has multiple bargaining units in which case the chief may be a person with considerable experience from another unit. It is a bad idea to have a chief negotiator who is not a member of the association.

The chief negotiator is the voice of the association at the bargaining table and the person who usually reports on bargaining at membership meetings. Official bargaining communication should go through the chief. Even if different team members introduce or speak to proposals at the bargaining table, the chief remains in charge of the process.

The chief should inspire confidence in the membership that their interests are recognized and given due consideration. Members who believe that the chief can forcefully represent their concerns to the employer will support the bargaining strategy. A chief that has the confidence of the membership will also have more authority at the bargaining table.

3.1.2 The Bargaining Team

The executive should appoint a bargaining team with the requisite skills, such as financial analysis, drafting language and conflict management. Representation should be considered by discipline, gender, seniority, and type of appointment (full-time faculty and librarians, contract academic staff, if they are in the bargaining unit). Members of the team must also be able to work well together, sometimes under considerable pressure.

The executive and chief must also think carefully about size of the team. The employer should have no say in this decision. There are no hard and fast rules for the size of a team. It must

be large enough to have the required skills and representation. A team with more than five regular members becomes hard to organize, while a team with fewer than four may be overworked and run the risk of being too narrow. The team can also recruit from the membership individuals with needed expertise to carry out specific tasks, and even appear at the table if necessary.

Collective bargaining requires team members to do the following:

- The team must work within the bargaining mandate and take direction from the executive on bargaining priorities required to achieve the mandate. They must hear what the membership says and transform it into bargaining positions, inform the membership of developments across the sector and educate them about forces that influence bargaining.
- Team members have to draft their proposals. Initial proposals may involve assistance from support committees and members of the executive. As bargaining proceeds, team members must revise the language accordingly. They must be adept listeners at the table who can reduce the discussion to language that maintains the members' priorities.
- The team must have the capacity to examine the institution's finances and prepare positions on salaries, benefits and pensions. Compensation must be compared with other institutions. The team must cost each proposal and know its impact at every rank and step in the salary system.
- Team members, especially the chief negotiator, must be skilled at speaking. At the bargaining table, the chief explains positions and answers questions from the other side.
- Listening skills may be even more important. Listening is an active process of paying close attention to what is said and asking appropriate questions. The team must be constantly attentive to cues from the other side. It must listen carefully to what is said in response to its proposals and digest the full meaning of suggestions from the other side for revisions. For

further discussion of these matters, see the sections on speaking skills and listening skills in part 6, *At The Bargaining Table.*

- At least one member of the team should record the proceedings at all times. Good note-taking requires constant attention to the details of the discussion.

3.1.3 Support Committees

All negotiators require support for their work. With experience and greater expertise they are better able to identify what they need, in the form of appropriate committees, staff support and advice from CAUT.

Required support for bargaining depends upon the maturity of the collective agreement, the association's size, makeup and resources, the negotiators' experience and expertise, the mandate and bargaining strategy, and the employer's demands.

First agreements require considerable work because every issue must be negotiated. With older agreements, strategic concerns may determine the issues that are tabled. Some rounds may focus on a limited number of issues. On other rounds the association may decide to address complex matters that require considerably more support.

Associations that employ administrative staff can rely on them to produce and track documents, mail out newsletters, schedule meetings, provide appropriate resources for committee members to do their work, pay necessary child care costs, and arrange for release time from teaching for the chief negotiator and members of the team. A wide range of teaching release options can be negotiated with the employer. Consult CAUT before negotiating release time. Professional staff can maintain databases on members' salaries and provide necessary analyses for preparing positions. They can also perform a wide range of other research, and serve as resource person on the bargaining team.

Support committees ensure that there is a reasonable division of labour, and that the bargaining team obtains the work and advice it needs. They provide opportunities to draw members with expertise into the orbit of the association, as well as members who are interested in learning about collective bargaining. Membership on a support committee is a useful entry point for further involvement in the association.

The executive creates all the support committees. Here are some examples:

- *Research committees* prepare background research and recommendations on existing articles or new proposals. The work is usually requested by the bargaining team, and must be completed in time for the team to prepare its proposals. Committee members must be familiar with matters that could affect collective bargaining, such as language of the current agreement, the demands of creating new language, and the conditions outside your institution (in other associations, or in other sectors). Research committees may also require expertise on salaries and issues such as intellectual property, harassment, and equity.
- *The bargaining advisory committee* provides the bargaining team with advice on language and strategy. It must contain experienced negotiators.
- *Communications or publicity committees* provide the vital means for communicating with the membership, and with any other on-campus or off-campus groups identified by the executive. It must be emphasized that this is a support committee. Usually the president is the chief spokesperson for the association.
- *Strike readiness committee.* Unionized associations should ensure that they are prepared for the possibility of strike. While this may seem overly pessimistic, it is necessary for successful negotiations. The committee ensures that the association is fully prepared to carry out a strike if it becomes necessary. The committee must know the legal

requirements for strike action and ensure that it can implement all the details of a strike. Further discussion is in part 9 on *Strike*. Full details for preparation are in the *CAUT Strike Manual*.

3.2 Working Collectively

Collective bargaining requires team-work at all levels of the association. Expectations to work collectively are different than the more individual focus of day-to-day academic work. When they work on institutional governance committees, members provide advice to an employer that exercises its final authority. When working with teams of colleagues on research or policy, members typically participate as individuals who assemble to carry out specified tasks.

Working in the academic staff association relies on developing organizational vision and objectives. Decisions are made democratically. When the membership makes decisions, the leadership is expected to carry them out. Members assume a collective duty that unifies the association towards meeting its bargaining objectives. Members must rely on each other to perform complementary tasks and to subordinate personal goals to the matter at hand for the group. Collective work draws on the contributions of many skilled people to the overall outcome.

Team-work demands that people relinquish some of their autonomy, and work alongside others at roles that are defined by the task at hand. Stepping into roles that may be narrowly-defined can be a challenge for skilled and highly educated people. But satisfaction can be derived from working in concert with others as part of a larger collective. Being part of the group that shapes the terms and conditions of employment is a powerful experience that can draw members towards making substantial commitments to their association.

Working collectively is a key requirement for members of the bargaining team. Members must shelve their personal priorities,

and concern themselves with the fit between their negotiating positions and the membership's priorities.

3.3 Research

Before preparing positions, the association should know the strengths and weaknesses of its agreement and how it compares to agreements at similar institutions. This information forms the foundation for setting bargaining priorities. It provides the objective grounds for explaining priorities to the members and for supporting positions at the bargaining table. The following sources are particularly useful.

- *Bargaining notes* from the last round of negotiations provide information on positions that were not achieved. Some of them may require tabling for this round. The notes are also a reminder of the pattern of bargaining. It can be useful in building on strengths and improving on weaknesses from the last round.
- *Grievances* filed since the last round indicate where the employer has violated the collective agreement. The results of grievances settled successfully, through discussion or adjudication, should be negotiated into the collective agreement. Examining unsuccessful grievances may point to gaps or weaknesses in contract language that can be fixed at the bargaining table. Confidentiality must be respected when analysing grievances. This can be done by stripping the grievance record of identifying references, or by having the grievance officer report to the bargaining team on the issues raised by the grievance.
- *Letters of Understanding* may clarify elements of the agreement or amend the agreement in response to unforeseen circumstances. Letters signed during the last round may contain commitments by the parties to joint committees and studies. Letters expire with the agreement to which they are attached, and should be incorporated into the agreement if they still serve the association's interests. The work of joint

committees and studies should be reviewed and incorporated into bargaining as appropriate.

- *Executive minutes* are a record of the matters before the association in the period between agreements. Those that bear on the new round of bargaining can be identified and brought before the team.
- *The joint committee* of senior administrators and senior association officials monitors the operation of the collective agreement, and attempts to solve problems between negotiations. Discussion with the association members of the committee and review of committee minutes may reveal issues that require attention at the bargaining table.
- *Correspondence from individual members* during the life of the agreement may reveal problems with the agreement. Review of the correspondence file may identify issues that require attention during the membership consultations.
- *Employer policies* should be reviewed for any changes that may impact on collective bargaining. The best protection with employer policies is language that requires association approval of all policy changes. Otherwise, any alleged policy violations should at least be subject to the grievance procedure in the agreement. This can be done by including the policy in the collective agreement, either by reference or as an article. There may be disadvantages to full inclusion because the association assumes joint responsibility for the policy, even though it was not negotiated. CAUT can provide assistance on the most appropriate strategy. If a policy change bears directly on terms and conditions of employment, the association can legitimately complain, because it interferes with the association's status as exclusive bargaining agent. An association grievance can be filed if the employer refuses to address the complaint.
- *A statistical profile of the membership* provides crucial information for bargaining. The association should have a database that lists for each member their salary, other remuneration,

date of appointment, date of birth, rank, year of attaining highest degree, department, and gender. Unionized associations have a right to receive this information because it is necessary for collective bargaining. If the employer refuses to provide the information you are encouraged to contact CAUT for assistance.

- *Appointment letters* should be reviewed. The association should receive a copy of each new member's appointment letter and maintain them in a file. Everything mentioned in an appointment letter should be consistent with the agreement. Variations from the agreement should be considered for how they may be addressed at the bargaining table. For example, the employer may offer more generous start-up research grants only to certain new hires. The association could use this as an opportunity to negotiate higher start-up grants for all members.
- *Legislative and public policy changes.* Bargaining may be affected by changes to funding structures, policies on harassment, equity or privacy, or federal research protocols. CAUT can provide advice, and may have policy statements and bargaining advisories on these issues.
- *Review your agreement.* Every agreement contains articles that could be improved. A thorough review of the agreement will provide a list of required improvements.

Numerous resources are available on the CAUT Website

- *CAUT model clauses* provide guides to ideal language
- *CAUT bargaining advisories* provide information on what to negotiate on an issue and the best existing contract language from across the country.
- *CAUT Collective Agreement Database* provides searchable information on agreements at most member associations.
- *CAUT Benefits Survey* lists detailed benefit provisions at most member associations.
- *CAUT Academic Staff Salary Data*

- *CAUT Librarians Salary Survey*
- *CAUT Almanac*, also available in print, is the most comprehensive national compendium of statistical information for academic staff.

3.4 Consultation

Consultation with the membership is an ongoing feature of collective bargaining. Members should be regularly informed about the progress of bargaining and their input should be sought. It is especially important to have extensive membership consultation before setting the bargaining priorities. At this beginning stage, the executive and team can provide information and education on bargaining issues and create venues for members to express their views. Information can be provided through discussion about the upcoming bargaining process and with fact sheets on the major bargaining issues. An example of a salaries fact sheet could show comparisons with similar institutions and show the amounts of recent settlements elsewhere.

A questionnaire is useful for discerning the strength of members' support on a range of issues. Ask members to identify their age, gender, rank, department or faculty and type of appointment so you can sort their preferences by these factors. Basic monetary issues should be included. Some questions can be framed as comparisons (e.g. 'Which is more important to you: improved coinsurance for prescription drugs or higher annual maxima in the dental plan?'). You can request comments on existing provisions (e.g. 'How well has the University Research Support Fund worked for you?'). There may be new issues that the executive deems important. There should be a write-in section for members to raise their issues.

Questionnaires provide general indications of member preferences and priorities. They are not rigorous instruments and their findings are not conclusive. Nonetheless they can be useful in gauging support for issues and identifying matters

that require further discussion with the membership. Questionnaires should be used in the early stages of preparation.

Communicating results back to the members is important, and can take several forms. It is constructive to use more than one. For example: a newsletter summarizing and commenting on the results is a helpful way to distribute to the membership a reasoned response to their work in filling out the questionnaire. The newsletter can be used at a subsequent general membership meeting to discuss bargaining priorities.

Meet with members in their constituencies or departments for focussed discussion of their concerns. Try some meetings that cross constituencies, such as with women, members of equity-seeking groups, or members on limited-term contracts or contingent appointments. Members of the executive and bargaining team should attend each meeting. The chief negotiator or a member of the bargaining team should provide a report on plans for negotiations, and the issues that have already been identified. The meeting should then be open to members' candid discussion of all the issues they wish to raise.

Some members may prefer writing individual or group submissions. Make sure they have the opportunity.

In the final step of consultation the executive presents bargaining priorities for approval by the membership. Typically this is done at a special meeting. A good turnout is essential to ensure the priorities have legitimate member backing.

3.5 Bargaining Mandate

The mandate is the full package of bargaining priorities. The bargaining team should provide a list of priorities for the executive to recommend to the membership for adoption as a mandate. Before going to the members, the executive and bargaining team should meet for a full discussion of the issues, to ensure that the interests of all the membership are fairly addressed.

Members should have the opportunity for full discussion of the priorities at a meeting called by the executive to approve the bargaining mandate. Such discussion is a good testing ground for the priorities, since they have little value if they fail to pass scrutiny by the membership. Members should also legitimately feel ownership of the bargaining mandate, which can only happen if they have a discussion and a vote of approval.

The meeting should be chaired by the president or the member who normally chairs general membership meetings. The chief negotiator and bargaining team should present the priorities. This provides an opportunity for the membership to hear directly from their negotiators.

Once the priorities are written as contract proposals a master copy can be filed in the association office for members who wish to read them.

The executive should also inform the membership about what to expect from the bargaining process, including reports they should expect, overall time-lines, roles of the committees, and the need for continuing support of the team and mandate.

4. Drafting Proposals

Eventually the results of research and consultations must be written as proposals to present at the bargaining table. Proposals should be suitable for inclusion in the agreement. Drafting usually follows after the membership has approved the priorities, although earlier drafts may be written while preparing recommendations for the membership. Proposals must be consistent with the priorities established by the membership and defensible at the bargaining table.

Proposals are opening positions that will be subjected to the pressures of bargaining. They will have to stand up to challenges and counter-proposals by the other side, and leave room for productive compromise.

4.1 Drafting Process

Drafting should follow a systematic process that incorporates the following steps.

List the broad objectives

The objectives flow from the bargaining priorities. Establish a list of objectives that translates the priorities into more specific terms. For example, one of the major priorities might be salary parity with comparable institutions. Objectives could include specific improvements to the salary structure, targets for scale increases, and specific equity targets.

Another example of an objective is to gain improved protection for members teaching courses at a distance. Objectives could include members having copyright ownership of course materials they prepare, fair payment to members for preparing a course, and a requirement that all such courses are prepared and taught by members.

List the specific points you want to address

For each objective, there should be a detailed list of the rights and benefits you want to achieve.

The salaries objectives would include the number of steps in the salary structure, value of step increments, size of scale increases and how they should be distributed, and any differential increases by rank or type of appointment.

For courses at a distance, the points would include the factors that determine how ownership is established, payment for course preparation in formula or dollar amounts, and the elements of preparation and teaching that require protection.

Review precedents

Do not re-invent the wheel. Consult other agreements in the *CAUT Collective Agreement Database*, review CAUT's *Facts & Figures*, and use CAUT bargaining advisories and model clauses.

When researching other agreements keep in mind that the language is the result of compromise. For best practice language, consult CAUT bargaining advisories and consult with CAUT for advice on the agreements with the best language on the topic.

Using established vocabulary in the agreement can save time and confusion. Borrow phrases and technical terms from good existing articles. Relying on them may reduce misunderstandings and improve the handling of disputes if the terminology has already been workable.

Draft the language and review the draft

- Have the priorities been addressed?
- Are the specific points included?
- Does the clause fit into the overall agreement? (Does it contradict other clauses? Do words carry consistent meaning? Are there unintended consequences?)
- Is the clause enforceable? (Does it limit employer discretion?)
- What costs are involved?

Have someone else review the draft

If every team member reviews drafts, they are more likely to spot errors, improve their understanding of all the draft language, and be better prepared for discussion during negotiations.

Amend the draft accordingly

Review the entire package

The package should address the interests of all constituencies. All of the proposals should be reviewed for how they work as a package. Having all the proposals together may reveal unforeseen links between proposals, or gaps that must be filled. Even though monetary proposals are typically introduced last, they should be costed at this stage.

4.2 Pointers for Drafting

When drafting, always keep the audiences in mind. For members, the agreement covers their rights, obligations and benefits. Employers must meet their obligations and follow procedures. Arbitrators must adjudicate alleged violations of the agreement. The drafter should always ask the questions, "how will an arbitrator interpret this clause? Will the membership understand it? Does it provide clear rules for the employer to follow?"

Use Plain and Precise Language

Plain language is preferable to complex construction. Precision is equally important. Complexity and ambiguity invite misunderstanding and make it more difficult to enforce compliance with the agreement. Use specific dates and deadlines rather than terms like "from time to time." Specify the positions or groups you intend to include instead of "all interested parties."

One Concept/One Word

Pick the term that best fits your purposes and use it consistently for the same concept. A collective agreement is a legal document, not an exercise in creative writing. Repeating the same term is preferable to using a synonym. For example, each of the terms "base salary," "regular salary," and "earnings" may have different meaning. They should be defined in the definitions section of the agreement and used consistently.

The Specific Overrides the General

Describing a practice with a list of specific examples rather than a definition will exclude anything not on the list. For example, if the discipline article has a list of disciplinary behaviours rather than a definition then actions omitted from the list may not be subject to the due process and other requirements of the discipline clause.

The clause, "Members will be provided with an adequately furnished office," is overridden by a subsequent clause, "The employer shall be under no obligation to provide ergonomic chairs."

Beware of Categories

Rule 1: The inclusion of a specific term implies the exclusion of others. This presumption can be avoided by adding the phrase "including but not limited to" when enumerating a class of objects.

With the language below you will only be entitled to the listed items.

"A member shall be supplied with the necessary office furnishings, specifically, a desk, a chair, a telephone and a stapler."

The clause is improved with the additional phrase.

"An employee shall be supplied with the necessary office furnishings, including but not limited to, a desk, a chair, a telephone and a stapler."

Rule 2: The meaning of general words is restricted by the specific words that precede them. Where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.

Consider the following phrase: "An employee shall be supplied with an office furnished with a desk, a chair, a telephone and anything else required to do their work."

The meaning of "anything else required" will be restricted to office furnishings.

Do Not Rely on Past Practice

An adjudicator will use evidence of past practice to interpret a clause only if the language is ambiguous. The safest route is to concretize a practice by writing it into the agreement.

Incorporate by Reference

It should be clearly stated in writing that schedules, letters of understanding, and appendices are part of the agreement. This ensures that any violation of their terms is subject to the grievance procedure.

Be Careful with Boolean logic

Boolean logic consists of three logical operators: AND, OR, NOT. Take care, because these operators can be easily misused. See the following examples:

"If you are a faculty member AND a member of the Appointment and Promotion Committee, you will be supplied a computer."

According to this clause, only faculty members on the Appointment and Promotion Committee will get a computer.

"If you are a faculty member OR a member of the Appointment and Promotion Committee, you will be supplied with a computer."

With this clause faculty members and members of the Appointment and Promotion Committee get a computer.

Use Imperative Words and Avoid Discretionary Ones

The terms MAY and SHALL can be misused. SHALL is mandatory, MAY is discretionary. Use SHALL, do not use MAY

"Each faculty member SHALL be provided with a computer," ensures that every faculty member receives a computer.

"Each faculty member MAY be provided with a computer," ensures nothing.

Avoid "Weasel Words"

The imperative SHALL can easily be weakened with weasel words. Avoid the following language that allows the employer discretion in conferring a benefit:

- best efforts

- endeavour
- normally

In the following examples the employer has no obligation to supply a computer.

"The employer shall make its best efforts to supply the member with a computer".

"Under normal circumstances the employer shall supply the member with a computer"

5. Bargaining Strategy

The bargaining strategy, or overall plan, should be tailored to the association's total package of proposals. Package themes are useful. Benefits and workload proposals can form a "family-friendly" theme. Salary proposals to close gaps between lower and higher salaries may be part of a "fairness and equity" theme. Improvements to workload and staffing complement may address a "quality of education" theme. Themes are useful as rationale and explanation of the proposals. By identifying the constituencies that benefit from the proposals, they solidify membership support.

Members must be well informed about the themes, the proposals that make them up, and the approach the association is using to reach its goals. Communication is therefore a key component of the strategy, and relies on the work of the communications committee mentioned in section 3.1.3, on Support Committees.

The strategy should cover communication with student organizations and other unions, on and off-campus. Sharing details of bargaining is inappropriate and can be counter-productive to negotiations. However, it is useful to keep these bodies informed of the climate for negotiations and of the association's major bargaining concerns that have already been published in newsletters to the membership. Unionized associations should consider joining NUCAUT (National Union

of the CAUT). NUCAUT provides membership in the Canadian Labour Congress, its provincial and local federations and access to their services.

The president and communications committee should maintain good relations with the media, through providing information and resources on a wide range of issues apart from bargaining. Good media relations will be helpful if bargaining breaks down. In planning, consider the CAUT one-day workshop, *Media and Communications*, provided on campus, that prepares participants to communicate effectively with the media and to develop in-house communication strategies.

The strategy should have a timetable for meeting priorities, and the actions to consider if they are not met. Employers may undermine the timetable, through delays, refusals to seriously discuss the association's proposals, or tabling unacceptable positions. If the bargaining team cannot get the employer to move, the executive may have to recommend pressure from the membership, with strong statements of support for the team and the positions, and calls for the employer to negotiate in good faith.

Unionized associations can invoke the threat of strike. Timing and preparation are crucial. The threatened strike must be during an appropriate phase of the academic year (not between April and August), and account for the legal steps required to reach a strike position. Requirements are listed in a separate CAUT publication on *Collective Bargaining Legislation*. To establish a convincing strike threat, all the appropriate preparation must be in place. This is the work of the strike readiness committee, discussed in section 3.1.3 on Support Committees. Strike preparation is covered in detail in the *CAUT Strike Manual*. The *Manual* can be found in the password-protected area of the collective bargaining section of the CAUT Website. For bound copies of the *Manual* please contact CAUT.

Before going to the membership on such an important issue, the executive and bargaining team must demonstrate that they

have exhausted all possible avenues short of considering strike. Members should already know, through meetings and newsletters, how and why bargaining is not going well. When they are adequately informed, members will not be surprised by the call for a meeting to consider authorizing a strike vote. Discussion of strike can evoke a wide range of emotions, including fear. If your association has never been on strike it can be useful to invite a speaker to the meeting who is knowledgeable or experienced with strikes at other universities and colleges. CAUT can provide assistance with providing a speaker or identifying one from a member association.

A non-unionized association can use the same tools of membership pressure with the exception of threatening a strike. The strategy must account for the prospect that a bargaining impasse will be settled through binding arbitration. For further discussion see section 8.3 on Arbitration.

Duration of the agreement is an important element of the strategy, and should rarely be agreed until the late stages of bargaining when all monetary issues are on the table. For further discussion see section 7.3, Duration of the Agreement.

6. At The Bargaining Table

Good preparation and strategy are necessary for successful table negotiation. The team is charged with taking the bargaining priorities to the table and getting the best deal possible. Results depend on the abilities of the bargaining team. They must be skilled at drafting language, presenting positions clearly and forcefully, and actively listening to responses from the other side. Team members must work well together, to handle their internal differences and to deal with the stress of conflicts with the employer. Key requirements are full and open discussion in caucus and sound discipline at the table.

6.1 Protocol

Before exchanging proposals, the teams should establish rules of conduct for the negotiations. Each team should verify that it has authority to negotiate for its principals. The association must have the unrestricted right to communicate with the membership. A reasonable limit, such as advance notice, may be established on communicating the status of negotiations with the media.

You should seek agreement on the following issues:

- Before bargaining commences, the employer should provide to the association all the information it requires to prepare its proposals. If the association still requires information at the time of the protocol discussion, the team should table a full list, and receive from the employer team a response on when the information shall be provided.
- To facilitate the flow of negotiations, it is useful to establish a schedule of meetings, and a requirement that at the end of each session the agenda will be set for the next session.
- Each team shall determine who they bring to the table. This flexibility is required to bring in members with expertise on particular issues, or a bargaining expert from CAUT.
- By an agreed date, each team must provide a list of every article it intends to open. Further articles can be opened only with the agreement of both teams.
- Once either side opens an article, the other side is free to respond with changes to any part of the same article.
- Each team shall bring written proposals to the table for all the changes it seeks.
- Before a proposal is negotiated, the proposing team shall explain the proposal, including the reasons for tabling it and its full implications. The team opposite shall then ask questions for clarification.
- Every draft of a proposal shall indicate the proposing team, date and time tabled.

- Once an article is agreed and initialled by both sides, it cannot be reopened unless both teams agree or if it requires alteration to be consistent with changes in other articles.
- When a team formally advances a position it cannot retreat from that position at a later date unless the other team agrees. Retreating from a tabled position is bad faith bargaining.
- Either team can call a caucus at any time.

6.2 Record-Keeping and Paper Flow

Maintain an ongoing record of proposals, responses and sign-offs, so that at any point you know what is agreed, what is outstanding and where it is in the cycle of presentation and response.

A master binder should contain each piece of paper exchanged in the course of negotiations, with date and time, filed by article. A separate binder should contain all the research and supporting materials, filed by article. Another file should contain correspondence, including emails, filed chronologically.

Proposals should be presented at the table in hard paper copy, with a copy for all members of both teams. The paper copies comprise the official record of negotiations. Electronic copies may be exchanged for drafting responses.

6.3 Speaking at the Table

The chief negotiator is expected to be the team's best spokesperson and is usually the sole speaker at the table. Other members of the team should speak only with the permission of the chief. Even when the team has planned in caucus for a member of the team to speak on an issue, at the table the chief should invite the member to speak. When the team decides in advance that a member will lead the questioning on an issue, at the table the member should seek the chief's permission. The rationale for this hierarchical arrangement at the table is for the team to always speak with its strongest voice. The chief is also most

likely to be aware of the links between all of the proposals. The approach also presents to the other side the appearance of a single, unified message.

It may be appropriate for other members of the team to speak on specific issues. For example, the salaries proposal could be presented by the team member who prepared it. The team member who has done the most work on intellectual property could lead the questioning of the employer's proposal.

Speaking arrangements should always be planned in advance of a session. Interruptions from within the team should not occur at the table, because they may undermine momentum that the chief is trying to build, or they may mar the appearance of solidarity. For matters that appear urgent, a team member can pass a brief note to the chief. The chief may decide to call a caucus, either immediately or at a later appropriate moment. For further information, see section 6.10, Effective Use of Caucus.

All negotiations should take place at the bargaining table. The entire team should always be present. If a team member is unexpectedly ill, the scheduled session should be cancelled. This practice reinforces a message of team solidarity and a position that every team member is a crucial contributor to the process.

6.4 Flow of Proposals & Counter-Proposals

Before bargaining begins, written proposals should be presented by both teams, and fully discussed for clarification. Counter-proposals cannot be prepared until each side has as full an understanding as possible of the proposals they have received. Make sure you spend as much time as necessary in the clarification stage.

When responding to questions, be certain that you know the answer. Do not improvise at the table. When unsure about a response say that you will get back with an answer. Make sure that you keep track of the question and provide the answer in a timely fashion.

The other team may request time to respond to some of your questions. Get a commitment on timing. If you meet weekly and they promise a response in two weeks, make sure to ask for their response at the designated meeting. If they do not yet have a response, make note of it and ask when it will be forthcoming. You should have a detailed history of commitments and when they are met.

Bargaining begins when counter-proposals are tabled. For each issue there must be clear understanding on which team will respond next. You should expect the employer's team to respond to each of your proposals, and not move any further until their counter-proposal shows movement towards your position. You could then move on the particular article, stay with your position and show movement elsewhere, or explain why you cannot move any further.

Try to maintain as much control as possible over the language. Whenever there is discussion of positions, the association team should always volunteer to draft language to bring back to the table. You are in a stronger position when bargaining from your language rather than from the employer's.

The process should be similar with employer initiatives that are reasonable. Use a different strategy with unacceptable proposals. Rollbacks of rights are unacceptable, such as weakening peer review procedures for tenure and promotion. Introduction of new procedures such as post-tenure review are unacceptable. You must be prepared to demand that the employer remove the proposals. You should not table counter-proposals, because they legitimize the employer's initiative. Contact CAUT for advice on how to respond.

You should start with the least important and less contentious issues — changes unlikely to cause much dispute, such as editorial improvements, bringing a clause into line with new legislation, or improvements to time lines. Through the discussion, you will gain an understanding of how the other team

operates. Reaching agreement on these issues will create momentum and build confidence in the process.

The length of time between proposal and counter-proposal will vary with the issue. Less contentious articles should have a quick turnaround time. Stalling by the employer on these matters may signify a larger problem. You will have to demand that the employer's team identify why they are not responding. Make sure you don't fall into the trap of offering a concession to move negotiations forward. Granting a concession tells the employer that your team is compliant and willing to yield for the sake of movement. The employer's team will try to exploit this error throughout the negotiations.

Make sure that the employer always responds to your positions. The employer may refuse to respond to a position unless you change it. This amounts to bargaining with yourself. After tabling a position you should insist on a response from the other side before revising your own position.

Once negotiations are moving, you must not veer from your priorities. You may have to hold to your positions in the face of vigorous pressure from the employer's team. Remind yourself that you report to your members and not to the employer. You don't have to please the employer's team; you must convince them to satisfy your demands.

Before agreeing to something the employer wants, you should be absolutely certain that you receive something of the same or greater value in exchange. Otherwise, don't agree with what they want. They may eventually take it off the table. There are countless bargaining stories from academic staff associations, of nasty proposals that employers vigorously and insistently defended until one day they were mysteriously dropped. Hold out on agreeing to a demand until you get something substantial or it disappears from the table.

Every move you make reveals information to the other side. Use this fact to your advantage. Concessions should always be from a position of strength. You may agree to moderate a

proposal because the employer offers you something worthwhile in exchange, or because the employer responds with a reasonable offer somewhere between your position and theirs. Backing away from a proposal without very good reason tells the employer that you may not have considered it carefully enough at the outset, or you are losing your nerve. They are less likely to consider other contentious proposals because your move tells them that if they wait long enough you may back away from them.

Contentious non-monetary proposals may remain open right to the end of negotiations. Hold on to them. You may be able to trade them for money.

6.5 Bargaining in Good Faith

In a unionized environment, the parties are required under provincial labour legislation to bargain in good faith and make every effort to conclude a collective agreement. They cannot just go through the motions and engage in what is known as surface bargaining. There are similar expectations in non-unionized settings, but they are neither legislated nor enforced by a provincial labour relations board. At the most basic level, good faith means that collective bargaining can take place only between the designated bargaining agents for each side.

The employer is required to negotiate solely with your bargaining team, as you are with theirs. They cannot attempt to influence the composition of the association's bargaining team. All proposals for changes to the agreement must flow through the bargaining teams.

The employer engages in "bad faith" bargaining when it tries to negotiate directly with the membership, or when it attacks the credibility of the association. It is bad faith bargaining for the university president to write directly to the membership with a new offer, or for an administrator to pressure any association members to lobby the association executive or team on bargaining positions. These practices are prohibited because

they are designed to undermine your team's authority and may intimidate your members. If the employer does engage in "bad faith" bargaining the membership should be informed, and the association can seek an order to desist from the provincial labour board.

Other employer actions may appear to be bad faith bargaining. For example, the president may send directly to your members an explanation of the employer's most recent position. Such an action is usually not considered bad faith because the employer is not changing its position. However, you should not allow such communications to continue. Tell the president, in an open letter copied to your members, that you expect such communications to cease, because they are unethical and border on bad faith bargaining. Remind the president that the association expects the employer to engage in proper negotiation, and communicate only through the bargaining teams.

At the table, bad faith bargaining includes any attempt by a party to rescind an earlier position. Once a party has formally tabled a position it cannot improve the position in its favour without the agreement of the other party. If the employer offered a ten percent salary scale increase over three years, they cannot later reduce it to nine percent. Likewise, the association cannot increase a salary position it already tabled. Labour boards may force a party to return to its earlier position.

For a more full discussion of bad faith bargaining, see Appendix IV, *Bad Faith Bargaining*.

6.6 Hard Bargaining

Don't confuse bad faith bargaining with hard bargaining. For example, the employer may forcefully and continuously reject one or several of the association's key proposals. They may also insist on rolling back some of your members' rights that are in the agreement. The employer has a right to engage in these forms of hard bargaining. You cannot seek redress from the labour board. Solutions will come from membership pressure,

and in other forms covered in part 8, *Third-Party Assistance* and part 9, *Strike*.

At the bargaining table, the employer's team may challenge your team's legitimacy by stating that you do not have the support of the membership, or that you don't know what the members really want. You are strongly advised to not engage at all in such a discussion. Tell the other team that membership support is your concern, not theirs. You have a strong mandate from the membership, and you expect the employer to respond accordingly. If the employer persists with this theme through several bargaining sessions and refuses to provide reasonable proposals, consider holding a membership meeting to explain what is happening and to ask the membership for a restatement of their support for the team and the association's positions, and for a motion demanding the employer to negotiate reasonably.

How should you respond when the employer states that they will not move on an item because it is a "deal-breaker?" This is just another form of hard bargaining. The employer is signalling that the item is a high priority. The employer's team may have instructions to make every effort to obtain the item. Remind yourself that everything is negotiable. Make sure that you understand as much as possible what the employer is seeking and why. You may be able to accommodate a portion of the item, or modify it in an acceptable fashion. If compromise on the item is not possible, state this clearly. You are not compelled to agree, and they cannot get the item without your agreement.

6.7 Bargaining for Money

Preparing proposals on the key monetary issues of salaries, benefits and pensions requires considerable research on comparator institutions, the distribution of salaries by rank, gender and discipline, and a full cost analysis. This is already covered in section 3.3 on Research, but merits a reminder here.

You should also cost other monetary proposals, such as professional development allowances and tuition waivers

Introduce monetary proposals last. If monetary terms are signed off, there is less incentive for the employer to agree to other demands. Money is usually a key issue in a strike vote. If settled, the membership will be less inclined to support a strike vote. Money is also a key issue for arbitration.

When bargaining over money, each side comes from vastly different perspectives. The association seeks salary and benefit improvements to meet the needs of its members. It seeks a collective salary solution that minimizes the employer's discretion to award money to individuals. And it seeks a fair distribution of the money consistent with its mandate. The employer aims to minimize the cost of the package and maximize its discretion to award individual increases. Its concerns over distribution flow from the dictates of the market. Reaching agreement requires a full understanding of these perspectives. Highly contentious differences are shaped by these perspectives. They appear in positions on merit pay, market differentials, and determination of starting salary.

The association's ability to have the employer improve its offer will depend on having a fully-mobilized, supportive and militant membership. Only the membership has the power to move the employer on money. The team's job is to ensure that the proposals continue to make sense to the membership.

6.8 Speaking Skills

Negotiators must be able to present proposals in clear and concise language. Presentations should be well organized, so that every important point in a proposal is covered. You must explain what the language is trying to do, how it works, and why the proposal is necessary. The chief should prepare speaking notes, in point fashion, so as not to forget anything, and review them with the rest of the team, for help with refinements and additions.

Speaking involves different types of statements. Here are the key ones.

6.8.1 Opening Statement

The association usually sets the agenda because it initiates most of the changes. The opening statement should set the tone and parameters for bargaining. Start with general areas where the parties are likely to share perspectives, such as quality of education, high calibre of academic staff, maintaining the institution's competitiveness, having a fair and equitable settlement, and negotiating in a timely fashion.

Use the opening statement to establish your bargaining team's legitimacy and mandate by discussing membership solidarity and support for the proposals and the authority the membership has given you to bargain on their behalf.

The opening statement should discuss the association's objectives. Mention specific themes that drive your proposals. Talk about their significance as issues and their importance to the membership. Make sure to mention the care taken by the association in preparing the proposals, that they are all serious, and that you expect serious and thoughtful responses from the employer.

These statements help to set a context of negotiation between equals. The employer has the power to run the institution. The association has the collective power of the membership.

6.8.2 Initial Bargaining Statements

Initial bargaining statements set the theme and tone for a proposal. Start with a non-controversial statement that leads to the proposal. For example: "We expect you agree that faculty salaries should not discriminate unfairly against any group. Our way to achieve this is with proportional compensation. The association therefore proposes that the beginning per-course payment for contract academic staff shall be at X% of the floor for a full-time assistant professor, with career progress incre-

ments up to the floor of an associate professor. I will now explain the details of the written proposal."

6.8.3 Position Statements

Position statements remind the other side of the association's current position on an issue. Use them when negotiations are stalled, or have become sidetracked from the main position. The position statement should: state your position; summarize the mutual benefits, wherever possible; and request a response. For example, "The association's position on salary anomalies is clear. We are resolved to have a salary scheme that eliminates anomalies. Our proposal for an anomalies fund and larger step increases at lower ranks will improve recruitment and retention of talented academic staff. When can we expect a full response that clearly indicates your position?"

Position statements fulfill several functions, such as: clarifying a proposal; keeping negotiations on track; communicating priorities; overcoming delay tactics; and stimulating a reaction or counter-proposal.

6.8.4 Proof and Rebuttal Statements

Proof statements provide evidence supporting an association proposal or refuting an employer position. Evidence must be carefully prepared, because the employer will try to counter your proof and present their own version. You can also provide this kind of evidence to the membership, to reinforce the legitimacy of your proposals and reveal weaknesses of the employer's positions.

Rebuttal statements are used when you don't have evidence. Instead of providing proof, you demonstrate the unreasonableness of the employer's position.

6.8.5 Closing Agreement Statement

Use a closing agreement statement when you want to formalize agreement on a proposal. You should state your understanding

that agreement has been reached, summarize the points agreed, and move for formalizing agreement. Formalizing agreement usually involves both parties signing their initials on a clean copy of the proposal.

6.9 Listening Skills

Good negotiators seek to understand the rationales and motivations of their counterparts. They listen objectively, without filtering the message through their own expectations. The best negotiators are attentive to verbal and nonverbal communication. They are mindful of word choice and emphasis, and can respond with appropriate questions. Poor listeners miss important opportunities. They fail to hear the nuances in statements from the other side of the table.

Many negotiators erroneously assume that their job is primarily one of persuasion through talking. They assume that speaking is active and listening is passive. While the other negotiator is speaking, they ponder what they will say next, instead of carefully absorbing what is said.

Good listening is hard work. It involves active listening and questioning

6.9.1 Active Listening

- Listening is the key to being well-informed. The team with the most information usually achieves the better outcome. Be clear about the information you want from your counterpart, and ask questions that will elicit the appropriate responses.
- Be attentive to nonverbal cues. Negotiators rarely put their entire message into words. Nonverbal expressions of attitude and motive can be as important as the words they accompany.
- Do not interrupt. Interrupting a speaker is rude and counterproductive. You might miss a statement that contains valuable information.

- A good listening environment is free of distractions. Your team must be disciplined for attentive listening.
- You cannot possibly remember everything that is said. The designated note-taker on your team should write it all down.
- Listen with a goal in mind. If you have a listening goal, you can look for words and nonverbal cues that add information you are seeking. When you hear specific clues, such as your counterpart's willingness to consider an alternative position, you are better informed to shape a response.
- Give the other team your undivided attention. Pay close attention to the speaker, to convey the message that you are fully attentive to what is being said, and to give yourself the best opportunity to hear all the messages that are being sent — intended and unintended.
- React to the message, not to the person. Negotiation concerns issues. You can maintain a professional relationship with the other team even when you disagree strongly on the issues. Remember that you must eventually come to agreement with the other team. Attacking the other negotiator rather than the issue is counterproductive.
- Control your anger. Expressing anger at the table can be appropriate if it is planned, controlled and clearly focussed on an issue. Your message should convey the reasons for your anger and the changes you expect. Remember to maintain the distinction between the person and the issue. You needn't attack an individual for who they are to express anger about what they have said or done. Anger can be counterproductive when it spontaneously erupts at the table, without forethought. It interferes with communication and problem-solving. If you feel such anger welling up you should call a caucus and discuss the matter with your team before deciding how to respond.

6.9.2 Questioning

Don't rely on the other team to offer up full disclosure about their proposals. They speak from a different perspective than yours and may not be aware of everything you need to know. They may offer just minimum information and leave the inquiring to your team. They may deliberately omit key facts. Questioning helps you obtain the information you need. To get more specific and refined information, you must carefully question your counterpart. Questioning usually moves from the broad to the specific. Questions can be open-ended or closed-ended.

Open-ended questions

Open-ended questions provide the other party an opportunity to explain their thinking on an issue. These questions seek expansive responses. Ask open-ended questions when you need more information about how the employer is framing an issue. Examples are: "What problems are you addressing with your proposal on conflict-of-interest?" or "What is your objection to our proposal on course teaching load?"

Closed-ended questions

Closed-ended questions try to limit the other party's range of answer. Ask closed-ended questions when you want to force a narrow response. Examples are: "Can we expect your counter-proposal at the next session?" or "Does your definition of spouse include same sex partners?"

Open-ended and closed-ended questions can be used in a variety of ways. Here are some possibilities.

Clarifying questions

Clarifying questions are used to get more information about a proposal. They are usually open-ended, and ask the speaker to add to what was said. The question can refer to a term in a

statement, such as, "Would you please clarify what you mean by 'consultation' in your statement about setting criteria for tenure." Another type of clarification is about intention, such as, "Please explain how your position on intellectual property ownership would improve the situation for our members."

Paraphrasing
Paraphrasing questions seek to confirm the listener's understanding of a statement. A paraphrase is a restatement in your own words of a previous remark. It is useful to confirm an attitude or fact, or to place a statement by the employer on the record. A paraphrase usually seeks a simple affirmative or negative answer with explanation, such as, "I understand that your position allows the dean to choose from the short list of candidates regardless of the recommendation of the hiring committee. Is this correct?" or, "Did I hear you correctly that your only concern with salaries is to keep the cost of the package at no more than two percent?"

Reflective questions
Reflective questions seek to confirm the emotional content of a message, such as, "Have I heard correctly that you are very firmly committed to this proposal?" They can also ask about the strength of conviction for a proposal, such as, "Are you saying that you do not wish to compromise on ownership of courses delivered at a distance?" These types of questions attempt to elicit more information about the employer's resolve on an issue.

6.10 Effective Use of Caucus

Caucus serves important functions, and should be called whenever necessary. Table strategy is prepared and refined in caucus. The team reaches consensus on an issue in caucus before bringing it to the table. Caucus is useful for cooling off if tempers are beginning to flare. It is the place to maintain team

solidarity. Caucus is also necessary to iron out different positions held by team members.

Call a caucus no matter how trivial the issue may seem. Always use caucus to frame a response to a request from the employer for a position or additional information, unless you have anticipated the request and planned your response.

Remember that the bargaining table is where you exchange views and positions that have already been determined in caucus. Trying to determine your team's views at the bargaining table is a dangerous practice.

When breaking for a caucus, indicate to the other side the approximate time you require. You needn't give any reason for calling the caucus. Make sure to inform them if you need more time. During a caucus planned for 15 minutes, you may realize the issue is more complex than anticipated. Don't try to rush to a conclusion within the expected time limit. Just inform the other side of how much more time you need. State simply that you need more time. If you think the discussion will take several hours, you should set a time for meeting. This could be the next scheduled negotiating session. If you are in the final stages of negotiation and trying to meet a deadline, such as for a strike vote, you should suggest a recess for the length of time you require.

6.11 Seize Opportunities

Seasoned negotiators are always seeking creative compromise. Some opportunities may be obvious, such as an employer agreeing to a proposal that appeared lost. More often, opportunities appear as subtle clues in the to and fro of negotiation. You may discover that the employer's opposition to an association proposal was not at all what you thought from earlier discussion. The real concern only surfaced later in negotiations, and you realize that an accommodation is possible. You may learn that the employer made incorrect assumptions about the association's objectives for a proposal.

Listen carefully to the employer's reasons for rejecting a proposal. You may be able to meet their concerns and still achieve your objective. Knowing why an employer refuses to raise a salary scale offer may be the key to getting salary money in a different form. The employer may not want to set a precedent for other negotiations, or go outside local public sector norms on the scale percentage. They may, however, agree to structural improvements such as increasing the value of the annual step increases, raising salary floors, and moving everyone up by a step or two.

Pay careful attention to the implications of employer proposals. An employer may hold fast on salaries and benefits while proposing a large fund for discretionary salary increases based on market demand or merit. The employer is prepared to spend more money on compensation as long as the increases are determined by administrators on a case-by-case basis. This is a struggle over power: collective determination through negotiation versus administrative decree. Use the opportunity to inform your members on the advantages of collective determination. A well-informed membership may provide the leverage you need to convert the discretionary fund into salary increases for all your members.

Keep track of regressive employer proposals. You needn't worry too much about them, because the employer will eventually drop them if you maintain firm opposition. Associations have faced employer proposals for post-tenure reviews, weaker financial exigency protection, setting unreasonable requirements for accountability, removing members' ownership over their course materials, and eliminating benefits coverage for retired members.

Regressive proposals are serious tactical errors by the employer. Employers may exacerbate the situation by holding on to the positions for too long. Members of academic staff associations do not take kindly to these kinds of proposals. They have expressed their anger through motions of support for their

team and mandate, and votes to reject the employer's proposals. Members of unionized associations have held strike votes and, if necessary, have gone on strike. Employers' regressive proposals never survive when the membership opposes them.

You can create opportunities by sending appropriate signals to the employer. Give them direction for their responses. They may not follow your lead, but at least they will know where you expect to go. You can consider telling them of possible trades you are prepared to make, but do this with extreme caution. The advantage is that you are giving shape to a possible compromise. The disadvantage is that you have signalled a compromise you are prepared to make. The employer may think they can eventually get you to unilaterally fill your part of the compromise. If so, they will file the information for later use and refuse the compromise you offered. If you decide to try this type of strategy, start with easy issues that are not very contentious, and proceed with caution.

7. Reaching Agreement

Negotiations are over when you reach a written, signed settlement on all outstanding issues. The agreement is final only after ratification by the membership. Until then it is a tentative agreement. You must have written evidence that the employer agrees with the settlement. Make sure that the settlement is fully in writing and signed by both teams.

Knowing when to settle requires careful balancing of the employer's offer, the association's bargaining goals and the members' determination to meet the goals.

7.1 When to Settle

The last issues to settle usually involve monetary items concerning salaries, benefits and pensions, and non-monetary issues such as workload, major governance matters, and duration of the agreement. At this stage the employer may offer a take-it-or-leave-it "final package" to settle all remaining issues. They may

state firmly that they have nothing more to offer. Remember that the only final package is the one that you sign. Until then the "final package" phrase is just a negotiating ploy. Some settlements are similar to the employer's first final package; others are far better.

The monetary offer may be designed to weaken support for a strike or undermine the prospects for arbitration. Such packages also show up in the midst of a strike, as an attempt to force the association's hand in a final offer vote. The employer may challenge you to put their final offer to a membership vote. They may taunt you with claims that the membership will grab the deal if you give them the opportunity. Don't be intimidated. You are under no obligation to hold a membership vote on the employer's offer. However, If the offer is inadequate and you think a membership vote would be strategically useful, tell the employer you are willing to take their offer to the members. If the employer agrees, have the executive bring it to the membership with a recommendation that the members reject the offer and instruct the team to continue bargaining towards the association's objectives.

Reaching final agreement on all the monetary items usually involves several exchanges across the table. It is crucial at this stage that you have a careful costing of each proposal, to ensure that you are making progress and that you know how each move affects all of your members. All of this information is necessary for making informed moves on monetary items.

Reaching the final settlement draws on all the negotiators' skills and fortitude, and the fine art of knowing whether you have achieved enough. Ask yourselves the following questions.

- Does the employer's last offer sufficiently meet your bargaining objectives?
- Does it provide the necessary balance to satisfy the interests of all your constituents?
- Do you think that more money is available if you press harder?

- Will the membership think this is a good settlement?
- Are the differences between your position and the employer's offer sufficiently large to justify asking the members for more pressure?
- Will the members of your unionized association support a request for a strike vote?
- With a non-unionized association do you think you might get more through arbitration? Success at arbitration is more likely if salaries are behind your market comparators and if you are not proposing major changes to the salary structure.

Your key consideration should be whether the settlement meets your objectives. If it does, the association will emerge stronger, with a good precedent for the next round of negotiations. Don't fret over whether you might have been able to squeeze a bit more money from the employer. You cannot know if you did, and it is irrelevant if you have a good settlement.

Don't settle too soon if you are still short of your objectives. Inform your members, give them your best assessment of what it will take to achieve more, and advise them on a strategy for going forward. The membership must then decide. Usually, they will approve the advice from the executive and team.

7.2 Removing Items From the Table

In the closing stages of bargaining, the employer may propose to take away one of its demands, in return for the association removing a proposal. This may be advantageous if your proposal is unimportant and the employer's demand creates serious problems. Otherwise, you should reject trades of this nature until the very end. The employer's offer to remove the demand indicates that they are willing to eventually drop it. They may drop it unilaterally at a later stage of the negotiations. Remind them of the importance of your proposal and the

problems with theirs, and wait to see if they keep the demand on the table.

The employer may suggest submitting some of the unresolved issues to joint committees. Such committees are typically created through a letter or memorandum of understanding, and meet after collective bargaining is concluded with a mandate to either recommend a resolution, or to just report on the issues. Joint committees of this nature usually are an advantage to the employer. They move a contentious proposal from the bargaining table to a committee that has no authority to negotiate. The employer can instruct its nominees to the committee to stall discussion and agree to nothing. The association has no leverage over the committee. Beware of these letters of understanding. In most cases the committees accomplish very little, and the issue must be returned to the next round of collective bargaining.

Some associations have used joint committees to remove employer proposals from the bargaining table. Consider such a tactic with great care, especially with issues that are contentious among the membership. The committee process may legitimize discussion of an issue, and create pressure to consider it at the next round of bargaining. Introduction of merit pay is an example. If your members are opposed, then end the discussion at the bargaining table rather than continue it in a joint committee.

7.3 Duration of the Agreement

Duration of the agreement should be settled near the end of negotiations. Most agreements have a three-year term because it allows sufficient time to test new provisions and provides a return to bargaining soon enough to address changing conditions. You may have to deal with new rights issues, or economic circumstances may require new approaches to salaries.

Employers usually want longer terms to delay facing new proposals from the association. Agreeing to a term longer than three years is a concession for which the employer should pay.

Monetary offers should be sufficiently high to compensate for the potential costs of a longer term. Anything longer than a three-year term can be dangerous to your members because it is too long to wait until you can correct unforeseen problems in the agreement or deal with significant and unexpected changes in the economic environment (e.g., a rapid increase in the cost of living).

A one or two year term may be appropriate if you cannot budge the employer from a low monetary offer and the association does not feel prepared to pursue a strike vote. The shorter term limits the financial damage of a low salary increase and provides time to build momentum for more aggressive salary negotiation in the next round.

7.4 Pacing

As you reduce the number of items on the table and bring monetary issues more directly in focus, the talks may become more intense and pressured. Careful consideration of the interrelatedness among proposals becomes more important. You may have relatively short table sessions interrupted by lengthy caucus meetings. Remember to take all the time you need in caucus to analyze the status of proposals and consult as much and as widely as necessary. Take special care not to make mistakes. Don't fall prey to the temptation of finally bringing an end to lengthy negotiations. The care you take at this stage can pay significant dividends in the final agreement.

7.5 Outstanding Grievances

When all the major issues are settled, the employer may ask the association to settle some grievances. Your decision must take account of the type of grievance, the issues that are at stake, and the substance of the employer's offer.

There may be grievances that the association filed to put pressure on negotiations. An example is disagreement over interpretation of a clause in the agreement. These types of

grievances can usually be abandoned if you successfully negotiated the necessary improvements. If the language is improved to your satisfaction, the grievance served its purpose and is no longer necessary. You should not abandon the grievance if the language was not improved.

Grievances that concern individuals must be handled with care. You are still bound by the association's duty of fair representation to the grievor. If the employer offers a settlement, you must ensure that it is reasonable, and inform the grievor. The settlement should be no worse than what you expected to achieve through grievance and arbitration.

7.6 Ratification

Ratification by the membership is the final step of collective bargaining. Even though the teams signed the agreement, it remains tentative until formal ratification. The agreement should be posted on the association's website and presented at a membership meeting to inform members about the provisions before they vote. Printed copies of all the changes to the existing agreement should be distributed at the meeting.

Presentation of the tentative agreement should be accompanied by an executive motion for approval. The negotiating team should present the agreement with a summary of all the clauses and details about the more important ones. Usually, the chief negotiator takes the lead. Comparisons should be provided between what was achieved and the initial bargaining objectives. There should be sufficient time available for questions and discussion.

Members must have sufficient opportunity to cast their vote, usually by secret ballot. Ballot boxes can be available at the end of the meeting and for another day or two at a convenient location on campus. The length of time and location(s) depend on the size and location of your membership.

If members reject the tentative agreement, seize the opportunity to go back to the employer and say that the members were

not satisfied with what was negotiated. The negotiating team is an instrument of the membership and should accept a rejection as the members' demand for a better agreement.

8. Third-party Assistance

If negotiations reach an impasse, the teams may require a neutral third party, or facilitator, to move forward. In this section, we examine the forms of third-party assistance that can be used: conciliation, mediation, and arbitration.

Third-party involvement changes the nature and tone of negotiations. Control of the process is taken away from the teams. In practice, this means that the facilitator determines where the meetings take place and how they are conducted. Table bargaining is usually replaced with shuttle negotiation. The teams are located in different rooms and the facilitator moves between them.

Facilitators are engaged only to help the parties reach agreement and not to pass judgement on the fairness of the parties' proposals. Remind yourself of this fact as you move through the process. The facilitator is an expert in process, and not nearly as familiar as you are with your proposals or the academic setting. Good facilitators are relatively indifferent to the content of the agreement, as long as they can get the parties to agree on something. You waste valuable time by trying to convince the facilitator of the merits of your proposals. Instead, you must convince the facilitator of your conviction, your members' resolve, and provide the facilitator with arguments to present to the employer's team.

Deciding to use third-party assistance involves complex considerations. Contact CAUT before you decide to use conciliation, mediation or arbitration.

8.1 Conciliation

A conciliator is appointed by the provincial government. In Newfoundland, New Brunswick, Prince Edward Island, Nova

Scotia, and Ontario, conciliation is required by law before the union can call a strike or the employer declare a lockout. In these provinces, a union's application for conciliation usually signals that strike preparation is underway.

Either party may formally ask the Minister of Labour to appoint a conciliation officer. Strikes by academic staff are prohibited in Alberta.

Conciliation may be requested at any time during negotiations, but typically the request is made much later in the process to put pressure on stalled negotiations.

If the request is in order, the Minister usually appoints a conciliation officer to contact the parties and arrange a meeting. Preparing for conciliation is relatively straightforward. The conciliator usually examines the most recent versions of the proposals and supporting evidence, and attempts to restart negotiation. The conciliator may make recommendations to the parties, but they are not binding. Successful conciliation ends with a tentative agreement.

In Québec, Manitoba, Saskatchewan and British Columbia, the conciliation process has no bearing on whether the association can strike. Conciliation is just a mechanism for third-party assistance.

In Newfoundland, New Brunswick, Prince Edward Island, Nova Scotia, and Ontario, the conciliator's report starts the clock ticking towards legal strike status. The conciliator reports to the Minister that agreement is not yet possible. This is usually called a "no-board report." Even though provincial legislation allows the Minister to appoint a conciliation board, these boards are rarely used. The dispute is left in the hands of the parties. After a waiting period of one or two weeks, depending on the province, the association is in a legal strike position. Some provinces require between 24 and 72 hours' notice to the employer before the strike commences.

Consider your options carefully. When conciliation ends, you must be prepared for a strike. Otherwise, the application for

conciliation could be characterized as a bluff. You may end up back at the table and no further ahead than before conciliation started.

It can be strategically useful to have a strike vote, or authorization for a strike vote, before conciliation begins. Votes of this nature provide evidence to the conciliator and the employer that the association is prepared to consider strike. The vote puts more pressure on the employer to show some movement.

Agreements are rarely reached through conciliation because the process itself does not create much pressure on the employer. Where required by law, it is a necessary hurdle but not a sufficient one to hold a strike. The association must have a solid strike vote and demonstrate that all the preparations are in place. Until that time, there is little incentive for the employer to move. The employer may try to save some money and management rights by waiting, and table its last moves only when the threat of strike is real and imminent.

8.2 Mediation

Mediation is typically a more aggressive process than conciliation, because the mediator is expected to bring the parties to agreement rather than just report on whether an agreement is possible. Mediators do not score points by reporting that an agreement is not yet possible. They must be more ruthless than conciliators in pursuing a settlement, to maintain their reputation of getting the parties to agree.

Mediators impose their process, with styles that range from very aggressive and authoritarian to passive and supportive. Try to learn in advance as much as possible about the mediator's approach. CAUT can often provide helpful information about mediators.

Each mediator has an inventory of tools that can include:

- separating the parties
- bringing the parties together to test a proposal, or to give the appearance that both parties hear the identical message (you

do not know what the mediator tells the other side after the joint session is ended)
- separating the chief negotiators from their teams
- telling either side that their proposals are unreasonable and must be modified
- vetoing your proposals because they know the other side will reject them
- threatening the association team of the dire consequences of not settling
- requiring the parties to try a different framework for seeking solutions
- keeping the parties at the table around the clock until a settlement is reached
- telling either or both parties the mediator's view of an appropriate settlement
- threatening to write a report that describes the terms the mediator thinks the parties should have reached

Mediation can be used at any point during negotiations. A few agreements require the use of mediation if agreement is not achieved by a deadline. There are some instances, usually in the midst of a strike, when a provincial government will impose a mediator and cover the costs. Otherwise the parties must agree to use mediation, jointly determine the mediator, and share the costs.

If you are considering mediation, or facing a request by the employer to use a mediator, remember that an agreement negotiated directly by the parties is almost always preferable to one that relies on third-party involvement. A mediator cannot know the workplace particulars of post-secondary education as well as the parties. Most of your agreement language is specific to the academic setting. Mediators' suggestions may be limited by their lack of familiarity with the structures and processes of post-secondary work.

Mediation is less likely to serve your interests if the association is in a strong bargaining position. Success at the table will flow from solid member support. Mediators usually relocate negotiations to a neutral off-campus site and impose a ban on communication with the membership to suspend the impact of their support. Stepping up membership pressure may serve the association's interests far better than using mediation.

Mediation might be appropriate if the mood of the membership is less militant. If you are unionized, mediation may be the last step before considering a strike, as it demonstrates that the association has exhausted all other reasonable means to obtain a deal. This is a tricky strategy, because there will be intense pressure and great temptation to accept a mediated agreement that falls short of your objectives. Most mediators are good at their job. They are usually private practitioners with good reputations and considerable experience at pressuring the parties towards a deal.

If you opt for mediation, it is still possible to invoke the presence of the membership even if you are not communicating with them during the process. Ask the membership to state that they will authorize a strike vote if mediation fails. This signals to the employer and the mediator that the association will only be satisfied with a good mediated settlement. The challenge for your team is to maintain this resolve while the mediator tries to break it down. The team requires considerable support and constant consultation during mediation. The executive should be on call or even physically present in an adjacent room. CAUT is available for on-call telephone consultation.

During a strike, mediation may be called by the parties or imposed by the province. These circumstances produce the most intense form of mediation. Government involvement usually indicates increased public pressure for an end to the strike. The mediator will try to create a pressure cooker of the already heated environment, and use it to contain and reduce the team's proposals. The team will need all the resources the

association can muster. Preparation must begin the moment that a strike is in the wind. The executive must be close at hand for all caucus discussions. If warranted, CAUT can be physically present as well.

An oft-used mediator's technique is to hold one-on-one sessions with the two chief negotiators, where they encourage frank discussion and consideration of "off the record" speculation. Try to expand the number to at least two people from each side, so that the chief has a witness and advisor. Also, remind yourself that nothing is off the record. Anything said in these meetings may appear in later discussion.

When preparing for mediation, remember that an experienced mediator is familiar with all the complaints and accusations that you may wish to make about the behaviour of the other side. A team's complaint session about the other party is just a phase to be endured before getting to the issues. Before starting a tirade ask yourself if it serves a strategic advantage. Usually it doesn't, and should not be done. It may even have negative consequences if you appear to the mediator as whiners.

At the first meeting with the mediator it is useful to present a brief history of the negotiations, focussing especially on your mandate from the members, the strength of members' convictions, and the attempts you have made to bargain reasonably and in good faith. You should also have a well-organized binder of your proposals with supporting rationale for each one. If requested by the mediator, you may have already forwarded the binder before the process started. Make sure the rationales show how your proposals are consistent with industry standards and settlements elsewhere. If you use statistical material, keep it as simple and straightforward as possible. Complex statistical analyses of salaries are usually a waste of time. Mediators are experts in due process and contract language, not in mathematical wizardry.

Contact CAUT before deciding on mediation, for recommendations on strategy and tactics and about specific mediators with positive experience in the sector.

8.3 Arbitration

Arbitration in collective bargaining is termed "interest arbitration," as distinguished from "rights arbitration" used for grievances. Interest arbitration is the most intrusive method of third-party assistance, and the most risky, because the arbitrator controls the process and determines the final settlement.

The start of arbitration marks the end of collective bargaining. Instead of table negotiation, or facilitation by a mediator, the arbitrator typically receives written briefs from both sides, hears presentations and rebuttals, and then writes a decision to settle all outstanding items. The brief must be as complete as possible because it is the arbitrator's main source for determining the award. The arbitrator may question either team for clarification or for further information to support their positions. There is little, if any, negotiation or even direct discussion between the teams.

There is no ratification vote because the association and the employer have committed in advance to accept the arbitrator's award. Barring a gross misapplication of law or due process, the arbitrator's decision is beyond appeal.

For non-unionized associations arbitration is the sole method for settling issues that cannot be resolved through direct negotiation or mediation. With unions, the association or employer may suggest arbitration at any time during negotiations. They might even agree in advance to submit to arbitration all monetary items that remain unresolved by a deadline. Arbitration might be used in lieu of strike or lockout, or to end a strike. In all these examples, the parties must agree to the process and the arbitrator, and share the costs.

Final offer selection (FOS) is a particular form of arbitration that requires the arbitrator to choose either the association's or

the employer's final written package. FOS is designed to bring the proposals as close together as possible. CAUT advises against using FOS. It pressures both parties to move as close to the status quo as possible. There is great pressure on the association to drop proposals that might prejudice the arbitrator against choosing their package, even though the proposal may be worth the arbitrator's consideration. It also provides very limited scope for the arbitrator to craft a reasonable settlement that may lie somewhere between the two final proposals.

As a general rule of thumb, you should avoid arbitration if at all possible. A negotiated agreement is almost always preferable, as the two parties make the decision. Frequently, an arbitrated settlement only postpones difficulties until the next round of bargaining.

9. Strike

Strike is only possible for unionized associations. Preparation for strike begins early. The executive should form a strike action committee and instruct it to ensure the association will be ready for a strike. Sound preparation sends a clear message to the employer of the association's resolve. The *CAUT Strike Manual* provides a detailed guide to preparing for a strike and carrying it out. It is available on the CAUT Website, in the password-protected area of the collective bargaining section, or in print directly from CAUT.

Going on strike requires careful and complex decision-making. The executive must be convinced that the threat of strike is necessary to move the employer beyond its last offer. Issues on the table must be important enough to convince the membership to go forward, either because of the employer's retrograde positions or its refusal to move on central issues in the association's mandate. When considering such a major decision, you are encouraged to contact CAUT for advice.

Table negotiations should continue while the executive moves the strike preparation forward. The bargaining team

should continue its attempts to negotiate, and use the leverage of strike preparation to pressure the employer to modify its positions. As the possibility of strike becomes more imminent, there will be greater pressure on the employer to improve its offer. Continued bargaining is also important for the membership, to show them that the association is genuinely trying to negotiate an agreement without resorting to strike.

An informed and mobilized membership is key to a successful strike. Mobilization is also the best prevention of a strike. The employer is more likely to compromise if they are convinced that the association is willing and able to carry out a strike.

Legal requirements for strike are governed by provincial legislation. Review the provincial labour relations act for details. It is also advisable to check the details with your local labour lawyer and contact CAUT for strategic advice.

Appendices

Appendix I: Training

Most academic staff are familiar with negotiation at work in departmental meetings or in preparing research grants and dealing with funding agencies. They know about compromise from relations with spouses, children and friends. But they have minimal experience with collective bargaining. When they get involved, some people love the experience and others abhor it. Good training helps to identify people who will take to the process and develop the skills.

The best way to learn about collective bargaining is through involvement in the process. This is why CAUT collective bargaining courses have a large experiential component. For the *CAUT Collective Bargaining Workshop*, about 60% of the two-day course is spent in a supervised collective bargaining simulation. Participants learn about the process and have the opportunity to test out how it feels. A copy of the course agenda follows.

The course should be held about four to six months before you give notice for negotiations. Contact CAUT to arrange for the course to be offered on your campus.

AGENDA
CAUT COLLECTIVE BARGAINING WORKSHOP

DAY ONE
Part I: OVERVIEW OF COLLECTIVE BARGAINING

9:00 am Welcome and Introduction
- Introductions of participants
- Objectives of the course
  - Improve knowledge of bargaining structure, process, and internal association relations
  - Improve skills at drafting and presenting contract language
  - Improve negotiating skills at the bargaining table
  - Improve team process and solidarity

9:15 am Collective Bargaining Process
- Emphasis on the collective
- Dealing in a power relationship
- Identifying and resolving conflict

10:00 am Preparation for Bargaining
- Know your legal rights and obligations
- Appoint the bargaining team
- Involve the Executive and appropriate committees
- Identify priorities
- Prepare positions and strategy
- Draft language

10:45 am Break

11:00 am Organizing Requirements

- Roles and authority of bargaining team, executive, bargaining support group
- Relations among bargaining team, executive, and membership
- Representing members, reaching consensus, managing positions
- Team process

11:45 am Table Skills in Negotiation

- Verbal skills
- Listening skills
- Identifying deals
- Closing

12:30 pm Lunch

Part II: COLLECTIVE BARGAINING SIMULATION

1:30 pm Clause Drafting: Process and Pointers
2:00 pm Table Protocol and Process
2:15 pm Bargaining Simulation: Introduction to Great Northern University
2:30 pm Bargaining Teams Caucus to Prepare Proposals
4:00 pm Bargaining Teams Meet to Present Opening Positions
5:00 pm Recess

DAY TWO

9:00 am Teams Caucus to Consider Responses to Opening Positions
10:00 am Teams Caucus and Negotiate to Reach an Agreement
12:00 pm Working Lunch
3:00 pm Team Debriefing
4:00 pm Summary and Wrap-up

Appendix II: Release Time for Negotiators

Members of the bargaining team should have release time from teaching. Usually the chief negotiator has more release time than members of the team, because of the heavier work requirement.

Key factors for release time are:

- the association must have as much time as it requires, through a combination of free units provided by the employer and units purchased by the association
- rates to purchase time should be negotiated between the association and the employer
- the association determines on its own the positions that receive the release time
- the association allocates the release time units to the appropriate individuals

Your association may already have a satisfactory arrangement for release time, either through negotiation in the agreement, or because the employer provides free release time as a matter of practice. A release time arrangement should stipulate the amount of time that the employer makes available, usually expressed as a number of course units that the association can distribute. The association should also have the right to purchase additional units from the employer, at agreed per-course rates.

Appendix III: Interest-based or Mutual Gains Bargaining

Interest-based bargaining is promoted as "win-win" negotiation, based on "a rational approach" to bargaining in which both parties are assumed to have similar interests. The parties are expected to come to the table to discuss interests and general concerns, and then to mutually develop proposals that they can take to their principals. A professional facilitator is usually part of the process from the beginning, before your team develops positions.

CAUT advises strongly against using interest-based bargaining for the following reasons:[1]

1. The association team is restrained from fully consulting with the membership prior to negotiations. Without consultation, the team cannot know its members' priorities. Entering negotiations without clear direction from the membership is contrary to a fundamental democratic principle of association governance. The membership is the sole and final authority on major matters, such as the content of the collective agreement. Members must determine the bargaining mandate. The executive and bargaining team are then responsible for ensuring that their positions are consistent with the mandate.
2. Thorough consultation with the membership has important strategic merit. Members should genuinely feel ownership of the bargaining positions that go to the table. The association's major strength in negotiations is the membership. Members are more likely to give the team the support they need if they are committed to the positions.
3. The interest-based process is secretive. The teams are prevented from informing their members about the content or process of negotiations. Good negotiators always keep their members fully informed about what is happening. When they

[1]If you are approached by the employer or your members to consider interest-based negotiation, contact CAUT for additional information, and for assistance with your response.

are kept in the dark, members can become wary or even suspicious about the progress of negotiations.

4. The bargaining teams are expected to work collaboratively at the table, making it virtually impossible to maintain team discipline. There are grave risks of what can happen at the table if members are encouraged to speak spontaneously without preparation in caucus. The process may even prohibit separate caucus discussions which are a valuable aspect of collective bargaining.

5. Interest-based bargaining promotes rational discussion without the exercise of power. However, achieving good improvements through collective bargaining relies on the exercise of power. The approach can seriously undermine the possibility of achieving significant gains. At best, modest improvements may be possible.

6. The interest-based principle of shared interests is flawed. It assumes interests are common, when many times they are not. Faculty and administration may share commitments to having a high quality institution, but they have different interests and positions on major workplace issues that are covered in agreements.

7. Proponents of interest-based bargaining paint traditional collective bargaining as adversarial and rife with conflict. They suggest that positional bargaining creates barriers to agreement. CAUT maintains that positional collective bargaining is not necessarily divisive. It can be productive when both parties are committed to getting a fair deal. Nonetheless, associations must always prepare themselves for difficult bargaining, when an employer takes hard positions. Traditional bargaining anticipates difficult negotiations. Interest-based bargaining does not.

8. The interest-based approach isolates the team from the membership. Bringing the proposed agreement to the membership can produce a shock when it is the first time they are seeing the positions.

Appendix IV: Bad Faith Bargaining

In every Canadian jurisdiction, giving notice to bargain imposes a duty to bargain on both the employer and the union. In some jurisdictions, a duty to bargain may also arise during the life of a collective agreement, where an employer introduces a change in working conditions which is of fundamental importance (such as a technological change affecting job security) and the association seeks to bargain in response to those changes.

While the precise contents of the duty to bargain vary from jurisdiction to jurisdiction, broadly speaking, it contains two requirements: a duty to bargain in good faith, and a duty to make reasonable efforts to reach a collective agreement. In policing the duty to bargain, labour boards have sought to enforce these requirements while respecting "freedom of contract," and in particular the right implicit in that freedom to apply the full weight of a party's economic power to the negotiations.

When faced with a bad faith bargaining complaint, a labour board will be very reluctant to evaluate the reasonableness of either party's proposals. The requirements of "good faith" and "reasonable efforts" are procedural ones designed to ensure no more than that (1) the employer recognize the union as exclusive bargaining agent, and (2) the parties engage in a full, free, honest and rational discussion of their differences. Within these requirements the parties remain free to bargain hard and to steadfastly disagree.

Generally, labour boards are less likely to intervene in the bargaining process in "mature bargaining relationships." Labour Boards in first contract bargaining relationships are more likely to provide remedies. Although direct evidence of union-breaking is rare, labour boards will consider the context of employer reaction to recent unionization.

Symptoms and Patterns

The following are some patterns and symptoms which have lead labour boards to find a breach of the duty to bargain. It should be noted that a labour board is unlikely to consider any event in isolation. Rather, it will weigh the totality of the

circumstances surrounding the negotiations. Of particular relevance is the existence (or non-existence) of other unfair labour practices.

1. "Surface Bargaining"

This term is used to describe a pattern of simply going through the motions of bargaining without the intent of concluding a collective agreement. Historically, this has been of particular concern in first contract negotiations. Aspects of surface bargaining often include the following:

a) making patently unreasonable proposals with no justification, particularly where such proposals are predictably inflammatory;
b) the adoption of inflexible positions on issues central to the negotiations without apparent justification;
c) presenting changes in position which are by their nature tailor-made for rejection;
d) efforts to scuttle a memorandum of agreement by urging its rejection by the group to which it is put for ratification.

2. Direct Dealing with Members

Once a union is certified, an employer may not bargain directly with bargaining unit members. An employer is generally free to attempt to "set the record straight" by explaining to members its bargaining position. However, it may not:

a) make new proposals to its members before the association can respond;
b) invite members to respond directly to its proposals;
c) attempt to obtain information about member sentiments concerning its proposals, either by speaking to them directly or by infiltrating association meetings.

3. Attacking the Credibility of the Association

Examples of patterns of conduct found to violate the duty to bargain include the following:

a) negotiating with a view to protecting members which the employer believes oppose the association, or with a view to

fostering dissension in the bargaining unit, without valid justification;

b) conveying the message that employees will suffer economically as long as they are represented by a trade union;

c) implementing new terms and conditions of employment before negotiations with the association have reached an impasse.

4. Attempting to Dictate or Negotiate the Composition of the Association's Negotiating Committee

This includes refusals to bargain with an authorized representative of an association on the grounds that he or she is an employee, not an employee, a member of another bargaining unit, or an employee of a competitor.

5. Insisting Upon Illegal or Improper Demands

Illegal demands should of course never knowingly be tabled. Other demands must be withdrawn once the point of impasse is reached. Examples of such demands include the following:

a) that the association conduct a ratification vote where it is not required by law to do so;

b) demands to alter the scope of the bargaining unit;

c) demands that a union accept a union security, arbitration, or other clause providing less protection than that provided by a statutory minimum clause;

d) demands that a successor or related employer be excluded from the coverage of a collective agreement;

e) demands that negotiations be held in public;

f) demands that a union admit as members employees excluded from the coverage of the applicable labour relations statute.

6. Threatening an Illegal Lockout

7. Misrepresentation

Not every misrepresentation breaches the duty to bargain. The following elements must generally be present:

a) deceit designed to induce the other party to reply to its detriment;
b) actual detrimental reliance.

8. Failure to Disclose Relevant Information

a) where a union specifically requests information relevant to the negotiations an employer generally must comply with that request.
b) in addition, in some jurisdictions an employer has an obligation to reveal decisions that it has already made which will have a major impact on the bargaining unit, such as a plant or facility closure.

9. Abusive and Insulting Conduct

Conflict and tactlessness in negotiations do not in themselves violate the duty, and boards will generally only intervene where abuse and insults are so obvious as to reveal a contempt which is tantamount to a refusal to recognize the status of the opposite party at the bargaining table.

10. Refusals to Discuss

The parties are required to engage in full, rational and honest discussion. A party fails to do so when it:

a) fails to provide a full justification of a bargaining position when asked to do so; or
b) refuses to hear or consider the other party's objections to a bargaining position; or
c) insists upon discussing one point to the exclusion of all others; or
d) refuses to discuss other matters until a particular matter is completely settled.

11. Reneging or Changing Position

Such conduct amounts to a breach of the duty to bargain only in serious cases, such as where the change of position has the predictable effect of destroying the framework for decision making at the bargaining table, or, as noted above, forms part of a pattern of surface bargaining. Examples include the following:

a) adding several new demands after all matters appeared to be settled;
b) reneging upon agreements with respect to important clauses in clear contravention of ground rules agreed between the parties.

12. Failure to Meet

Parties must be reasonably available for negotiations. Evidence of bad faith or a failure to make reasonable efforts can be found in conduct such as the following:

a) repeated cancellation or abbreviation of meetings;
b) arbitrarily breaking off a meeting;
c) persistent unavailability;
d) refusal to respond to new settlement proposals which offer the possibility of compromise;
e) refusal to attend conciliation.

13. Insisting upon a bargaining process which is time-consuming, repetitive, and serves no useful purpose

14. Sending a negotiator to the table without real authority to negotiate

In addition to unnecessarily slowing down the process, such practices have been criticized for denying members a channel through which to express their ambitions to the relevant decision makers.

The union is entitled to expect an employer negotiator who has full knowledge of any employer plans to alter its operations (e.g. to discontinue or significantly alter a programme, or part or all of the institution). It is no defence for the employer

negotiator to answer honestly where the negotiator is not fully appraised of the plans.

Responses and Remedies

Bargaining team note takers should record detailed descriptions of conduct which may form part of a pattern breaching the duty to bargain. These notes should be dated and kept as originals.

Bear in mind that accusations of bad faith bargaining are highly charged and can throw sand in the gears of negotiations. They should be used sparingly and out of necessity. However, where you believe upon reflection that the employer is negotiating in bad faith, probing the reasons for its conduct may expose an absence of bona fide justifications, and stating your objections to such conduct may have a salutary effect.

Where informal measures have failed, recourse may be had to the labour board. Keep in mind that such cases tend to take many days to hear and can therefore be quite expensive.

If a complaint is successful, a labour board may provide one or more of the following remedies:

a) a declaration that the employer has violated the relevant act;
b) a direction that the employer cease and desist from violating the act. This can entail, for example, that inflammatory proposals be withdrawn from the bargaining table.
c) a direction that the employer prepare and present a complete collective agreement proposal which it is prepared to sign;
d) a direction that the employer explain that proposal to the union, possibly at a meeting convened by a mediator;
e) a direction that the parties continue to meet as directed by a mediator to negotiate a collective agreement;
f) a direction that the employer provide the union with reasonable access to employee notice boards;
g) a direction that the employer post a notice in a form prepared by the board stating that the employer has violated the act;
h) a direction that the employer pay all monetary losses of the union and of bargaining unit members which may reason-

ably be proved as arising from the employer's breach of the act, including losses resulting from the loss of opportunity to negotiate a collective agreement, together with interest on such damages;

i) where there has in fact been agreement on all terms of significance, a direction that the employer execute a collective agreement.

It should be noted that the availability of such remedies may vary from jurisdiction to jurisdiction. Awards of damages have been made in British Columbia and Ontario. In Ontario the Board approaches the awarding of damages with caution, and as a response to cases of more flagrant violation.

Appendix V: Glossary of Bargaining Terms

Arbitration
A binding process for settling a disagreement. An arbitrator is a neutral third party usually chosen by the employer and association. Sometimes the arbitrator is a board, with one member chosen by the employer, one chosen by the association, and a chairperson. The arbitrator's decision is final and binding on the employer, the association and any members who are affected.

There are two main forms of arbitration:

- "grievance" or "rights" arbitration decides whether a collective agreement has been violated and determines an appropriate remedy.
- "interest" arbitration decides the final settlement terms for a collective agreement.

Article
A section of a collective agreement, also called a "provision", "clause", or "language".

Bad faith
An act that contravenes requirements to act in good faith. It may involve not being truthful, retracting previous commitments, or attempting to intimidate members. Examples of bad faith are:

- An employer lies during bargaining or withholds important information on purpose.
- The association increases a monetary proposal that it formally tabled earlier.
- The employer attempts to bypass the bargaining team and negotiate directly with the membership.

Bargaining agent
An association which has been chosen by employees and recognized by the employer or certified by the labour board. Unionized associations negotiate for all members of the bargaining unit. Non-unionized associations negotiate for their members.

Bargaining unit
A group of employees deemed by the labour board as an appropriate group to bargain together, with one bargaining agent and covered by the same collective agreement.

Benefits
Negotiated entitlements in addition to salaries, including extended health and dental plans, pensions, sick leave, long term disability, life insurance and vacations

The employer pays for all or part of these benefits, depending on the collective agreement.

Binding
A binding decision must be followed by the parties to the negotiation. The term is typically used with "binding arbitration" which means that the employer, association and any affected members are bound by the arbitrator's decision.

Caucus
Either bargaining team may withdraw for private discussion in caucus. They return to the table when ready to resume discussion.

Certification
The process of a labour board deciding that an association can be the legal bargaining agent for employees in dealing with their employer. Once certified, the association has a legal right and obligation to represent all members of the bargaining unit. To get certification, the association must demonstrate that a majority of the workers support it.

Checkoff
A clause in a collective agreement that says the employer must deduct dues determined by the association and send those dues to the association.

Clause
Part of a collective agreement or other document dealing with a particular subject.

Collective agreement
A written agreement between a union and employer that tells members and the employer what their rights and responsibilities are. It is also called a "contract".

Conciliation
A process for reaching a collective agreement with help from a neutral person appointed by the government. Often, the union and employer must meet with a conciliator before a strike or lockout is legal. A conciliator may make recommendations, but they are not binding.

Contracting out
When an employer uses another employer to do work of the bargaining unit.

Contract proposals
What the union or employer wants in the collective agreement. The two parties suggest these changes in collective bargaining.

Discipline
When an employer punishes an employee for misconduct. Discipline usually includes:
- verbal warning
- written warning
- suspension
- dismissal

Discrimination
When a person or group of people is treated differently for an improper reason.

- Direct Discrimination: when a person is treated differently based on race, gender, or other characteristic. For example, an employer who refuses to hire any women is discriminating directly.
- Adverse Impact or Indirect Discrimination: when a rule or policy applies to everyone, but it ends up negatively affecting a particular group. For example, a height requirement might affect women more than men.
- Systemic Discrimination: when different treatment based on stereotypes or prejudice is deeply rooted in an organization.

Duty to accommodate
Steps that the employer must take to provide appropriate supports for employees with disabilities. Failure to provide these supports may constitute discrimination. The employer must look for standards, requirements, practices, or rules that discriminate against workers, and then eliminate those barriers. For example, the employer may renovate buildings or classrooms to accommodate members with disabilities. Members needing accommodation must cooperate and accept reasonable offers of accommodation. Standards for what is reasonable usually mean anything short of undue financial hardship to the employer.

Duty of fair representation
The association must represent all employees in a bargaining unit fairly. The representation cannot be arbitrary, discriminatory or in bad faith. An example of bad faith is a union officer refusing to carry out a grievance because the grievor is unpopular.

Employment equity
A plan to bring disadvantaged groups to equality in hiring, promotion, wages, and other aspects of employment. For example, the plan may favour the hiring and promotion of

women, aboriginal people, people of colour, and people with disabilities until equality is reached.

Employment standards
The minimum terms of employment for workers required by law. See Labour standards.

Essential services
Work that is considered so important to the health, safety, or security of the public that members who do it are not allowed to strike. Legislation may say that certain services are essential, or labour boards may decide it.

Expedited arbitration
A streamlined process to get certain types of grievances heard quickly and cheaply.

Final Offer Selection
A type of interest arbitration where an arbitrator chooses either the association's last offer or the employer's last offer.

Grievance
A claim that the employer or association has violated the collective agreement.

- Individual grievance: A claim on behalf of one member
- Group grievance: A claim on behalf of more than one member
- Policy grievance: A claim by the association about a general question or interpretation of the collective agreement
- Association grievance: A claim by the association
- Employer grievance: A claim by the employer

Jurisdiction
The limits of authority or control. For example, an arbitrator has the power to decide grievances by considering the collective agreement and any related laws.

Just cause
A good enough or proper reason to discipline or fire a member

Labour relations board or Labour board
A body created by legislation to interpret and rule on that legislation. For example, a labour board has the power to certify unions as bargaining agents, and decide unfair labour practice complaints.

Labour standards or Employment standards
The minimum employment rights that workers have. These laws usually set minimum wages, maximum hours of work, vacation, holidays and other working conditions. Collective agreements usually contain higher standards. Some non-union workers – such as farmers, babysitters and domestic workers – are not covered by even these minimum rights.

Letter of Understanding (LOU)
An agreement in writing between the association and the employer. An LOU is often part of the collective agreement.

Lockout
When the employer stops unionized members from working in order to pressure them to agree to its collective bargaining proposal. For a lockout to be legal, the employer must follow certain steps, just as a union must before going on strike. A lockout is legal only after the collective agreement has expired and bargaining has gone through the steps required by law.

Management rights
The employer's right to control and direct the workplace. Management rights are usually set out in one clause of the collective agreement and are limited by other clauses.

Mediation
A process for reaching a collective agreement or resolving a disagreement with help from a neutral person.

Mediation-Arbitration
A way of resolving a grievance using a neutral person. If the association and employer cannot reach an agreement, the neutral person holds a hearing and makes a decision.

"No Board" Report
A notice that the government will not appoint a conciliation board to settle a collective bargaining dispute. This notice may set the time when a legal strike or lockout can happen.

Parties
A person or organization that is directly involved. The parties to a collective agreement are the association and employer.

Picketing
Physical presence at the entrance to the employer's premises. The purpose is to discourage others from entering the property or dealing with the employer. Picketing usually occurs during a strike or lockout. For example:

- Information picketing: picketing intended to give information.
- Mass picketing: a large number of workers picketing a location.
- Secondary picketing: picketing a workplace or location not directly involved in the strike or lockout
- "Flying pickets": a delegation of supporting picketers from across the country sponsored by the CAUT Defence Fund

Precedent
A prior decision of an arbitrator, labour board, other tribunal or court. The decision can be used to help decide similar disputes in the future.

Progressive Discipline
A series of more and more severe disciplinary penalties. Generally, an employer must apply progressive discipline unless the misconduct justifies dismissal.

Ratification Vote
A vote of bargaining unit members to accept or reject a proposed collective agreement.

Recognition Clause
Article of a collective agreement that describes the bargaining unit certified by the labour board or agreed upon by the association and employer.

Retroactive
A change comes into effect on a date that has passed. For example, if the association negotiates a salary increase during bargaining, you may be owed that increase back to when the collective agreement starts.

Scope of the Bargaining Unit
A description of the bargaining unit represented by the association.

Service
The length of time you've worked for an employer. Benefits such as vacation and pension are often linked to length of service.

Statutory freeze
A period when no collective agreement is in effect, but the employer cannot change rights, benefits, and other terms of employment without the union's consent.

Strike
Members of a unionized association stop working as a way to pressure the employer to settle a collective agreement. Usually, strikes are legal only after the collective agreement ends and certain legal steps have been completed.

Suspension
Discipline that prohibits a member from working. Suspension can be with or without pay.

Third party
A person or organization that is not directly involved. In a labour dispute. The third party may be a neutral person who helps solve the dispute.

Unfair labour practice
A violation of the rights of workers or others protected by labour law.

Voluntary recognition
An employer agrees that a union has the right to represent its members, without certification.

Without prejudice
When a person or party makes an offer on condition that it not be used against them. For example, a grievance settled "without prejudice" cannot be used by either the association or employer in future cases. A without prejudice offer in collective bargaining can be withdrawn.

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Notes

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