

# EFFECTIVE COLLECTIVE BARGAINING STRATEGIES

**ESICA SPRING CONFERENCE**

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# TODAY ...

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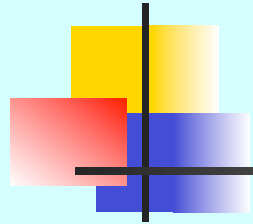
- **Understanding the Bargaining Relationship**
- **Effective Preparation for Negotiations**
  - Selecting the Form of Bargaining
  - Establishing your Labor Relations Policy
  - Gathering Background Information
  - Input from the Management Team
  - Preparing the Chief Negotiator's "Bargaining Book"
  - The Position Statement
  - The Model Agreement
  - Conditioning the Bargaining Unit
  - Consult Counsel
  - Recent Developments/Trends/Statistics



# TODAY ...

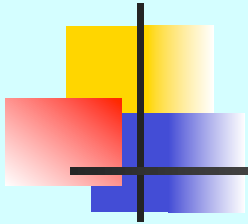
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- **The Law of Collective Bargaining**
  - The Obligation to Bargain
  - Procedural Requirements for Bargaining
  - Midterm Changes in Contract Terms
  - Subjects of Bargaining
  - Bad Faith Bargaining Misconduct
  - Terminating the Bargaining Relationship
- **Specific Contract Clauses to Adopt and Avoid**
- **Hints for Negotiating, Drafting, and Organizing**
- **Bargaining Table Conduct**



# UNDERSTANDING THE BARGAINING RELATIONSHIP AND YOUR CONTRACT

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UNION

VS.

MANAGEMENT

?



# EFFECTIVE PREPARATION FOR NEGOTIATIONS

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- Selecting the “Form” of Bargaining
- Establishing your Labor Relations “Policy”
  - Anticipate union demands
  - Consider business forecasts
  - Identify needed relief areas
  - Establish “end” position
  - Determine strike issues
  - Write out goals



# EFFECTIVE PREPARATION FOR NEGOTIATIONS ...

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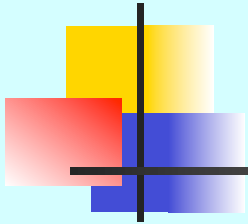
- Selecting a Bargaining Team
- Gathering Background Information
- Input from Management Team
- Preparing the Chief Negotiator's "Bargaining Book"
- The Position Statement
- The Model Agreement



# EFFECTIVE PREPARATION FOR NEGOTIATIONS ...

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- Conditioning the Bargaining Unit
- Consult Counsel
- Bargaining Logistics
- Recent Developments/Trends/Statistics



# EFFECTIVE PREPARATION

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- Consider your form of bargaining ASAP because getting into and out of multi-employer groups take time
- Have you previously assigned bargaining rights to an association?
- What are the terms of any past assignment?
- Are you bound by whatever they negotiate?
- Have you signed letters of assent in foreign jurisdictions which need to be voided out?



# SELECT YOUR FORM OF BARGAINING

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- Single Employer
  - One contractor bargaining a contract with each union
  - “Me too” agreements – letters of assent A and B
- Multi-Employer
  - Consensual
  - Assignment of bargaining rights
  - Association based



# FORM ...

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- Coordinated Bargaining
  - Individual contracts negotiated at same time and/or using same spokesperson
  - Benefits of both single and multi-employer
  - Carefully orchestrated



# PROS/CONS OF MULTI-EMPLOYER BARGAINING

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- Enhanced bargaining powers – *strength in numbers*
- Avoids union whip-saw
- Lesser expense
- More expertise
- Exchange of information
- Parody on labor costs for competitors
- Influence over industry functions
- Selection of contractors representing trust funds



# PROS/CONS OF MULTI-EMPLOYER BARGAINING ...

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- Selection of representatives for local grievance committees
- Union more willing to deal with identifiable group
- No stronger than weakest link
- Compromise of individual positions and ability to orchestrate individual bargaining strategies
- Forecloses Deklewa
- May foreclose specialized contract – light commercial



# PROS/CONS OF SINGLE EMPLOYER BARGAINING

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- Orchestrates own bargaining strategies
- Negotiates individually desired clauses
- Permits Deklewa
- Possibly enhances union concessions to avoid departure
- Expensive
- Time consuming
- Disparity of expertise



# PROS/CONS OF COORDINATED BARGAINING

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- Attributes of multi-employer but risk of NLRB finding such



# ASSIGNMENT OF BARGAINING RIGHTS

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- Pledge to take united and joint action upon group demand
- Agreement not to sign any labor agreement not approved by multi-employer group
- Provisions prohibiting resignation during the term of the labor agreement
- Provisions for enforcement



# ASSIGNMENT OF BARGAINING RIGHTS ...

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- Strict assignments promising no interim/retro agreements
- Lockout by all in event of strike
- Assignment through Association By-Laws



## EFFECTIVE PREPARATION ...

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- Do you know the deadline for giving contractual and legal notice to the union and FMCS?
- Mark the deadlines on your calendar now after checking your contract expiration clause – give both notices at the same time



## EFFECTIVE PREPARATION ...

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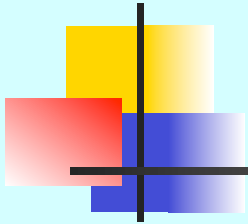
- Do you have a NLRA Section 8(f) pre-hire bargaining relationship or a permanent Section 9 relationship?
- If it is a pre-hire agreement you may wish to consider not bargaining at all
- How has the current contract treated you? Does it need some changes?



# LEGAL RELATIONSHIPS

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- Section 8(f) pre-hire
  - No requirement for majority status
  - No requirement for any employees
  - No requirement to consult employees
  - No bargaining obligation
  - No duty to observe CBA until signed
  - Free to sever relationship
  - No election petition bar
  - No duty to bargain upon CBA expiration
- Section 9(a)
  - Majority status required
  - More than one employee
  - Employer may not pick union
  - Duty to bargain in good faith before agreement reached
  - Duty to bargain for new agreement
  - Exists until decertification
  - Contract/certification bar



# EFFECTIVE PREPARATION

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- Have you gathered some current trade journals and other types of publication articles related to your industry to support the arguments you make at the bargaining table in support of the changes in wages and terms you are requesting?
- Have you developed the company's position?
- Have you picked the right team to help you bargain your contract?



# EFFECTIVE PREPARATION ...

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- What is your current business status?
  - Does it demand some major changes in your bargaining philosophy?
  - Can you afford a strike – even for a week?
    - The “end” position
  - Can you afford to give in to the union’s demands one more time without causing serious harm to your company?



## EFFECTIVE PREPARATION ...

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- Have you lost your competitiveness because of certain provisions, such as daily overtime? Benefits on hours paid?
  - Scrutinize the contract closely with your key staff and then formulate proposals



# EFFECTIVE PREPARATION ...

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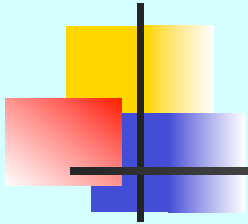
- Are there some significant changes anticipated for your business in the next two or three years which require changes to the bargaining agreement – sale, merger or expansion?
- Have there been grievances and arbitrations over contract disputes which need to be avoided in the next contract term by making language changes?



# EFFECTIVE PREPARATION ...

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- Do you have effective work rules?
  - Do you negotiate the rules or did you reserve the right to make and use work rules through your managements' rights clause?
- Model Clauses/Agreements
- Educating/Conditioning Employees
- Your Labor Attorney – who?



# CONTRACT NEGOTIATIONS

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- Logistics
- Security
- Communications
- Conduct at Table
  - “The Ritual”
- Activities away from Table



# THE LAW OF COLLECTIVE BARGAINING

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- The Obligation to Bargain
- Procedural Requirements for Bargaining
- Midterm Changes in Contract Terms
- Subjects of Bargaining
- Bad Faith Bargaining Misconduct
- Waiver of Bargaining Rights
- Terminating the Bargaining Relationship

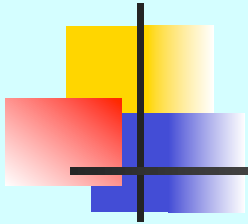


# HINTS FOR NEGOTIATING, DRAFTING AND ORGANIZING

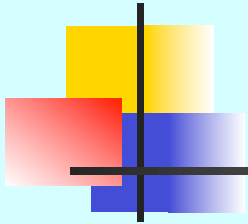
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- Bargaining Techniques
- Bargaining Strategies
- Pre-drafting Proposals #1, #2, #3
- Mediator's Role
- Side Bar Negotiations

# CLAUSES TO ADOPT AND AVOID



- Preamble
- The Management Rights Clause
- Wage Deferral
- Americans with Disabilities Act
- Grievance Procedure
- Just Cause for Termination
- Direct Deposit
- Helpers



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- Most Favored Nation
  - Automation/Restrictions
  - Work Rules
  - Compensation for Hours Worked
  - Insurance
  - The Zipper Clause
  - Industry Fund
  - Code of Workmanship/Constitution
  - Market Recovery

Contract by any of the Contractors for whom it is acting, or by any employee of such Contractor. It is further understood and agreed that any liabilities of the Contractors who have authorized the negotiation and execution of this Agreement shall be several and not joint.

As an afterthought to the preceding paragraphs, it is sincerely recommended and concluded that those parties not signatory to this Agreement will endeavor to abide by this Agreement and/or the legal rules and by laws of the parties signatory to this Agreement.

This Agreement entered into between the aforementioned parties is for the purpose of preventing strikes and lockouts, and for facilitating a peaceful adjustment of any and all grievances and disputes that may arise between the Employer and employee in the Masonry Industry in the territory covered by this Agreement.

#### **ARTICLE I JURISDICTIONAL AREA**

BRICKLAYERS LOCAL NO. 15 AREA 1: This Agreement shall be in effect in the following Counties: **Barbour, Doddridge, Gilmer, Grant, Hardy, Harrison, Lewis, Marion, Monongalia, Pendleton, Pocahontas, Preston, Randolph, Taylor, Tucker, Upshur and Webster.**

CEMENT MASONS/PLASTERERS LOCAL NO. 15 AREA 1: This Agreement shall be in effect in the following Counties: **Grant, Hardy, Pendleton, Pocahontas and Randolph.**



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