
NEW BRUNSWICK NURSES UNION

**HOW THE
NBNU
NEGOTIATES
YOUR
CONTRACT**

“Collective bargaining is more an art than a science. The goal of both parties is to reach a mutually acceptable agreement. The method by which this is obtained is more creative than analytical.”

***How the NBNU
Negotiates Your Contract***

One of the New Brunswick Nurses Union’s constitutional objectives is to regulate the employment relations between its members and their employers including particularly the negotiation and enforcement of collective agreements between them.

Regularly, the Union renegotiates the terms and conditions of employment for its members established in its five provincial bargaining unit collective agreements. The material that follows is to provide you with an opportunity to expand your knowledge and appreciation for the collective bargaining process by exploring key elements of negotiating.

THE BARGAINING PROCESS

NBNU is always in a constant mode of preparation for the next round(s) of negotiations. As one negotiating team completes its work and signs a collective agreement, the issues that were not completely addressed are duly noted and stored away for the next round of negotiations. Matters of interpretation that are dealt with by Local Presidents and Labour Relations Officers are accumulated for consideration for the renegotiation sessions.

Over the years, the Union has developed a plan for receiving from the members their priorities, objectives and perceptions as what would be a suitable settlement for their renegotiated collective agreement. The Union currently utilizes four techniques:

- 1. The Cultural Research Survey:** Since the 1992 Annual Meeting, Cultural Research Inc., has been conducting an investigation of the membership as, among other topics, their expectations and objectives for the collective bargaining process.
- 2. Membership Questionnaire:** The Union requests each member of the respective bargaining units for their prioritization of issues. This mailout questionnaire provides each member with the opportunity to submit a priority of their individual objectives for the upcoming negotiations, and to “be” at the negotiating table.
- 3. “Let Us Hear From You”:** Local Presidents are requested to prepare the “*Let Us Hear From You...in setting your bargaining objectives*” questionnaire. The information received from the specific questions relating to the application of the provisions of the collective agreement will deepen the negotiating teams’ appreciation of the treatment of the collective agreement on a local by local basis.

***Step 1
Preparation***

- 4. Locals Priorities For Change:** Represents each Local's opportunity to express new improvements for the negotiating teams' consideration for inclusion in the Union's bargaining agenda.

The information received from these various tools serve the respective negotiating teams with the objectives and expectations of the members of their particular bargaining unit. The input of every member is crucial for the success of the bargaining process. Your negotiating team members must be able to, with confidence, represent realistic demands and expectations of its constituents.

Negotiating teams, the Executive Committee and staff review long term bargaining goals, and our grievance and adjudication experience. Committee members and staff, research issues, prepare general principles and consider possible contract language. We assess the current bargaining climate in New Brunswick and note progress by counterpart nurses' unions.

The negotiating team meets at the provincial office to develop the bargaining agenda that will be presented on behalf of the bargaining unit to the Employer. By taking into account members input through the various questionnaire processes, the team will finalize the proposals.

A bargaining conference of Local Presidents and the negotiating team reviews the general goals and their relationship to the bargaining agenda developed. The bargaining conference discussions will be reported to members of the bargaining unit through their Local President.

Designations of Essential Positions

Due to 1991 amendment to the *Public Service Labour Relations Act*, the designation of essential positions must occur prior to the commencement of the negotiations. The Union receives, no later than six months prior to the expiry date of the collective agreement, the employer's statement with respect to the positions that will be required to remain at work during a strike. The locals negotiate on the basis of what they believe to be a safe level of staffing in their facility. This process must be carefully managed to ensure the opportunity for an effective withdrawal of services.

The first meeting with the Employer's negotiating committee facilitates the exchange of proposals, establishment of procedures and process, and a review of each others priority proposals. A tone for future meetings is set. The members of the Employer and Union negotiating teams will take time to introduce themselves and give sketch of their relevant background. Typically, the employer's proposals offer no improvements, and often would erode current conditions and benefits.

Step 2 Prenegotiations

At this preliminary meeting, the schedule for negotiations is agreed to between the parties. Prior to the commencement of discussions, the Union's teams will reserve time to review and analyze the employer's bargaining agenda.

Step 3 ***Exploring Realistic Settlement***

The parties commence the negotiations discussion. Both Union and Employer teams are working hard to understand each others proposals, to identify each others real priorities and areas of possible movement. The Union utilizes this time to probe the acceptability by the Employer's committee its list of priorities and goals. Typically, monetary proposals are not dealt with at this stage. Some proposals are withdrawn, others are modified and agreement is reached on minor items. The basic positioning of both sides is now established; is there any flexibility in the Employer's proposals and where? Issues that are critical for both sides are identified. Both parties adopt a position of persuading the other side to their proposals and rationalizing their own positions. This is a difficult time for members and Local Presidents because actual progress at the table is often not apparent.

Step 4 ***Inrust and Counterinrust***

Once both parties have become very familiar with the rationale of the position taken by the other side, the negotiating team goes to the offence in an attempt to persuade the other side to their position. Both sides attempt to bolster their own arguments, while attempting to convince the other that their positions are either without basis, without credibility or not within the realistic realm of a settlement.

Step 5 ***Moving Towards A Tentative Agreement***

The Employer normally tables a "final" position while the Union also identifies their minimum position on all issues. Sometimes there are trade offs. Depending on the desirability of the settlement by either side, the amount of persuasion that is required to move the other side to an accommodating position will be a matter of degree. The objective at this stage is to convince the other side of the need and desirability of movement by them from their last position. If the distance between the parties can be eliminated, a tentative agreement results.

C Conciliation Officer/Commissioner

Step 6 ***Dispute Resolution Mechanism***

If the two parties are too far apart, an impasse is reached. The parties may request the services of a Conciliation Officer or Commissioner whose job is to meet both committees separately and attempt to break the impasse. The Conciliator and Commissioner will identify areas of possible movement, and even suggest compromises to existing positions. Management's "final" position sometimes becomes more flexible in an area of two.

The fundamental difference in the mandates of a Conciliator and Commissioner is that the Commissioner's report is to include recommendations on

the unresolved issues if agreement is not reached. Reports to the membership are very difficult at this stage because no actual progress on issues is happening. Normally, both committees are under enormous pressure from the respective membership to reach an agreement, but not at any cost.

C Conciliation Board

If the Conciliation Officer or Commissioner fails in bringing the parties closer to an agreement, either party has the right to request the establishment of a Conciliation Board. The tripartite board is comprised of a Union nominee, an employer nominee and a mutually agreeable neutral party as chairperson. The mandate of the Conciliation Board is different from that of the Conciliation Officer in that it is given the legislative authority to provide written recommendations to resolve the dispute. The Conciliation Board report, however, is not binding on the parties.

C Declaration of Deadlock: Binding Arbitration or Strike?

If conciliation fails, and before a strike mandate can be sought, one of the parties must apply to the Chairman of the Public Service Labour Relations Board to declare that a deadlock exists. Traditionally, the Chairperson of the Public Service Labour Relations Board will intervene as a “special” mediator in an attempt to resolve the differences between the parties. If this attempt proves unsuccessful, the Chairperson will declare a deadlock leaving the parties with two options; by mutual request, they can seek binding arbitration. In the absence of the mutual request, then the Union is entitled to take a strike vote. If the Union’s committee believes management is seeking concessions that cannot be accommodated, the strike mandate may be acted upon. The strike vote would undoubtedly impact on the Government’s flexibility.

C Ratification

The negotiating team throughout the course of the process attempts to hammer out a tentative agreement, judging what might be acceptable to members while pushing management to drop unacceptable proposals. When the team believes the best possible settlement has been offered by the Employer, often management’s third or fourth “final” position, a tentative agreement is reached. If a tentative agreement is reached with the negotiating team believing that it is the best possible offer that the Employer is able to make it can only be accepted if the majority of voting NBNU members votes in favour of the settlement.

The Union conducts negotiations under both the Public Service Labour Relations Act, (Hospital, Head Nurses and Supervisors, Schools of Nursing and the Part I Bargaining Units) and the Industrial Relations Act (Nursing Homes and VON). Appendixes A-1 and A-2 provide the legislative bargaining calendars under each law.

EXTERNAL FACTORS

Negotiations are not conducted in a vacuum. There is a variety of external factors that shape and influence the environment in which the bargaining process unfolds.

1. The Political Environment - The policies and initiatives taken by the employer's negotiating team are influenced significantly by the political attitudes of the government party. Over the last three years, public and quasi public sector employees have been subjected to a legislated wage freeze aside from the effect of freezing the wages, this regressive policy also restricted the free collective bargaining process.

The government's recent policy on health care reform and its adoption of the agenda to "rightsizing" its financial picture has obvious tremendous impact on the process. Public sector employees who at one time had the security of continued employment are now left with the quest for job security. This environmental change impacts on the bargaining process particularly from the employer's point of view. With a mandate to reduce its labour costs, and with the support of the political decision makers, the determination employer representatives have in pursuing roll backs at the negotiating table escalates.

2. Public Opinion - The impact of public opinion or public perception plays a tantamount role at the bargaining table. Government works very hard to convey to the public to believe that wage freezes and cutbacks in health care measures are necessary and justified. Long standing opinion polls reflect that nurses are held in high esteem by the general public. The issues that nurses represent, quality health care, access to health care and as advocates of patients and our health care system rate the nurses public profile relatively high.

Without public empathy for the case established by your negotiating team, there is little chance that the government will be sympathetic to the Union's arguments.

BARGAINING POWER

The best made strategies, the most convincing arguments and persuasive stances taken at the bargaining table do not, in themselves, guarantee a good public sector settlement. The skill of your negotiating team must be complimented with **power**.

The concept of **power** shouldn't be seen as neither good nor bad. But rather conceptually, the idea is to utilize your available power to convince the other side of

Your Negotiating Team -- Working For You

your ideas and objectives.

Power is a relative and nebulous concept. In the political realm, power is expressed in numbers. Elected members of our legislative assembly and members of federal parliament are elected by their constituents to represent them in the decision making process of the respective level of government. Therefore, they respond to letters, telephone calls and other lobby efforts.

The power of the Nurses' Union and that of its negotiating team rests in the degree of cohesion, leadership and commonality of objectives within the membership. Safety in numbers, unity in strength are two adages that well define the scope of our organizational power.

Bargaining Table Power. The solidarity that exists between a team committee and the membership that it represents reflects the impression of power. The employer will engage in the strategy; divide and conquer. It has been proven time and time again that the bargaining unit that is easily fragmented has little power.

Political Power. The sources of political power for the NBNU is unlimited. Public opinion, the status of our health care system and New Brunswick's desire to maintain an acceptable satisfactory delivery system serves to compound the political power that nurses have. On the other hand, government exudes its power from the fact that it is able to make the rules and that it believes to have public support for its restraint initiatives.

You are represented at the bargaining table by your negotiating team. These elected representatives and Union staff ensure that your concerns are represented at negotiations. Your team is comprised of your bargaining unit representative, and at least four members of the bargaining unit who are elected by the bargaining unit. The NBNU President is a member of each of the five provincial bargaining committees. The Executive Director serves as the chief negotiator and is an ex-officio member of the committees.

Your negotiating team is truly reflective of the membership of your Union. We benefit from the knowledge of experienced members while the newly elected bring a new perspective and often a new direction. Many perspectives are represented on the committee.

Your negotiating team will meet on a regular basis in preparation for negotiations. It takes the objectives and concerns of the membership and formulates them into bargaining proposals. Every Union member has the opportunity to make sure their concerns are heard and represented by the negotiating team. This process means that all members are, in effect, at the bargaining table.

The Negotiating Team (Committee) conducts itself under the relevant provisions of the Union's ***Constitution and By-Laws***. As a committee, it is entrusted with the exclusive authority to:

- (i) *bargain collectively with the Employer using as a basis for bargaining, proposals submitted by the membership and drafted by the Negotiating Committee;*
- (ii) *determine the best settlement which the employer is prepared to offer;*
- (iii) *through the Local Presidents of the bargaining units concerned refer the settlement offered by the Employer to the membership of the bargaining unit for acceptance or rejection.*

The negotiating team members are also responsible for communicating with the Local Presidents through the Union's fan out communication system before and throughout negotiations.

Although in the initial stages of negotiations there is often very little to report, the negotiating committee will disseminate as much information as possible. The membership will be kept informed. The only instance where information will remain confidential, is when it could jeopardize the progress of negotiations. Local Presidents are kept informed of progress by the mailing out or faxing of negotiation bulletins and by agreed to statements read over the phone by the negotiation team members.

RESOURCES

1. *Making a Deal: The Art of Negotiations*, Martin Teplitsky, Lancaster House, 1992.
2. *Labour Relations Law in the Public Sector*, Industrial Relations Center, Queens University, 1982.
3. *Interest Arbitration, Measuring Justice in Employment*, edited by Joseph M. Weiler, Carswell Company Limited, 1981.
4. *New Brunswick Public Service Labour Relations Act, Industrial Relations Act.*

5. *The Structure of Collective Bargaining*, W. Craig Rydell.
6. *Comprise: The Future of Public Sector Industrial Relations*, Mark Thompson and Gene Swimmer, EDS, 1984, Montreal: The Institute for Research on Public Policy.
7. Various resources from the *United Nurses of Alberta, Manitoba Nurses' Union, Ontario Nurses' Association*.



APPENDIX I

PUBLIC SERVICE LABOUR RELATIONS ACT — BARGAINING CALENDAR

in documents under “TABLE”



APPENDIX II

PROCEDURES UNDER THE INDUSTRIAL RELATIONS ACT