



MINISTRY OF LABOUR, INDUSTRIAL RELATIONS, TOURISM AND ENVIRONMENT

CODE OF GOOD FAITH 2007

1. INTRODUCTION

- 1.1 This Code is developed at the direction of the Minister for Labour and Industrial Relations under Section 152 of the Promulgation. It is based on the Good Faith obligations under Part 16, Division I of the Promulgation. The Code has included the inputs from the tripartite partners and civil societies before been endorsed by the Employment Relations Advisory Board.
- 1.2 The purpose of this generic Code is to give guidance to employers and unions (“the parties”) on their duty to act in Good Faith when bargaining for a collective agreement or variation to a collective agreement under the Employment Relations Promulgation 2007 (“the Promulgation”).
- 1.3 This Code is not a substitute for the Promulgation. However, the Employment Relations Tribunal and the Employment Relations Court may have regard to it in determining whether or not the parties have dealt with each other in Good Faith in bargaining for a collective agreement. The Code will also help parties to identify all the things they should be considering when trying to bargain in Good Faith.
- 1.4 The ultimate goal of the Promulgation is to build productive employment relations based on Good Faith values. Employers, workers and trade unions will always seek changes to employment relationships as needs and conditions change. New issues will always arise in the workplace. The goal of the Promulgation is for employers, workers and unions to make changes and work through issues themselves, by dealing with one another in Good Faith.
- 1.5 Good Faith under the Promulgation requires the parties to an employment relationship to be active and constructive in establishing and maintaining productive relationships. It is about how people and organisations treat one another every day, including being responsive and communicative in meaningful ways. This is the essence of the Labour-Management Consultation and Cooperation Committees established under Section of 9(3).
- 1.6 At the most basic level, Good Faith is about telling the truth. It means employers, workers and unions are not allowed to do anything that misleads or deceives one another. In the context of the statutory obligation in the Promulgation, the concept of Good Faith is explicit and specific in guiding the behaviour of both parties during the negotiations for a collective agreement.

2.0 DUTY OF GOOD FAITH

- 2.1 The Code applies the core Good Faith values of respect, honesty, mutual trust, confidence and fair dealings into the collective bargaining process. The resultant duty of Good Faith in the context of collective bargaining includes:
- the union and the employer using their best endeavours to reach an agreement;
 - that they meet with each other;
 - that they consider and respond to and each others proposals;
 - that they recognise the authority of any person appointed to be a representative or advocate and not to undermine that authority; and
 - they must provide each other with the information that is reasonably necessary to support or substantiate claims.
- 2.2 Bargaining for a collective agreement means all the interactions between the relevant employer(s) and union(s) includes negotiations that relate to the bargaining; and communications or correspondence (between or on behalf of the parties before, during or after negotiations) that relate to the bargaining.
- 2.3 The parties to the bargaining must deal with each other in Good Faith and must not, whether directly or indirectly, do anything to mislead or deceive each other; or do anything that is likely to mislead or deceive each other.
- 2.4 The Good Faith matters set out in this Code are not exhaustive.
- 2.5 The parties must recognise the role and authority of any person chosen by each to be its representative or advocate.
- 2.6 The parties must not (whether directly or indirectly) bargain about matters relating to terms and conditions of employment with persons whom the representative or advocate are acting for, unless the parties agree otherwise.
- 2.7 The parties must not undermine or do anything that is likely to undermine the bargaining or the authority of the other in the bargaining process.
- 2.8 The parties are encouraged to consider, where appropriate, ways in which Good Faith relations during bargaining can take into account cultural and religious differences.

3.0 DEVELOPMENT OF AN AGREED BARGAINING PROCESS

3.1 In order to promote orderly collective bargaining, the parties must use their best endeavours to enter into an arrangement, as soon as possible after the initiation of the bargaining, that sets out a process for conducting the bargaining in an effective and efficient manner. Even if the parties cannot agree on an arrangement, they must continue to bargain in Good Faith, and should endeavour to ensure that such bargaining is effective and efficient. In any case, any arrangement entered into must be consistent with relevant provisions of Part 16 of the Employment Relations Promulgation 2007.

3.2 The parties should consider the following matters, which may, where relevant and practicable, in whole or in part, make up any such arrangement -

- (a) Advice in writing as to who will be the authorised representative(s) or advocate(s) for the parties in the bargaining process;
- (b) Advice as to whom the representative(s) or advocate(s) represent;
- (c) The size, composition and representative nature of the negotiating teams and how any changes will be dealt with;
- (d) Advice as to the identity of the individuals who comprise the negotiating teams;
- (e) The presence or, otherwise, of observers;
- (f) Identification of who has authority to enter into agreement;
- (g) The proposed frequency of meetings;
- (h) The proposed venue for meetings and who will be liable for any costs incurred;
- (i) The proposed timeframe for the bargaining process;
- (j) Advice on preferred positions in respect of the type and structure of agreements;
- (k) The manner in which proposals will be made and responded to;
- (l) The manner in which any areas of agreement are to be recorded;
- (m) Advice on ratification and signing-off procedures.

- (n) Communication to interested parties during bargaining;
- (o) The provision of information and costs associated with such provision;
- (p) Appointment of, and costs associated with, an independent reviewer should the need arise;
- (q) Any process to apply if there is disagreement or areas of disagreement;
- (r) The provision of referral of a disagreement or dispute to the Permanent Secretary when the need arise;
- (s) In the case of multi-party bargaining, how the employer parties will behave towards one another and how the union parties will behave towards one another;
- (t) Where appropriate, ways in which Good Faith relations during bargaining can take into account cross-cultural issues or protocols that might exist in the environment in which bargaining occurs;
- (u) When the parties consider bargaining is deemed to be completed.

3.3 The parties will adhere to any agreed process for the conduct of the bargaining.

4.0 BARGAINING

4.1 The duty of Good Faith requires a union and an employer bargaining for a collective agreement to conclude a collective agreement unless there is a genuine reason not to, based on reasonable grounds.

4.2 *Genuine reason* does not include opposition or objection in principle to bargaining for, or being a party to, a collective agreement.

4.3 The parties should, therefore, at all stages in the bargaining, act in a way that will assist in concluding a collective agreement.

4.4 As soon as possible, but not later than 10 days, after the initiation of bargaining the employer must draw their attention of all their workers under the proposed coverage clause (whether members of the union or not) that collective bargaining has been initiated.

4.5 At the beginning of bargaining, a union must notify the other parties of its procedure for ratification.

- 4.6 The employer must not advise or do anything with the intention of inducing an employee:
- (a) not to be involved in bargaining for a collective agreement;
 - (b) not to be covered by a collective agreement.
- 4.7 The parties must recognize the role and authority of any person chosen by each to be its representative or advocate.
- 4.8 The parties must not (whether directly or indirectly) bargain about matters relating to terms and conditions of employment with persons for whom the representative or advocate are acting, unless the parties agree otherwise.
- 4.9 The parties must not undermine or do anything that is likely to undermine the bargaining or the authority of the other in the bargaining.
- 4.10 The parties must meet each other, from time to time, for the purposes of bargaining. The frequency of meetings should be reasonable and consistent with any agreed bargaining arrangements and the duty of Good Faith.
- 4.11 The meetings will provide an opportunity for the parties to explain, discuss and consider proposals relating to the bargaining. Where proposals are opposed, each party should provide explanations which support their view.
- 4.12 A union and employer must provide to each other, on request, and in a timely manner, information in accordance with sections 149 (1) (e) and 151 of the Promulgation that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of bargaining.
- 4.13 The parties must consider and respond to proposals made by each other.
- 4.14 Where there are areas of disagreement, the parties will work together to identify the barriers to agreement and will give further consideration to their respective positions in the light of any alternative options put forward.
- 4.15 However, the parties are not required to continue to meet each other about proposals that have been considered and responded to.
- 4.16 Even though the parties have come to a stand still or reached a deadlock about a matter, they must continue to meet, consider and respond to each other's proposals on other matters.

4.17 The parties should attempt to settle any differences arising from the collective bargaining. To assist this, the parties should not behave in ways that undermine the bargaining for the collective agreement.

4.18 Negotiated terms and conditions, which are passed on (to an individual employment contract or another collective agreement) -

(a) during bargaining with the intention **or** effect of undermining the bargaining; or

(b) after the bargaining has concluded with the intention **and** effect of undermining the collective agreement;

constitutes breach of Good Faith.

4.19 Relevant to the duty of Good Faith is whether or not an employer considering passing on the terms and conditions negotiated in a collective agreement or reached in bargaining has consulted with the union concerned before passing on the term or condition to an individual or another union. The parties should attempt to reach agreement on any pass on arrangement an employer is considering. If a pass on occurs with the agreement of the union concerned, it is not a breach of Good Faith.

4.20 The provision of any media release or disclosure of information by either of the parties -

(a) without prior approval of the parties; or

(b) the content or manner of which undermines the collective bargaining process;

constitutes a breach of Good Faith.

5.0 BREACH OF GOOD FAITH

5.1 Where a party believes there has been a breach of Good Faith in relation to collective bargaining the party shall, wherever practicable, indicate any concerns about perceived breaches of the Code at an early stage to enable the other party to remedy the situation or provide an explanation.
