bureau for employers' activities

INTERNATIONAL ORGANISATION OF EMPLOYERS

STRATEGIC COLLECTIVE BARGAINING

AN INTRODUCTION FOR EMPLOYERS

CONTENTS

MODULE 1 - INTRODUCTION

1.1 OVERVIEW

1.1 This Guide provides a basic introduction to Collective Bargaining. It seeks to provide practical advice and ideas to employers either bargaining for the first time, or seeking to get more out of the collective bargaining process.

1.2 It has been prepared for employers, by employers. This is a joint project of the International Labour Organisation's Bureau for Employers' Activities (ACTEMP) and the International Organisation of Employers (IOE).

1.3 The Guide aims to give employers critical tools to get the most out of collective bargaining and use this process to their best commercial and operational advantage. It contains a number of practical ideas and approaches, reflecting best practice and experience across a number of collective negotiations and a number of national systems.

1.4 The Guide supports the *Strategic Collective Bargaining* Training Program being delivered in the Asian region during September 2009. The Guide and Training Materials have been designed to work together as an integrated package. The Guide provides more information on the ideas and concepts introduced in the training program for employers to take back to their workplaces.

1.5 Both the Guide and the Training Program have been organised into six (6) Modules:

a. Module 1: Introduction

This introduces the collective bargaining concept, the benefits of collective bargaining and what employers should be seeking to get out of this process. It also introduces various key options for enterprise bargaining, and the importance of approaching bargaining strategically to get the most out of it as an employer.

b. Module 2: Strategic Collective Bargaining

This outlines a strategic model to ensure employers can get the most out of the collective bargaining process for their business. There is an emphasis on tools to improve your productivity, efficiency and competitiveness. There is also an emphasis on effective planning and preparation.

c. Module 3: The Law

Complying with the law is critical for successful collective bargaining and also offers the prospect of improving commercial outcomes for employers in many cases. Module 3 outlines an approach for ensuring legal compliance and harnessing what assistance your national legal system may offer.

d. Module 4: Negotiation

Negotiations lie at the heart of collective bargaining. Getting the most out negotiations is critical to getting the best possible outcomes for your business. Module 4 outlines some practical negotiation skills and tactics to equip employers to enter negotiations effectively and strategically. It identifies both good practices and mistakes to avoid in the negotiation process.

e. Module 5: Written Collective Agreement

Creating an effective and enforceable written agreement from your collective negotiations (the collective agreement) is critical. This is the key finished product of the collective bargaining process, most clearly visible to you and your employees. Module 5 outlines what makes an effective written collective agreement and provides some practical ideas to ensure you get the most out of this stage of the process.

f. Module 6: Implementation, Evaluation and Renegotiation

Finally, collective bargaining is an ongoing process. The concluding module outlines considerations for the implementation, evaluation and renegotiation of your collective agreement to ensure collective bargaining continues to make the best possible contribution to your commercial operations.

1.6 The Guide is generic in nature and deals generally with collective bargaining across a wide range of national systems. Advice may need to be sought at the national level on the application of some of the concepts and options included in the Guide in your national system.

1.2 WHAT IS COLLECTIVE BARGAINING?

Collective bargaining is a process of determining the terms and conditions of employment in your workplace by agreement with your employees.

1.7 The key elements of collective bargaining are:

a. Collective bargaining is a process. Employers should understand this process, understand the opportunities it presents and use it strategically. National laws will generally regulate this process, and it is important to know what the law does and does not allow (Module 3).

b. Collective bargaining is about the terms and conditions of employment. This means negotiations on wages, bonuses and allowances, terms and conditions of employment, hours of work, rosters etc.

c. Collective bargaining is a tool to regulate conditions of employment. It is a means to achieve outcomes beneficial to your business. Just like any other commercial activity, you as an employer need to use it to your benefit.

d. The outcome of collective bargaining should be an agreement between the employer and employees on the terms and conditions of employment (the Collective Agreement). Not all negotiations will result in an agreement, but generally successful collective bargaining is finalised by the making of a written collective agreement (this is required practice for good collective bargaining and protecting your interests as an employer).

1.8 At all times, collective bargaining must be viewed as a tool.

a. Employers: It is a tool which employers use to set the terms and conditions of work. It is a tool which employers can use to pursue their strategic and commercial goals, and to implement strategic plans such as the Labour Management Plan in Attachment B. Collective bargaining and collective agreements can also be useful in standardising the administration of employment, and simplifying how you manage and employ your staff.

b. Employees: It is a tool which employees use to set terms and conditions of employment which become the legal obligation of the employer. Collective bargaining is a tool that employees use to address their priorities, increase benefits, and pursue job security.

c. Governments: It is a tool which governments use to ensure that working conditions are fair, enjoy the support of employers and employees, and can be negotiated with a minimum of disruption to society and to the economy.

1.9 Collective bargaining is one tool amongst many potentially available to your business. Depending on your national system and national legislation, employers may have a range of options for how work is organised and regulated. In partnership with your employers' organisation, you can adapt the lessons in this guide to suit the needs of your business.

1.10 Regardless of how big your business is, how many staff you employ, and whether you have previously participated in collective bargaining, this Guide will offer useful ideas and checklists for you to consider, and practical advice on approaching the collective bargaining process and getting the most out of it.

Collective bargaining developed as an alternative to ad hoc employee claims and industrial instability.

(Done well) it is a process which allows employees to secure additional rights and benefits, and also allows employers to manage this process, ensure their operations remain commercially viable, and to plan and budget employment costs into the future.

It offers scope for substantial mutual gains for employers and employees, and an alternative to either industrial chaos or stalled workplace relationships.

This is why employers throughout the world support collective bargaining as one tool to manage terms and conditions of employment in the workplace. This is reflected in the importance of collective bargaining within the International Labour Organisation's body of international labour standards.

1.2.1 Collective Bargaining must be by Agreement

1.11 Collective bargaining is a process of negotiation leading to mutual agreement on terms and conditions of employment. Employees setting the rules under which they work is not collective bargaining, nor is an employer setting the rules of work on their own.

1.12 Only where outcomes are agreed by both parties is there genuine collective bargaining. This does not mean that employers or employees will be happy with the way each and every issue is dealt with in a collective agreement, but on balance they will be able to agree to the package of terms and conditions of employment (expanded on in Module 2 and Module 4).

1.13 For example:

a. An agreement may provide for a 5% annual wage increase per year. The employer may not support any wage increase, but has calculated that the 5% can be accommodated taking into account some of the other savings in the agreement.

b. The same agreement may also provide that shifts can be worked later each day, providing the employer with greater productive capacity during times of peak demand. On its own, the employees may not agree to this, but in exchange for a 5% pay increase they are willing to do so.

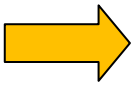
c. No party will be happy with every part of the agreement. But, on balance and when viewed as a whole, they can agree to it, and to work under it as the best possible negotiated outcome.

1.14 The need for pragmatism and realism is a key part of taking a strategic approach to collective bargaining (see Module 2 and Module 4).

1.2.2 The Collective Agreement

1.15 The outcome or product of collective bargaining is the collective agreement. This is a written agreement between the employer and the employees (or with the involvement of an employee representative) which reflects the matters agreed during the negotiations.

1.16 Collective bargaining leads to the written Collective Agreement:


1.17 The written agreement may change the organisation of work, or it may put existing arrangements in writing. Module 5 provides information on turning collective bargaining negotiations into an effective collective agreement.

1.3 WHY ENTER INTO COLLECTIVE BARGAINING

1.18 There are a number of reasons why an employer might participate in collective bargaining.

a. To make an agreement with their employees, and to have the security and predictability that a written collective agreement can deliver.

b. To agree terms and conditions for the life of an agreement, and have employees agree not to pursue any further claims for the period of the agreement, perhaps for 2 or 3 years (see 5.6).

c. The employer may want to improve the current organisation of work to better meet the needs of their business. In many cases, this can only be achieved by entering into a collective agreement.

d. The employer may want to introduce one general set of employment conditions (the collective agreement) which also allows for a degree of variation between individuals (using a specific term of the agreement allowing variation by individual agreement).

e. This may be part of wider strategic and operational planning, including using bargaining as part of a Labour Management Plan (Attachment B).

f. The employer may be responding to employee demands. Employees may approach the employer seeking a collective agreement. An employees' organisation may serve a log of claims on the employer, and initiate the collective bargaining process.

g. In some cases, major clients (perhaps multinationals placing very large orders) may encourage or even require a company supplying them to have some form of collectively negotiated agreement with their employees.

h. Collective bargaining is also actively promoted at an international and domestic level by a number of organisations, including the ILO.

1.19 Alternatively, an employer may examine collective bargaining and conclude that it is not the strategic direction they wish to head in at that time. Throughout this guide we emphasise the importance of obtaining strategic

advice from your employers' organisation. This may include advice on whether to enter into collective bargaining or not at a given point in time.

1.20 Entering into the collective bargaining process does not compel an employer to agree to a particular collective agreement. There are a number of situations in which employers may participate in discussions and even enter into negotiations, but conclude at some point that the collective agreement process is not appropriate for them at that time.[1]

1.21 Regardless of why you enter into the collective bargaining process, you are entitled to expect to get the most out of it for your business. All employers can legitimately expect to have the collective bargaining process deliver on the fundamental aim set out below (see 1.5).

1.22 This guide provides useful background information for any employer considering whether or not to enter into collective bargaining. Employers need to consider, for example:

a. Their options to use collective bargaining in pursuing their wider commercial, operational and employment strategies. The Labour Management Plan (Attachment B) is an example of such planning.

b. The benefits to the operation of their business of setting terms and conditions of employment for some predicable period. A two year agreement for example will allow an employer to factor in predictable employment costs across two years and to enter into longer term commercial contracts on the basis of these labour costs.

c. The benefits to the operation of their business of not having any industrial action or extra claims for the period of an agreement. This can be very useful where the country or industry an employer operates in has a reputation for industrial unrest or unreliability.

d. Whether there is such a level of support for collective bargaining amongst employees that the employer will need to enter into some form of collective bargaining at some point in the future. In other words, is collective bargaining inevitable for your workplace?

[1] Note: Some national systems require processes of compulsory conciliation and arbitration. Depending on the national system and the circumstances, employers may be compelled to accept the outcome of such processes.

e. Whether employees and their representatives have formulated specific claims they wish to have the employer bargain upon (for example a wages claim, a claim for an additional allowance, or claims about leave).

1.4 THE RISKS OF COLLECTIVE BARGAINING

1.23 Employers also need to consider the possible risks of entering into collective bargaining. These risks might include:

a. Entering into collective bargaining may encourage employees to make claims for increased terms and conditions – potentially creating disputation and increasing the costs of employment.

b. Entering into collective bargaining may encourage the creation and popularity of employee representative organisations.

c. Entering into collective bargaining may disrupt working relations, and lead to industrial disputes which can harm the profitability and reputation of the company.

d. A fear that you may no longer control the organisation and performance of work, and cede control to employees or to arguments each time with an increasingly organised set of employees.

1.24 One of the key lessons in this guide is that a strategic approach to bargaining can minimise and control these risks, and allow employers to make informed decisions on whether or not to enter into a collective bargaining process.

1.25 These risks also need to be considered critically:

a. If there is employee support for a representative organisation, that organisation will form and will become the representative voice of employees. An employer cannot avoid employees forming their own representative groupings, and indeed trying to do so can often only strengthen the organisation and drive more employees to join it.

b. If you fear the collective bargaining will unleash employee claims for increased wages and benefits, then these tensions will already be present and these claims will be inevitable anyway. Pursuing collective bargaining does not cause employee claims, and it may offer scope for employers to deal with them on their terms and according to their timetable.

c. Collective bargaining does not necessarily lead to more contested and less peaceful working relations. The negotiation process can actually improve relationships with employees, and can create ongoing opportunities for communication which can benefit production and quality well beyond the terms of the agreement.

1.26 The guide can assist employers in viewing perceived risks realistically and pragmatically and making an informed decision about how to navigate them.

Sometimes it may be better for an employer to control when a collective agreement is entered into, and to ensure the timing of collective bargaining is on their terms rather than that of employees and their representatives.

A strategic approach may often see the employer initiate the collective bargaining process, and encourage the making of the first collective agreement. This can have significant longer term benefits.

1.5 THE AIM OF COLLECTIVE BARGAINING FOR EMPLOYERS

1.27 Regardless of why an employer has entered into the collective bargaining process (and regardless of whether bargaining has been instigated by the employer, employees or an employee representative) there is one key aim all employers should be looking for from collective bargaining:

The aim of collective bargaining for any employer should be to ensure the performance of work properly contributes to productive, stable and sustainable commercial operations.

1.28 **Performance of work**: Collective bargaining is a process to establish the terms and conditions of employment. Collective bargaining concerns work, working relations, relations between employers and employees, how work is organised, the times at which work is undertaken, shift and roster arrangements, pay and conditions of work, leave arrangements etc.

1.29 **Productive**: Collective bargaining should make enterprises more productive or at least maintain productivity. Collective bargaining is not operating correctly where it ultimately makes a business less productive or less viable. Where an employer wants to make changes to work and its organisation, the collective bargaining and collective agreement process should provide a mechanism to deliver this. Module 2, Section 5 introduces some specific ideas on how to encourage greater productivity using pay.

1.30 **Stable**: Successful collective bargaining must offer extended periods of strike free, disagreement free, stable operations. One of the benefits of collective bargaining for an employer can and should be securing a period (e.g. 2 or 3 years) free of disputation, free of industrial action and free of any additional claims. During the period of the agreement, the employer should also be able to accurately budget their labour costs, and know how much a given level of production or service will cost.

a. Enforcement is critical. Such arrangements should only be entered into if they will be complied with in practice, across the life of your agreement.

b. Your employers' organisation can advise of the utility of such arrangements in your national system and practical issues to be addressed.

1.31 **Sustainable**: The outcomes of collective bargaining for employers have to be sustainable. Any collective bargaining system has to be properly balanced to ensure that the outcomes of collective bargaining are consistent with creating collective agreements that contribute to sustainable enterprises.

1.32 **Commercial**: At all times employers are running commercial businesses in highly competitive markets. The performance of work and how work is organised needs to contribute to these commercial operations. Done well, collective agreements properly balance employee and employer needs and priorities, and lead to more commercially sustainable businesses.

1.33 This **Aim** is also an expectation. Employers are entitled to expect that their national system for collective bargaining will allow them to negotiate effective and strategic collective agreements which contribute to their commercial operations, and to become more competitive, more productive and more efficient.

1.6 OPTIONS FOR BARGAINING

1.34 This guide is about collective bargaining. However, the ideas and concepts outlined in this guide apply regardless of the particular approach to bargaining that is right for your particular workplace. Options for bargaining with your employees might include[2]:

[2] Depending on your national system.

a. Individual agreements with your employees. This will suit the needs of many workplaces, particularly many smaller workplaces.

b. Bargaining collectively with your employees as a whole, or with part of your operations (for example an agreement with all production staff, or with all distribution staff). This is a form of Enterprise Bargaining.

c. Bargaining collectively with your employees and with their representatives (which is one form, but not the only form, of collective bargaining). This is another form of Enterprise Bargaining.

d. Multi-employer bargaining, in which employers across an industry negotiate an agreement to apply to multiple employers (see 1.7).

1.35 Employers may, depending on their national system and the state of relations with their employees and employee representatives, have choices in how they approach bargaining with their employees, and can in partnership with their employers' organisation, make informed and strategic decisions on what form of agreement they wish to pursue.

1.36 Each of the approaches outlined above has its benefits and its difficulties. No one approach is right in all cases, and not all options will be available to all employers in all cases. It is important to pursue the form of agreement right for you and your workplace, and your employers' organisation can advise you in making the right choice for your workplace.

1.7 THE PROS AND CONS OF MULTI-EMPLOYER COLLECTIVE BARGAINING

1.37 Multi-employer collective bargaining is where employers come together as a group to negotiate centrally with employee representatives. Such agreements might apply the same terms and conditions to all employers in an industry or region, and cover thousands or tens of thousands of employees.

1.38 Depending on the national system, employee claims against multiple employers can give rise to either negotiated outcomes, or arbitrated outcomes where negotiations are unsuccessful.

1.39 The traditional multi-employer model is coming under increased criticism on the basis that it does not provide the outcomes individual businesses require in today's rapidly changing environment. Arguments raised against the multi-employer approach include:

a. It is too inflexible and slow to change in the face of rapidly changing markets and commercial environments.

b. It reflects the past rather than the future.

c. It fails to recognise and accommodate the basic requirements of business today and the wide diversity of businesses, even within one sector or region. This includes issues such as capacity to pay.

d. It is hostile to innovation and new ways of doing things.

e. It is inflationary in terms of wage outcomes particularly when not linked to productivity gains.

f. It is non participatory for employers and workers, and serves to lock the majority out from the decision making which affects their interests.

g. It is inherently concession based – and fails to engage with optimal outcomes for most operations.

h. It is often predicated by a win/lose approach (Module 4 expands on why this is not appropriate).

i. It is often more about the protection of vested interests, rather than what suits employers and employees in workplaces. The needs of particular workplaces cannot be reflected in multi-employer outcomes.

j. There can be a prevalence of conflict under multi-employer bargaining.

k. It can be remote from workplace realities.

l. Multi-employer agreements can be relativity linked, and see terms and conditions set in regard to what others are paying rather than what each specific enterprise needs and can afford.

1.40 On the other hand, arguments in support of multi-employer collective bargaining include:

a. It saves management time. Negotiations are often done on an employer's behalf by others thereby freeing the employer from involvement, cost and time away from productive work.

b. It has a moderating affect on wage costs due to employers' ability to argue "*the lowest common denominator*" – i.e. consideration must be given to what the smallest and/or weakest employers might be able to afford.

c. It gives stability and uniformity in the area of labour costs. This uniformity has previously been attractive to some employers.

d. It can limit the use of industrial action and stop companies being selectively targeted. This is based on there being safety in numbers for employers where they are taking a common position on common employee claims.

e. It provides a commonality of outcome across all enterprises covered by the result.

1.41 It is important to determine whether those arguments are still sustainable, and to examine them critically based on your own experience, and what you know about your business. Counter arguments to those raised in the preceding paragraph (and arguments against multi-employer bargaining) include:

a. "Saving Management Time": It could be argued that time spent on negotiating an outcome that meets the needs of both parties within the organisation is actually a good use of management time. What other key cost components of a business are put into the control of others (often competitors) in order to save management time? What employer cannot afford to invest time in pursuing the best outcomes for their organisation?

b. "Controls Bargaining": For whose benefit is bargaining controlled? The argument that multi-employer bargaining generates "lowest common denominator" outcomes is often advanced by larger organisations as a means of limiting wage increases which, at the end of the day have the largest impact on them. Such an argument is rarely related to what "small" business can or cannot actually pay.

c. "Stability" in labour costs is also a very debatable benefit. There can be high labour costs which are stable, but not sustainable or efficient. Such "stability" has more acceptability provided every enterprise - big or small - bears the same labour costs. "Stability" however does not allow for consideration of the sustainability of these labour costs in terms of market place competition. Single employer bargaining offers scope for quite stable and sustainable collective agreements.

d. "Limits Industrial Action": This is the safety in numbers argument as it can be harder (although not impossible) to call a whole industry out on strike. One feature of strike action in this form of bargaining is that it is often most effective when it is aimed directly at either the largest employers or those employers present at the negotiations representing the industry. In such situations the smaller employer escapes the strike action but remains bound by any settlement reached as a result of that action.

   i. Industrial action should be a function of the negotiations concerned and avoiding industrial action should not lead to the worse outcome of incorrect and inefficient collective arrangements.

   ii. Industrial action also tends, in this environment, to be impersonal as the effects are often not directly experienced. It is regarded as part of the process and is often excused because of that.

   iii. In enterprise bargaining strike action or lockout action[3] has direct relevance to the workplace and the people working in it. No one else is on strike in support, they are not one of many and the results of that action directly impact on the business. Experience has shown that such a reality does dissuade both employers and employees from resorting to such actions.

e. "Commonality of Outcome": In a highly regulated and protected economy where costs can be passed on to the consumer and where government sustains the market artificially through incentives and tariffs, commonality of outcome may be seen as an acceptable goal. But where that environment does not exist or is declining, commonality can

[3] Addressed in Module 3 and Module 5.

adversely affect competitiveness and viability. Again larger companies and enterprises with a greater ability to absorb costs through other efficiencies can actually achieve an advantage in commonality of outcome situations over their smaller competitors who are not able to absorb them or offset them to the same extent.

1.7.1 Why the move towards enterprise based bargaining?

1.42 In a number of countries, bargaining is devolving from the multi-employer level down to the enterprise level (one employer making an agreement with their employees, perhaps with the involvement of a representative enjoying the support of those employees).

1.43 The reasons for this trend need to be understood in making your strategic judgement as to which level of agreement to pursue.

a. Increasingly competitive pressures are making it more difficult for companies in the same industry or branch to sit together to negotiate what is a major area for a competitive advantage to be gained; labour costs.

b. Frustration exists as to the outcomes of multi-employer bargaining failing to accommodate the needs and circumstances of individual companies.

c. A lack of ownership of the bargaining process and the inability to be involved causes concern to an increasing number of employers who cannot be accommodated in the actual multi-employer negotiation. Contemporary employers are less accepting of the need to put the negotiation of their labour costs into the hands of a third party or a small "representative" group.

d. The lack of responsiveness of multi-employer agreements to at times rapidly changing circumstances can no longer be tolerated.

e. Frustration at the "lowest common denominator" argument from both large enterprises (which can often pay more) and small companies (which often find even minimal increases too high).

f. Employers are thinking more strategically throughout the world in all facets of their commercial operations. Increasingly employers recognise the need to actively manage the whole of their business, including employment. Attachment B to this guide is a model for operational planning which is the antithesis of a multi-employer approach.

g. Employers increasingly recognise the need to communicate more effectively with their employees. Multi-employer approaches stop this communication and, in contrast, enterprise based approaches rely upon it.

h. Employers, whether they are aware of it or not, are negotiators. Employers are constantly negotiating prices, material supply, delivery of goods, the terms of credit etc. Negotiations of terms and conditions of employment are in reality very similar – and are something employers increasingly want to engage with for their enterprise.

i. It is often the perceived "formality" of negotiations that some find if not daunting, then at least uncomfortable. It is important to remember however that this is just another negotiation. The skills needed are similar in all areas of negotiation and they can be learned. Good negotiators are made, not born.

1.8 WHAT IS STRATEGIC COLLECTIVE BARGAINING?

1.44 Collective bargaining is a broad concept. Around the world many companies use collective bargaining to maximise their commercial advantages.

1.45 There are also companies for whom collective bargaining has not yet contributed to productive, stable and sustainable commercial operations. These are the businesses that stand to benefit from harnessing this process to their advantage through strategic collective bargaining. Those already participating in collective bargaining also often have opportunities to make it more strategic, more effective, and more profitable.

1.46 Strategic Collective Bargaining is positive for employers. It means approaching this process armed with necessary information, with a clear understanding of your priorities as an employer, and with a clear bargaining strategy. Strategic collective bargaining is bargaining which ensures the performance of work properly contributes to productive, stable and sustainable commercial operations.

The purpose of this guide is to provide you with tools and ideas to approach collective bargaining as strategically and effectively as possible. This program aims to help you get more out of the collective bargaining process as an employer. Module 2 outlines options for a strategic approach to collective bargaining which can deliver precisely these outcomes.

1.9 THE COLLECTIVE BARGAINING PROCESS / THIS GUIDE

1.47 Collective bargaining is a process generally involving the following stages:

a. Strategy, preparation, research, development of an employer bargaining agenda / claims (Module 2 and Module 3).

b. Negotiation (Module 4)

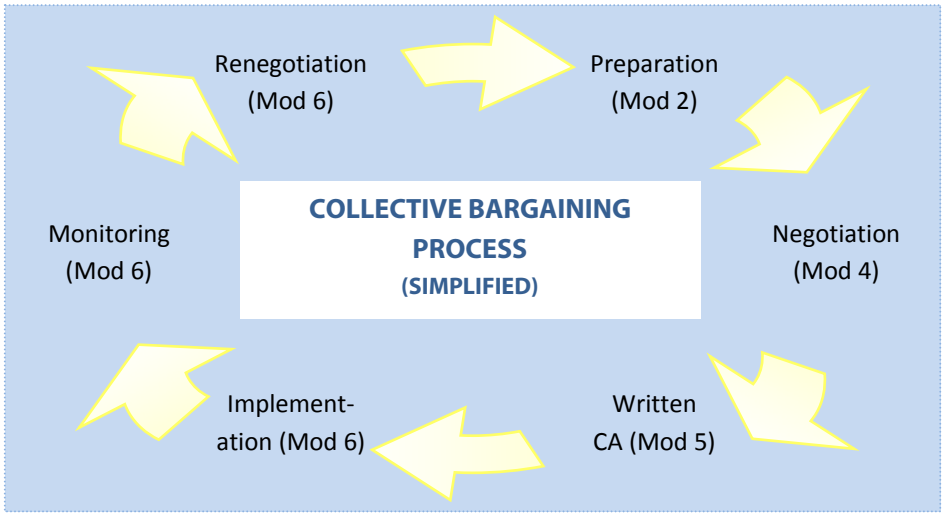
c. Written Agreement (Module 5)

d. Implementation (Module 6)

e. Monitoring (Module 6)

f. Renegotiation (Module 6)

1.48 This is a continuous process, with each generation of agreement leading to the negotiation of a fresh agreement (see also Module 6 on renegotiation).



1.49 What leads you to collective bargaining will differ from employer to employer.

a. Some employers will have employee claims served upon them, and will become involved in a collective bargaining process that way.

b. Some employers will seize the initiative and initiate collective bargaining themselves (an approach which has a great deal to recommend it strategically, where allowed under your national law).

c. Some employers will be part of a wider group or structure, and a centralised policy will direct their participation in collective bargaining.

d. Some employers will be engaged in multi-employer negotiations.

1.50 In each case there are both risks and opportunities for employers. In each case, employers can significantly benefit from participating in collective bargaining.

Regardless of what leads an employer to collective bargaining, there is one constant. Those employers who approach it strategically, pragmatically, and with foresight and preparation will secure the most from this process. This guide aims to help you secure these gains in your business.

1.10 KEY LESSONS

Lesson 1.1	The aim of collective bargaining (at all times) should be to ensure the performance of work in your business properly contributes to productive, stable, and sustainable commercial operations. This is about doing better and improving the operation of your business.
Lesson 1.2	Collective bargaining should be approached as a continuous process based on a foundation of good workplace relations and effective communication, not as a periodic, isolated or stand alone event.
Lesson 1.3	Collective bargaining is a tool to be used effectively by your business to gain commercial advantage over your competitors, just like any other process in running your business.

Lesson 1.4	Those employers who prepare best, and invest the most time and planning into this process, will get the most out of it.
Lesson 1.5	Not all options canvassed in the guide will necessarily be available to you, and your options will differ depending on your circumstances, and your national law.
Lesson 1.6	Your employers' organisation is your best source of advice on which options are available to your business and can provide strategic advice on how to approach collective bargaining.

MODULE 2 –

STRATEGIC COLLECTIVE BARGAINING

2.1 INTRODUCTION

2.1 Regardless of why they may enter into collective bargaining, any employer will want to get the most out of the process for their business. The key to getting the most out of negotiations is *Strategic Collective Bargaining*.

2.2 Taking a strategic approach means approaching collective bargaining with suitable preparation, and armed with (for example):

a. Some consideration of what form of bargaining will best suit the needs of your business:

i. Is it bargaining with employees as a group, with an employee representative, or with employees as individuals or smaller groups?

ii. Is it bargaining at the workplace level, for your company or group, or with multiple employers in an industry or multi-employee agreement? (See 1.7 for a critical analysis of multi-employer versus enterprise bargaining).

(A strategic approach will also establish in advance what bargaining options are legally and practically open to your organisation – see Module 3).

b. An understanding of what your employees and their representatives are seeking from the collective bargaining process. Effective communication with your employees and their representatives should provide you with an understanding of what they want to get out of bargaining. This helps you plan how to respond.

c. Some advance plan on which employee claims you can concede or negotiate upon, and how you can assess the costs and benefits of a negotiated package. This means knowing the limits of what you can concede financially in bargaining, and some thought to how you might

explain your economic calculations to your employees and their representatives.

d. A strategy or plan for what you as an employer want out of the collective bargaining process. This includes understanding the commercial and operational needs of your business, and changes you could make to how work is managed and organised to improve the productivity, stability and sustainability of your commercial operation in the future.

e. Linked to the preceding, any major changes you are seeking to the performance of work, remuneration, hours and shifts etc.

The Package: A useful perspective for employers is to always view the outcome of collective bargaining as a total package, which has a total impact on (and benefit to) labour costs, quality, delivery times etc. This "package" approach means there is not an excessive focus on particular claims and outcomes, and that the operation of the whole agreement is taken into account.

2.1.1 Link to Your Organisational Planning

2.3 Effective, best practice, strategic bargaining is also guided by (and linked to) the general strategic planning of the employer. This includes commercial and operational planning, market and competition planning and skills and workforce planning.

2.4 This need not be a complicated or scientific process, and it does not rely on having an MBA or business degree.

2.5 Organisational planning means no more than:

a. Gathering what you know.

b. Agreeing where you need to be, and the outcomes you would like.

c. Thinking about means and measures to achieve your agreed outcomes.

d. Prioritising means and measures and having a plan to implement them.

2.6 This can be done in workplaces armed with no more than paper and a pencil, and a will to improve and become more competitive, efficient, productive and profitable. Your employers' organisation can work with you on strategic planning. Practical tools such as the Labour Management Plan in Attachment B can be an important precursor to collective bargaining (and to improve your business operations generally).

2.1.2 The Strategic Approach

2.7 Taking a strategic approach means not simply reacting to your employees, their claims or the agendas of their representatives. It means that you as the employer can participate in negotiations as an equal partner and get the most out of collective bargaining for your commercial operations.

2.8 Strategic collective bargaining should contribute to productive, stable and sustainable commercial operations. A strategic approach can also help settle negotiations with minimal disruption or threats to workplace harmony.

2.9 Just as a sporting team prepares in advance for each match or contest, and researches its opponents, you as an employer should prepare for and think through in advance how you will participate in collective bargaining.

2.10 This Module outlines some key elements of a strategic approach to collective bargaining, and provides practical ideas on how employers can approach bargaining strategically and effectively.

2.11 There are two key concepts:

a. Preparation – the research and preparation you should do prior to commencing collective bargaining.

b. Strategy – the aims and priorities you should develop in advance of your participation in the collective bargaining process.

This process does not need to be difficult. A collective bargaining strategy for your business does not need to be a long or complex document. It should reflect the needs of your business and the way you approach your commercial and operational activities. It may be no more than a single sheet of paper in many cases.

In plain and simple language, your strategy should set out the needs of your businesses in a manner which is understandable not only to you, today, but also to those who may come after you in the future.

2.2 PREPARING FOR COLLECTIVE BARGAINING

2.12 Regardless of the reason for participating in collective bargaining, any employer will want to get the most out of the process for their business.

2.13 The first element of a strategic approach to collective bargaining is undertaking preparation and research, prior to any negotiations or discussions with your employees.

2.14 This does not have to be too extensive a process, but gathering background information in advance and feeding this into your strategic considerations can prepare you as an employer to effectively participate in collective bargaining.

2.2.1 Understand Your Commercial and Operational Needs

2.15 The starting point should be an understanding of your commercial and operational needs. As you prepare to enter negotiations, what should you as a business operator be seeking from the process? What (if any) changes to the organisation and performance of work do you need to make your commercial operations more stable, more productive and more sustainable? What are your competitors doing, and what do you need to do to compete with them?

2.16 Critically, how could the management, organisation and remuneration of work better contribute to the operation of your business? How does this translate into specific proposals for changes to how work is managed, organised and paid for?

2.17 The outcome of your review of your commercial needs should be a set of goals for changes through your collective agreement. This should not be complicated. It should generally be clear to you as an employer what your organisation needs to do to perform better.

2.18 The critical personnel at this stage of your process are your accountants and production managers, and those who will supervise work under a collective agreement. You need them to tell you what could be done better in your workplace, and what is required commercially and operationally in the next couple of years. Then you translate the commercial and operational priorities of your organisation into proposed changes to the organisation of work your workplace (i.e. your employer bargaining claims).

Labour Management Plan

Attachment B outlines a process which employers can use to plan their commercial and operational activities, and in particular, how they approach employment.

It is a framework employers can use to prepare for effective and strategic collective bargaining.

You can use this framework (or adapt it) with your employers' organisation to critically understand your organisation going into the collective bargaining process.

2.2.2 Understand What Your Employees Want

2.19 It is also important to try to understand in advance what your employees will be seeking from the collective bargaining process. If you have some idea what employees want from bargaining, you can establish in advance your capacity to agree or not agree to particular claims.

2.20 This means you can go into collective bargaining negotiations armed with an understanding of what you can and cannot agree to, and what you can and cannot negotiate upon.

2.21 This is easiest when your employees or their representatives serve a written log of claims on you, seeking a specific package of increased terms and conditions.

2.22 However in many cases, employee claims will not be so clear in advance. In these situations, employers may consider:

a. Talking with employees directly to find out what they want from collective bargaining.

b. Researching the collective agreements of their competitors[4].

c. Researching other agreements negotiated by the representatives who will bargain for your employees.

d. Consulting your employers' organisation to find out what employee representatives have sought from other employers.

[4] This will be an easier process in systems in which collective agreements are published and widely available.

2.23 An important part of effectively preparing for bargaining is also ongoing, day-to-day communication with your employees. Open channels of communication can help you understand the mood of your employees, and the pressures they may be under which will flow through into bargaining claims (e.g. rising prices, and agricultural or regional concerns).

2.24 Other options for understanding and engaging with the needs of your employees include:

a. Asking them. Either in meetings, forums, or through a survey you can ask your employees about their attitudes to work, your company, and their main grievances and priorities for change. You can also do this informally in day-to-day conversation. Done properly, this will often reveal quite sophisticated employee priorities extending beyond simply increased wages.

b. Looking at your grievances and day-to-day disputes, and why some employees leave your company. Exit interviewing is an option in which you sit down with leaving employees to understand why they are leaving your company. This can also provide interesting data and issues to address. Some of these issues may be able to be addressed through bargaining, leading you to retain more employees and reduce training and recruitment costs.

There are thousands of potential employee concerns with work and with your workplace, and some of these will lead employees to leave your employment. Many of these issues can be addressed without using collective bargaining or a collective agreement, and there are significant advantages of management continuing to manage some areas unilaterally without throwing all matters open to negotiations with employees and their representatives.

There should also be limits on the matters which employees are invited or allowed to negotiate upon, and which are addressed in a collective agreement.

Managerial Prerogative refers to those matters which remain solely the preserve of the employer in running the business. The extent of this prerogative, or the matters you view as solely yours to manage, is up to you as an employer (to the extent of your national law and practice), but commonly includes the recruitment, selection, discipline and termination of employees. It also commonly includes commercial, investment, operational and strategic decisions which, whilst they can affect employees, are not matters directly related to the employment relationship.

There are clear matters which strategically and as a matter of good practice employers should not bargain upon with their employees. Your employers' organisation is an important source of information on which matters should and should not be open to collective bargaining.

2.2.3 Understand Your Legal Options

2.25 It is important to understand which legal options are available to you in the bargaining process (See Module 3). This is a vital part of your preparation for collective bargaining.

2.2.3 Training

2.26 You might consider training the staff who will negotiate for you in specific negotiation techniques. There is a significant body of research and knowledge behind the approaches outlined in Module 4, which can inform and skill your negotiating staff. Your employers' organisation can advise on the availability of this specialist training in your national context.

2.27 Alternatively, there may be multiple agreements for each plant or operation within a larger company, conglomerate or commercial group. If agreements are going to be negotiated at this devolved or regional level, senior and experienced head office staff can work with their negotiators to pass on their experience and corporate priorities in advance of negotiations. You may also need a specific bargaining strategy to fit such a devolved bargaining structure.

Unique considerations arise where each workplace within a larger commercial group is to negotiate a separate collective agreement. There is a danger employees will make comparative claims citing outcomes in different areas of the company. Alternatively, the employer needs to control their middle and regional managers from agreeing to excessive pay outcomes, or from contributing to unnecessary industrial action. Both can inflate your wages bill.

One mechanism to combat this is to set a wages policy for your group. This might for example provide:

- The maximum possible wage increase under any agreement will be 5% per year.
- Any increases above 3% must be cost neutral to the employer, and based on increased productivity.

The key to making this work is to set your policy commercially and realistically, stick to it, and ensure it is well understood by your employees, their representatives and your middle managers.

Where there are to be any variations from a centralised position or policy, they should only occur with the permission of head office, and only following factual justification of why such an approach is needed. Where your manager or negotiator exceeds the policy without permission serious sanctions should apply.

2.2.4 Renegotiation

2.28 There are also unique considerations when renegotiating an existing agreement. Understanding how your existing collective agreement is working and not working is an important source of information and preparation for effective renegotiation and improving on the status quo (See Module 6).

2.3 COLLECTIVE BARGAINING STRATEGY

2.29 The next component of effectively preparing for collective bargaining, is formulating your ***bargaining strategy***.

2.30 Building on your preparations and research (and on analysis such as the Labour Management Plan in Attachment B), an employer can develop a strategy or plan for participating in collective bargaining.

2.31 This doesn't mean preparing a long or complex written document (in fact that will often be against the interests of many employers). But all employers can assess the information they have prepared in advance, and think strategically about the bargaining process and how they will approach it.

2.32 "Strategy" means no more than considering in advance how you will approach collective bargaining to get the most out of the bargaining process.

2.3.1 Your Strategy

2.33 Consider preparing your strategy in writing before bargaining starts. This is an internal document which your employer negotiators can use to monitor the bargaining process, and prepare in advance how you will respond to specific claims and proposals.

2.34 This might include for example:

a. A list of the outcomes the employer is seeking from the negotiation process (see 2.4 and 2.5), and your arguments in favour of these proposals.

b. The costs and benefits of what you propose, and of any negotiated changes to what you propose.

c. Identifying the financial consequences of agreeing to particular wage claims. Your might for example establish in advance the cost impacts of wage increases of 2.0%, 2.5%, 3.0%, 3.5% etc going into negotiations.

i. Your accounting staff might develop a costing tool or spreadsheet to assess the cost impacts of particular negotiated outcomes and the impact of any adjustment on a particular issue to the total wage cost. For example agreeing to extra leave, can vary overall wage and other costs.

ii. See also 2.5 (below), which can increase the wage options available to you in collective bargaining.

d. A list of matters you should insist be included in any agreement.

e. A list of possible claims which cannot be included in any agreement.

2.35 The key to this is preparation. Adequate and well thought through preparation means that you will have at hand the information you need to effectively participate in the negotiation process. It also means that you will be able to respond rapidly and clearly during negotiations. The arguments and responses you will make to your employees will have been prepared in advance.

2.36 Of course, there are two sides to negotiations, and you cannot script in advance how negotiations will actually proceed. However, an employer can have researched and determined in advance how to approach contingencies and likely developments in negotiations.

2.37 Just like a sporting contest, it is the team which has best prepared for the contest which often "wins" in collective bargaining (although as we shall see, if done right, both you and your employees can come out on top).

Caution: If you prepare a written strategy document, be very careful to keep it secure. Many a collective negotiation has been completely undone when one side of the negotiations has mislaid a document that the other side has found.

2.3.2 Control the Timing of Collective Bargaining

2.38 Employers may also have options to control the timing of collective bargaining, and to have employees and their representatives responding to the employer's claims, and the employer's agenda.

2.39 If employees serve claims and initiate claims then the timing of the process is not generally something an employer can control. But the employer can also initiate claims, and start the collective bargaining process before employees have a chance to do so.

2.40 An employer can strategically invite its employees to the bargaining table on his or her preferred schedule, initiate the bargaining process and set the agenda for bargaining. Where the benefits of collective bargaining might be attractive to you, or you think that your employees might be gearing up to make claims against you, you may have two options:

a. Wait for the employees to organise themselves, formulate their claims, and launch a bargaining claim against you.

b. Or, seize the initiative, start the collective bargaining process as the employer, and serve your claims on your employees.

2.41 There is also a benefit in avoiding negotiations during your peak seasonal periods, and those in which deliveries are most critical (including when your commercial contracts are being renegotiated). Industrial action or bans during bargaining may be prejudicial if they affect your capacity to supply your clients. Another consideration is to finalise your agreement prior to your competitors.

2.3.3 What Type of Bargaining To Pursue

2.42 Another strategic consideration is the level and type of bargaining. Do you want an agreement:

a. Between you and your employees directly, or with the involvement of employee representatives? Will an employee organisation/ representative be a party to the agreement, and be bound by it?

b. For a single workplace, for your whole company or group, or for more than one employer (a multi-employer agreement)?

2.43 Of course there are two sides to collective bargaining, and an employer does not necessarily control these outcomes on their own. However, critically examining your options and having realistically developed preferences makes it more likely an employer can control or influence these considerations.

Module 1, Section 1.7 critically examined arguments for and against multi-employer agreements and single enterprise agreements. Employer options on the form of agreement are also affected by national legislation.

2.4 HAVE YOUR OWN CLAIMS

2.44 Employees and their organisations almost always have claims or agendas for changes to the organisation of work and how work is paid for. Employees generally have quite clear desires for pay increases, increased leave, increased leisure, less intensive work etc.

2.45 Sometimes these claims will come from employees in the workplace, other times they are drafted by employees' organisations, and can reflect wider political agendas. Sometimes they are part of sophisticated national multi-employer bargaining strategies by employee representative organisations.

2.46 Employees and their organisations generally come to the collective bargaining process well armed with claims and a clear strategic understanding of what they want. Employees are also able to get organised to bargain very quickly.

2.47 An important part of bargaining effectively with your employees and responding to their strengths is to have your own bargaining claims, and a list of things that you as the employer are seeking to include in a collective agreement.

2.48 This might include changes to the hours of work, changing opening or closing times, or adding or adding a new shift. You may want more hours of work during a day or work cycle, more effective use of your machinery, or a reduction in lost time, wasted time, cleaning time etc. These claims should address your commercial and operational needs, and be linked to your analysis, perhaps developed using the Labour Management Plan framework (Attachment B).

2.49 Employer claims might include:

a. Changing hours: An employer may want to extend or change the working day, and the starting and finishing hours of work. An employer may want to add or change a shift, introduce 24-hour operations, or introduce work on weekends. Your collective agreement and the collective agreement process offers a mechanism to do this with the agreement of your staff or in exchange for increased employee benefits.

b. Increasing effectiveness: An employer may want to increase the effectiveness of work, of production, or of client servicing. An agreement might for example contain an agreed target for production per day, or an agreed turnaround time for cleaning a hotel room and making beds. There is also the option of strategically linking this to incentives and bonuses (see 2.5 below).

c. Performance based pay: An employer may be able to accommodate a level of wage increase, but only on the basis of some corresponding change in the organisation of work, or in exchange for greater productivity and efficiency.

   i. The simplest example is a bonus – an employer might not agree to a 4% wage claim from employees. However, he or she might offer a 2% wage increase, with a further 2% available as a bonus if the company achieves a certain level of production or efficiency (see 2.5 below).

d. Cutting waste: Some employers use their agreements to set targets to cut waste, and to reduce the costs per unit produced, per client serviced etc.

e. Changing employee behaviours: Employers can also use the collective bargaining process to try to change employee behaviours. This might include having employees agree to observe health and safety rules, or to enhance the quality and accuracy of their work.

2.50 With some forethought and creativity, an employer can broaden the bargaining negotiations and ensure that they do not proceed based purely on employee priorities. Your employer claims ensure that negotiations are not solely about what employees want.

2.51 Having your own agenda and demands in the bargaining process also allows you to make a strategic response to employee claims, and in particular it allows employers to ensure that bargaining focuses on more than just the level of pay increase under a collective agreement.

2.52 Negotiations will proceed not just about how much of a pay increase can be accommodated (or whether a pay increase can be accommodated at all) but there will be a broader discussion which also addresses your commercial needs in running a competitive business. The employer will have an opportunity to explain the realities of the business and the factors affecting their commercial operations. This is excellent for setting an appropriate tone for negotiations and strengthening your overall position and negotiating effectiveness.

2.53 Importantly, introducing the notion of performance based pay and an exchange of flexibilities and savings for a wage increase, at once makes this process more complex, and introduces new options for the finalisation of collective bargaining to the mutual satisfaction of both employers and employees.

Wants vs. Needs

It is important that employers focus on what their business actually needs (which reflects the genuine interests of the business, an approach expanded on in Module 4). This contrasts with wants, which are less important desires, not critical to the running of the business and not warranting any divisive or difficult collective negotiations.

It is also critical to understand what your opposing negotiators need to deliver, and to be able to separate the genuine needs of your employees from their additional (and less important) wants.

2.5 PERFORMANCE OR INCENTIVE BASED PAY

2.54 One very important option for employers to consider is using collective bargaining to link pay, and pay increases, to improved commercial and operational performance.

2.55 A simple or outright pay increase (which is what your employees will usually want) simply increases the wage with no operational improvements for your organisation. It is expressly an increase in your labour costs for the same level of output, service and operations.

2.56 There is an alternative. Increases in pay can be linked to, and made conditional upon, improved performance or some gain to you as the employer.

2.57 This potentially means mutual gains for both you and your employees. Your employees have their wages increased, and you as the employer gain increased productivity or reduced costs.

2.58 Additional operating costs to you as an employer are funded by the operational improvement of your employees, and are not simply an additional cash burden on the business that has to be paid from profits.

2.59 Consider the following situation.

a. Employees through their representative demand a 3% pay increase per year.

b. If accepted, this means an employer has to budget upon an additional 3% labour cost, and to increase prices.

2.60 However an option for the employer is to try to shift the focus of negotiations away from a simple pay increase towards an incentive based payment. In the example, the employer might respond with a proposition under which there would be a 2% immediate pay increase, with a further 2% available if specific performance targets are met.

a. If the targets are met both the employer and employees are better off.

b. The employees gain a 4% rather than 3% pay increase.

c. The employer can afford the increase because productivity and efficiency have improved (and it may actually be cheaper than a 3% increase with no offsets). The employer also often gains from improved delivery times, production quality, reputation with clients etc.

d. If the targets are not met, the employer is better off, having increased labour costs by only 2% (and probably still benefiting from some increase in performance even if it falls short of the agreed target). Note: It is almost always better to have your performance scheme succeed, and reward both employer and employees, rather than to fail.

2.5.1 Incentive Based Pay – Examples

2.61 There are a number of well developed models for linking pay to employee performance

2.62 Bonus: The simplest form of incentive based pay, and the clearest illustration of the benefits of linking pay to improvement, is a bonus. Where employees produce a particular level of output, or quality, or turn over hotel rooms in a particular time, they receive a bonus on the base rate of pay. At the end of a week, a month or a year, employees will receive an additional payment if they meet a pre-agreed target (include in the collective agreement). If the target is not reached, the bonus is not payable.

2.63 Basket of indicators: In more sophisticated schemes, there might be multiple measures which are linked to pay in a more sophisticated way. For example, out of a 100% measure, 20% might be allocated to producing on time, 20% to quality, 20% to cutting waste, 20% to cleanliness, and 20% to overall company performance.

a. Pay could then be linked to performance in a more sophisticated way, for example:

i. Under 60%: No additional payment.

ii. 61 to 80%: A 4% bonus, calculated using the base rate.

iii. 81 to 100%: A 5% bonus, calculated using the base rate.

2.64 Gain sharing: In gain sharing, an employer shares a specific financial or performance gain with employees, often on a 50:50 basis. For example, you may have a problem with wastage of materials, or excessive water use. An agreement might give employees 50% of your savings in material costs per unit produced, or 50% of any savings in your water costs. The employees have an incentive to greater efficiency and less waste, and you get reduced overall costs as waste and water use are cut. Positives of this scheme can also include:

a. This is an ongoing incentive, to keep saving and keep cutting waste.

b. Increased employee concentration on how they work (to reduce waste for example) has other wider benefits for the quality and accuracy of work.

2.65 Profit sharing: In profit sharing, the employer agrees to share any increase in profit (or some other financial indicator) with the employees. In its simplest form, it might operate as follows:

a. Last year the company made X% profit.

b. For every percentage point of profit over this level through the life of the agreement, half will go the employer, and half will be shared across the employees as an incentive payment.

2.66 Each of these schemes has its pros and cons, and there are some important things to know in designing and implementing any scheme:

a. Schemes can be very sophisticated or very simple. You need to pursue a scheme which is right for your organisation and the sophistication of your employees, and most importantly what your business needs commercially and operationally.

b. One option is to start with a quite simple approach and develop what ultimately suits your operation over succession of agreements (perhaps across three, two year agreements). Your arrangements can become more sophisticated over time based on your experience and growing trust from your employees.

c. You can combine different incentives and approaches, for example combing additional weekly payments based on production with an annual bonus based on the performance of the whole company.

d. An employer also needs to think strategically about how often payments will be provided, and how pay frequency will effect performance incentives under the agreement.

   i. Some argue that immediate incentives are more effective than annual ones. A weekly bonus would for example provide a more immediate, visible reward for additional effort.

   ii. Balanced against this, an annual payment may be substantial, and provide employees with attractive spending options.

e. There are also options for rewarding individuals and their individual performance, rewarding the performance of your entire operation, or rewarding the performance of a unit or section. Again, what is possible will depend on your workplace and your employees.

f. Goodwill and mutual trust are very important in bargaining, and in particular when introducing incentive payments. For example, what if your employees are on track for an annual performance payment, but some disaster or stoppage beyond their control means they do not meet the agreed targets? Does the employer take a strict approach, or do you act flexibly and invest in the longer term goodwill of your staff? A pragmatic and longer term view, erring on the side of some payment, can bear fruit in these circumstances.

2.67 Your employers' organisation can advise of your capacity to pursue performance improvement through your agreement, and work with you to develop a model or scheme which is appropriate for your workplace. They can also be a good ongoing source of advice on the operation of your incentive pay scheme.

2.5.2 Good Strategy

2.68 Incentive based pay will not be the right approach for all employers, and negotiating these arrangements can be difficult where employees are strongly opposed or distrustful. This can also be very difficult in the first generation of agreement and may become easier as you and your employees build mutual trust over time.

2.69 This said, it is good practice to try to use your collective agreement and your pay arrangements to encourage improved performance. It is good for your business to have your employees trying harder, and working smarter and more accurately. It is also good collective bargaining strategy to be seeking something significant from your employees to counteract their pay claims.

Avoiding peaks and troughs

One of the unforeseen consequences of a performance pay scheme is that pay levels can be inconsistent across the year, and can vary significantly across production seasons. There are options to avoid this in the design of your performance related pay scheme, and to annualise payments or turn wages into a salary – however these become more relevant as schemes mature and well accepted by employees.

2.6 BE PRAGMATIC AND REALISTIC

2.70 Many employers will not be able to control the timing of bargaining. Their employees will have their own claims, strategies and agendas, and may initiate bargaining claims on their own timetables.

2.71 And of course, not all employers will be able to pursue all the possible bargaining options. For example:

a. Where your employees are already actively organised and participating in effective representative organisations, you will be less likely to be able to pursue bargaining directly with employees and without the involvement of an employee organisation.

2.72 At all times, your options will be a function of how relationships in your workplace are organised, and the history of relations between you and your employees. The better your relationships with your employees the more you can achieve through collective bargaining.

2.73 Strategic collective bargaining is fundamental to opening up the options for employers, and making bargaining pay.

2.74 Pragmatism and realism are also vital to getting the most out of collective bargaining. Sometimes the key to effective negotiations will be your recognition that:

a. A particular employee claim must be accommodated in whole or part as part of a wider package which you can agree to.

b. Some changes you are seeking will not be able to proceed in the current generation of agreement.

c. Your employees have given some ground, so you will also need to concede on some matters.

2.75 In short, you as an employer need to know when to fight, and when not to fight, and always have an eye on the larger picture and the overall negotiated package.

2.76 Your employers' organisation as your bargaining partner may be an important source of strategic advice for an employer trying to pick his or her battles. Module 4 also offers pragmatic, practical advice on approaching negotiations.

Your capacity to strategically bargain and to get the most out of collective bargaining also reflects your general approach to employment and issue management within your company.

Collective negotiations are not a one-off event which you and your employees will approach with no history, no biases and no preconceptions.

Efficient management of day-to-day workplace relations and efficiently dealing with day-to-day concerns provides the best possible background to bargaining, and the best possible opportunity for employers to get the most out of the process.

2.7 LONGER TERM STRATEGY

1.51 It is also important to think of your collective bargaining strategy as evolving over time and to avoid too much short-term thinking. Negotiations will always take place again, and there will be future rounds of bargaining which will again examine the issues you are collectively bargaining upon.

1.52 You will almost certainly not be able to secure all your priorities in your first agreement, and will have to build trust and develop support for changes over time, and over generations of negotiations. For example, it may take two generations of agreement to introduce a new shift, or to introduce performance based remuneration (see 2.5).

1.53 The longer-term nature of the bargaining relationship provides negotiators with tools and options.

a. You can pursue your aims over generations of agreements, and develop support for your concepts and proposals with your employees over time. You can work with your employees to build trust in how you want to organise work over time, including between rounds of formal negotiations.

b. You can persist with a claim your employees cannot accept at this point, and make clear that it remains a priority for you as the employer. You can keep going with proposals which you cannot secure in a particular round of agreement making.

c. You can often delay difficult employee claims to a future round of negotiations (for example two or three years hence). The employees have not been forced to back down on their proposal, and you have not incurred additional costs or restrictions on how work is undertaken. This negotiation technique becomes available because there will be future rounds of negotiation. (Note: this still means you will need to come back to these issues when negotiations next occur).

1.54 You can also work with your employees between formal rounds of negotiation (before employees make any new claims) to convince employees in support of your priorities and proposed organisation of work.

1.55 Also linked to this is the importance of pragmatism. Good strategy is flexible and can adapt to changing circumstances and developments. You may need to change your goals over time in response to how bargaining proceeds.

2.8 OBSTACLES TO SUCCESSFUL COLLECTIVE BARGAINING

1.56 Successful collective bargaining for employers is a process which proceeds peacefully and quickly with little or no disruption to work or working relationships.

1.57 It leads to collective agreements which ensure the performance of work contributes to productive, stable and sustainable commercial operations. Each round of successful collective bargaining improves the employer's operations.

1.58 There can be a number of obstacles to successful collective bargaining.

a. Intransigence: One of the key skills in collective bargaining is deciding when to be firm, and when to be pragmatic. Immature negotiations in which one side will not negotiate on any of its claims can make finalisation of a collective agreement very difficult. (This is not to say that you as an employer cannot be firm on a particular issue or priority, but this may dictate some flexibility in other areas).

b. Impracticality: Negotiators need to remain practical and realistic. They quickly move past the posturing of ambit claims to engage with what is being sought from them, and can engage effectively with employee claims.

c. Misunderstanding: Another key problem is where there is a misunderstanding of what is being proposed, how a particular part of an agreement would operate, of what a negotiator is saying, or of what has been agreed. Collective bargaining takes concentration, having someone take notes is important, and it is important that a written collective agreement be created during the negotiation process (see Module 4 and Module 5). Poor drafting should not be allowed to detract from the operation of your agreement.

d. Inconsistency / bad faith: If there is one golden rule in negotiations it is to be consistent, and to operate openly, honestly and in good faith.

Trying to trick your opposing negotiators, or acting capriciously or dishonestly will only make the process more difficult (and may harm your ongoing reputation with your employees).

e. Lack of authority: Another problem is situations in which the people bargaining lack the authority to deliver on what they negotiate.

   i. For the employer, this may mean sending negotiators who lack the authority to make the necessary decisions during negotiations.

   ii. This can be overcome by the most senior leadership of an organisation taking an active interest in negotiations, and appointing negotiators empowered to actually make concessions and develop mutually acceptable outcomes.

   iii. Employee representatives can also lack support from your employees, and may not be able to deliver on what they are negotiating. There may also be competing organisations.

   iv. (This is not to say that there cannot be external oversight and determination on some issues, but the negotiators have to be empowered to do deals, and finalise claims through give and take).

1.59 These problems can come from employees, employers or both.

1.60 This guide aims to give you practical ideas to overcome such problems and to ensure you deliver a successful collective agreement for your operations. Module 4 outlines practical measures for effective negotiations.

2.9 PARTNERSHIP WITH YOUR EMPLOYERS' ASSOCIATION

1.61 Throughout this guide we emphasise the benefits of working with your national employers' organisation. Your employers' organisation will be the expert on collective bargaining under your national laws, and will be able to access necessary advice, information and expertise on a wide range of issues.

1.62 Your employers' organisation is also able to advise you on bargaining strategy, and how to prepare for collective negotiations. Your employers' organisation can also provide an independent source of advice on your realistic options throughout the bargaining process.

2.10 KEY LESSONS

Lesson 2.1	Take a strategic approach to collective bargaining. Don't simply respond to employee claims.
Lesson 2.2	Prepare for collective bargaining. Research, consider and evaluate what you can in advance, applying the ideas in this guide.
Lesson 2.3	Understand what you need out of the process commercially and operationally and formulate your own employer claims for changes to the organisation and management of work.
Lesson 2.4	Consider linking pay increases to performance (Performance Related Pay).
Lesson 2.5	Review the Labour Management Plan in Attachment B of this Guide and consider its usefulness in your operations.
Lesson 2.6	Try to determine in advance what your employees want out of your collective bargaining negotiations.
Lesson 2.7	Establish what your options are legally and practically in light of how your workplace actually operates.
Lesson 2.8	Prepare a written bargaining strategy, and critically review it with your senior managers prior to negotiations.
Lesson 2.9	At all times be pragmatic, realistic and take a longer term view.
Lesson 2.10	Work with your employers' organisation as your strategic partner.

MODULE 3 - THE LAW

This section does not offer legal advice. Advice needs to be sought at the national level, and employers are strongly encouraged to work with their national employers' organisation.

3.1 INTRODUCTION

3.1 Most collective agreements are successfully finalised through negotiation (Module 3). In most cases, employers and employees will successfully negotiate and reach a collective agreement. This may take time, negotiations may be long and difficult, and there may even be some industrial action, but in the end a settlement is generally reached through the collective bargaining process.

3.2 Collective bargaining is however heavily influenced by national laws and labour regulation. These laws set the rights and responsibilities of employers, employees and employees' organisations. The law will determine the extent to which employers can ensure that collective bargaining actually contributes to productive, stable, and sustainable commercial operations (the overall aim of collective bargaining).

3.3 From the start of the process, collective bargaining raises legal questions and triggers legal rights and obligations. These legal obligations cut both ways for employers:

a. Employers must respect certain legal rights in relation to their employees wanting to bargain collectively, and of their representatives.

b. However, employers may also have legal protection and legal options to respond to union claims and actions in support of their claims.

3.4 It is vitally important that employers understand the law, and their rights and obligations at all stages of the collective bargaining process. An employer can only use the law strategically during bargaining if they have a sound understanding of how the law operates.

3.5 This doesn't mean each employer has to become a lawyer to participate in bargaining! But, it reinforces the importance of working with your employers' organisation throughout the collective bargaining process - right from your first internal discussions on collective bargaining. Your employer association is experienced in working with employers seeking to successfully navigate their national legal system.

3.1.1 Why the Law Regulates Collective Bargaining

3.6 There are a number of reasons why national laws regulate collective bargaining:

a. Collective bargaining has consequences for social and workplace harmony. Governments regulate collective bargaining to ensure negotiations are finalised, as much as possible, without disruption, violence or disorder.

b. The law can assist collective bargaining, and help negotiations towards a successful outcome. Imposing some legal rules can discourage strikes and progress negotiations towards an agreed outcome.

c. The law can set the rules for collective bargaining. The law can help everyone know where they stand throughout the collective bargaining process and what both employers' and employees' rights and responsibilities are.

d. Some people do the wrong thing during collective bargaining. Some form of legal regulation is needed to protect both employees and employers.

e. International Labour Organisation (ILO) Conventions (international treaties) require national laws to protect collective bargaining rights[5].

3.7 Most countries regulate how collective bargaining is undertaken. These national laws have to be understood and complied with for an employer to bargain effectively, strategically and sustainably.

[5] These obligations apply in those countries which have ratified the ILO Conventions, which is a formal legal process entered into by national governments.

3.1.2 Laws Regulate Employers, Employees and Representatives

3.8 Most national systems of labour law regulate the conduct of employers, employees, and employee representatives. Each has rights, each can take legal action, and each has obligations during the bargaining process.

3.9 For employers, the law may be useful in:

a. Establishing what may and may not be included in a collective agreement.

b. Knowing how particular employee claims should be addressed.

c. Establishing employer priorities and strategies.

d. Responding to employee actions and claims during negotiations.

e. Ending or avoiding damaging strike action.

Strategically using the law does not necessarily mean taking your employees or their representatives to court (instigating actual prosecutions) – far from it!

Establishing what the law requires or allows can be enough to change employee behaviours, or to avoid threatened industrial action. The threat of an employer taking legal action can often be more powerful than actually initiating legal action.

3.1.3 The Importance of Complying With the Law

3.10 The challenge for employers is to simultaneously:

a. Undertake collective bargaining in full compliance with the law, and

b. Ensure that through collective bargaining, the performance of work properly contributes to productive, stable, and sustainable commercial operations (i.e. the core reason for employers to participate in collective bargaining in the first place).

3.11 Laws can be very complicated and there are traps and pitfalls. It is not always completely clear what actions will and will not comply with the law during negotiations. Mistakes and disputes do arise – even where all parties seek to comply with the law.

3.12 At all times it is vitally important to have the right expert advice. Effective partnership with your employers' organisation is critical.

3.2 NAVIGATING THE LAW OF COLLECTIVE BARGAINING

3.13 Labour law: National labour laws can regulate collective bargaining in a number of ways, including:

a. Requiring collective agreements to be registered or lodged in writing.

b. Limiting the maximum period of operation of a collective agreement.

c. Regulating what happens when an agreement reaches its expiry date without being replaced by a new agreement.

d. Requiring all collective agreements to include particular matters.

e. Banning collective agreements from including other particular matters.

f. Requiring employers to deal with their employees and to consider and respond to their collective bargaining claims in particular ways. In many countries there are requirements for employers to bargain with employees in good faith.

g. Regulating the taking of industrial action, including requiring notice to be provided to employers of planned industrial action.

h. Providing legal protections to striking employees. This includes banning employers from taking any adverse actions against their employees for pursuing collective bargaining.

i. (Depending on the national system) requiring employers and employees to enter into compulsory conciliation and arbitration processes, and setting specific timetables for employer responses.

3.14 Criminal Law: Many forms of bans or strike action will breach some form of criminal law and could give rise to prosecution of employees and their representatives. Whilst prosecutions are generally a matter for governments, employers do have a role in bringing matters to the attention of the police, and in some cases in determining whether criminal charges will be laid.

3.15 This is a very difficult issue. Collective bargaining can provoke passions, and situations can get emotional and heated prior to their resolution. Introducing the police and legal charges will in many cases inflame matters and make resolution harder. In others, an employer will have no choice but to seek the assistance of the legal system (and may be legally compelled to do so).

3.16 Again, there is no hard and fast rule, and very careful considerations have to be undertaken. National and cultural considerations will also come into play. Again, your employers' organisation will be best placed to provide experienced and strategic advice.

3.17 Civil Law: Finally, the civil law also needs to be considered. Commercial and operational damage to the employer through industrial action, strikes and bans can raise the prospect of legal action in the civil law system. Employers often have options to sue employees using the civil law (including torts) for commercial and operational damages.

3.18 In evaluating civil law options, employers need to consider not only their legal capacities, but also:

a. The consequences of suing employees and their representatives for longer-term working relations.

b. The capacity to actually recover monies from employees following a civil law action (although the value of a civil action may not lie in actually recovering monies).

3.3 INDUSTRIAL ACTION

3.19 Industrial action has been defined as "*any concerted stoppage of work*"[6] to which we can add "*any concerted modification of work or detraction from normal rates of output*" (which would include work bans, overtime bans etc).

[6] Trade Union and Labour Relations (Consolidation) Act 1992 (United Kingdom), s.246

3.20 There are a few elements to this:

a. Work stops (in a strike or lockout) or it is partially disrupted (a work ban, overtime ban, work-to-rule etc).

b. This is concerted or deliberately organised for a purpose. In this case to advance a particular outcome from collective bargaining.

3.21 During collective bargaining industrial action means either the employer or the employees disrupting the performance of work on a temporary basis deliberately to try to force the other party to concede to their collective bargaining claims.

3.22 In a strike for example, the employer cannot produce anything, cannot sell to customers or provide goods or services. Production stalls, orders pile up and reputations are potentially damaged. These negative impacts of strike action on employers are what employees are using to have you agree to their collective claims.

3.23 In a lockout, the employer stops the work, and forces the employees to forego wages. These negative impacts of a lockout on employees are what employers may use to have employees agree to a collective agreement the employer can support. Your capacity to pursue a lockout will depend on your national law - *see below*.

3.24 Employers will understand the potential impact of strikes, bans and interruptions to the *efficient, productive, reliable and sustainable performance of work*. Employers will clearly understand the precise impact any strike will have on their productive process and capacity to deliver to clients.

3.25 In instances of strike action, or when threatened with strike action, it is important to work with your employers' organisation to understand your rights and obligations in managing strikes.

3.26 Your employers' organisation will also provide practical advice on how to manage the human and emotional dimension of strike action, how to manage the legal and productive dimensions of strike action, and how to ensure a fast and comprehensive return to work.

3.3.1 The Lockout

3.27 Something which should be remembered during your negotiations is that employers can take their own industrial action against employees, in support of the collective agreement they want.

3.28 The employer strike is called a lockout – and sees the employer literally exclude employees from the workplace. This means

a. The employee is not paid for work on a day where the employer has locked them out. This is designed to force employees to negotiate on the employer's claims, just as a strike is designed to force an employer to negotiate on employee claims.

b. Of course for the employer, the work does not get done for each day there is a lockout.

3.29 The extent to which lockouts are available to employers, and the legal requirements for a lockout will differ between countries. Again, advice from your employers' organisation is vital before embarking on such a course.

3.30 An employers' organisation can also advise an employer not just on his or her legal capacity to lock employees out, but also on the longer term management and industrial relations consequences of doing so.

a. Whilst an accepted option for employers, and used with some regularity in some countries, many argue lockouts have long-term negative consequences for longer-term relations with employees, and can lead to a potential escalation and protraction of negotiations.

3.31 Remember:

a. This option should not be forgotten in the tactics and strategy of negotiating towards a collective agreement (Module 4).

b. The threat of a lockout may be more important in negotiations than an actual lockout.

c. But an employer must be willing to go through with a lockout if one is to be threatened. There are major long term risks in not living up to your threats during bargaining.

3.3.3 Picketing

3.32 A picket or picket line is a specific form of industrial action in which employees try to limit access to your workplace, either by blockading it physically or using the moral `weight' of their cause to discourage employees of your suppliers and other visitors from crossing their line and supplying your business. The picket line is also designed to discourage non-striking employees from attending work. The effect of a successful picket is to close your business to the outside world, and make production impossible.

3.33 This can be a very dangerous and fraught form of industrial action and carries dangers for both employers and employees. It also creates considerable legal risks for employees and opportunities for employers to take remedial legal action. Urgent specialist advice should be taken if faced by picketing (and indeed if threatened with a picket).

3.3.4 Replacement Employees

3.34 Depending on the national system, employers also have options to relieve the impact of strike action by hiring replacement employees. A replacement employee takes the place of a striking employee, thus reducing the economic and operational impact of strike action. This can be viewed very negatively by employees, who may view replacement employees as "strike breakers".

3.35 Your employers' organisation will be best placed to advise not just on your legal capacity to hire replacement staff, but also the longer-term consequences of such a step. This is often not recommended, particularly in the context of shorter-run strike action to support a collective bargaining claim.

3.4 FREEDOM OF ASSOCIATION

3.36 The capacity of employees (and employers) to effectively participate in collective bargaining is a function of their capacity to freely associate and to form representative organisations if they choose to do so. The right to freedom of association is perhaps the most fundamental human right underpinning the work of the ILO.

3.37 Many countries have national laws protecting the rights of employees to form representative organisations and participate in collective bargaining. There may be national laws which protect the following rights, for example:

a. A right for employees not to be dismissed from employment, demoted, threatened or coerced for taking part in bargaining, or forming representative organisations.

b. A ban on paying a trade union member less than a non-trade union member, or giving career advancement only to employees who do not agitate for higher wages or improved conditions of work.

c. A ban on employers seeking to control trade unions, or influence their decision making, democratic or financial affairs.

3.38 In terms of practical advice to employers, it is (generally) best to genuinely bargain with your employees and their organisations, and to negotiate based on the merits of any claims they make against the company.

3.39 This does not mean you need to agree to what employees are seeking – far from it. But it does mean that you should look at negotiating rather than trying to make collective bargaining go away by influencing employee representation.

3.40 Seeking to single out individuals, cause them any detriment, threaten them, or to somehow destroy or restrict the operation of an employees' organisation will not only prove counterproductive and ultimately ineffective, but could expose a company to legal action and attacks on its reputation.

3.41 Your employer association is best placed to advise you on:

a. What the laws protecting freedom of association are in your country.

b. What you must do when faced with a collective claim.

c. Your options when faced with a collective claim.

d. What you may not do when faced with a collective claim.

e. When an employer might initiate bargaining, rather than employees.

You may realise the importance of protecting freedom of association, and the dangers of seeking to influence your employees and their organisations.

But what about managers in your other operations or factories, or more junior supervisors who may be beyond your day-to-day control? What about regional operations away from your head office?

It is important that any employer promote the protection of freedom of association, and the core rights of employees throughout their operation. This is a matter of commercial risk management.

Managers and supervisors may need to be trained in their rights and responsibilities, and how to effectively communicate with trade unions whilst staying within the law.

3.5 THE ILO

3.42 The International Labour Organisation (ILO) is part of the United Nations. Your country is a member, and the ILO is very active in the Asian region in seeking to promote various rights and responsibilities in employment.

3.43 Countries make international treaties on employment issues. When your government ratifies (signs up to) such a treaty, it is required to ensure that your national legislation protects certain rights.

3.44 This is why a law at your national level may restrict the options available to an employer in responding to collective bargaining, or require you to act in certain ways in dealing with employees and their representatives (e.g. protecting freedom of association).

3.45 The important thing for any employer is to be able to successfully navigate their national law and ensure bargaining results in an agreement which ensures the performance of work properly contributes to productive, stable, and sustainable commercial operations.

3.6 KEY LESSONS

Lesson 3.1	Make very clear to your employees and their representatives at the start of the process that you are only interested in participating in collective bargaining that complies with your national law.
Lesson 3.2	Find out what can and cannot be included in a collective agreement under your national legal system. This will establish what you can and cannot agree to during the collective bargaining process.

Lesson 3.3	Know your legal options at all points of the negotiation process, including when faced with strike action or the threat of strike action. This is a key part of your strategic considerations as an employer participating in the collective bargaining process.
Lesson 3.4	Establish what rights your employees and their representatives have in the collective bargaining process, and what you need to do at each stage.
Lesson 3.5	In responding to claims, or to any industrial action, don't just act on the law, but also consider the consequences of particular legal measures for your longer-term relationships with your employees.
Lesson 3.6	Know where to go for information on the law and how it affects your collective negotiations.
Lesson 3.7	Partnership between the employer and the employers' organisation is critical in ensuring that you can undertake collective bargaining legally, and can harness the legal system to deliver effective outcomes.

MODULE 4 - NEGOTIATION

4.1 INTRODUCTION

4.1 Whenever one person attempts to influence another person through an exchange of ideas and points of view or, when a person attempts to obtain from another person some item they value, the process used is "negotiation". Other terms are often used to describe this process such as; bargaining, haggling etc.

4.2 Negotiation is the process by which at least two parties with different perceptions, needs and motivations try to agree on a matter of mutual interest. In this case, the matter of mutual interest is the terms and conditions of work in your workplace or in your industry.

4.3 Consider:

a. Once upon a time there was bear which was hungry and a man who was cold.

b. They decided to negotiate in a neutral cave.

c. After several hours a settlement was reached.

d. When they emerged: the man had a fur coat and the bear was no longer hungry.

4.4 How do we measure the “success” of a negotiation?

a. By achieving an outcome at least as favourable as we expected.

b. But don’t be surprised by the commonality of interest that can exist in a negotiation situation.

c. Don’t assume conflict and don’t assume both parties want the same thing.

4.1.1 Identification of Negotiation Opportunities

4.5 How well you will succeed in "negotiating" is dependent upon your ability to identify opportunities for negotiation.

4.6 If you have not identified a particular situation as a negotiation, chances are you will not be prepared to negotiate and as such will not be able to try and improve the outcome of the situation for yourself. As such, the result will often be less favourable for you than it might otherwise have been had you been able to take advantage of the situation.

4.7 This ability to identify opportunities for negotiation is important as it is a tool that can be used against you. People will try to turn situations into negotiations when in reality for you it is not a negotiable matter. The skill of turning a situation into a negotiation must be coupled with an ability to stop a negotiation developing.

4.8 In all instances of negotiation, two questions must first be asked:

a. Is the matter covered by legislation, and therefore not open to negotiation?

b. Is the matter one of managerial rights, and therefore should not be open to negotiation?

4.2 NEGOTIATION PLANNING

4.2.1 Developing proposals

4.9 When developing proposals or claims, it is important to identify and pursue "needs" of the employer, sector or industry as opposed to pursuing a "wish list". The distinction will emerge from an in-depth consultation process either within your company or with industry employers.

4.10 This is sometimes linked to the receipt of employee claims but ideally this should occur in a meeting which is focussed on the employers' agenda. Meetings following receipt of employee claims can often end up looking to rebut them rather than concentrating on the employers' needs.

4.11 Linked to the advice in Module 2, be proactive and develop your employer position early so that when any employee claims are received your response is not at the expense of developing your own position.

4.12 Sometimes this process is also subject to statutory procedures. Where these exist, ensure your compliance with them (Module 3 expands on this).

4.13 Where proposals are developed, ensure you also gather the information necessary to support them at the negotiation table. Test the proposals as to their robustness so as to ensure they can be convincingly supported and are not just the whim of a member of your management team.

4.14 Proposals may also emerge as a result of legislative change or judicial ruling and there is a need to reflect that change in the document.

4.2.2 Analysing claims received

4.15 The types of claims that may be received are at times only limited in their scope and effect by the imagination of the claimant. Typically claims could be based on;

a. Cost of living increases

b. Movements in other industry bargaining outcomes

c. Trend setting (particularly if yours is the first negotiation in a "round" of bargaining)

d. Industry profitability (usually based on the financial results of the largest industry members)

e. Impact of technology

f. Productivity gains

g. Legislative changes or judicial decisions

h. Changes in the skills you need

i. Changes in the services your company provides

j. Concern based (e.g. in times of economic slowdown claims as to higher severance entitlements or consultation requirements increase)

4.16 No claim should be accepted at face value. Is the claim actually an area that should be negotiated over or is it more a management issue capable of resolution outside of the negotiation arena? Don't make non-negotiable matters negotiable.

4.17 All claims need to be costed for both the direct and indirect cost impact including compliance costs.

4.18 Rebuttal arguments should also be developed as part of this process of analysis

4.19 Some jurisdictions limit what are "negotiable matters". Check to see if there are any legislative or judicial constraints on such matters and assess whether the claim falls within or outside of such constraints (see Module 3).

4.2.3 Labour costs

4.20 In costing labour, not enough regard has been had to the total costs of labour.

4.21 Bargaining tends to focus on direct costs by way of wage and allowance movement as employers tend to have a better understanding of the impact of any changes in those costs. However there are also indirect and additional costs which need to be recognised and considered, these might include:

a. Any payroll or additional taxes to the employer from increasing wages.

b. Any additional premiums or payments, including additional social security or accident compensation payments.

c. Any additional administrative or payroll costs.

4.22 A lack of appreciation of the impact on indirect costs can lead employers to make concessions in bargaining in other areas such as increased leave entitlements: For example, the belief that such an increase is not a direct cost, and therefore its impact on the business will be less and provide a cheaper option in pursuit of a settlement. This is not always true.

4.23 In other instances employers, ignorant of what indirect costs are and how to measure their effects, will not look at indirect cost settlement mechanisms preferring only to look at and load up direct costs. These they understand; these they feel in control of. But a cheaper settlement could perhaps have been reached had they looked elsewhere.

4.24 A knowledge of indirect costs also known as non-wage labour costs (NWLCs), gives an employer the ability to look at the true cost and make informed choices while in bargaining. For example an employee claim for additional clothing or amenities may be able to be secured in place of a wage claim. Properly costed, it may represent a far better deal for employers than a pay increase. This is the type of analysis employers need to be able to undertake.

4.2.4 Selection of Venue

4.25 The venue for a negotiation is as important as any other aspect of the preparation for negotiations. Employers may or may not be able to influence where talks are held, particularly where the Government provides the venue, but the following should still wherever possible be considered:

a. Consideration must be given to whether negotiations should occur on or off-site. Whatever venue is chosen it needs to be suitably equipped and spacious enough to accommodate everyone comfortably.

b. Suitable rooms must be available to enable the parties to meet together for the purpose of negotiation and additionally another room must be available where one party can adjourn to consider their position.

c. The physical layout of the negotiating venue should assist the ease of communication and therefore requires consideration. A round or long table is conducive to negotiations as opposed to people sitting around a small desk or table attempting to record notes on their knees.

d. Consideration must be given to amenities and refreshments.

e. Appropriate support staff and materials must be available. Support staff are required to provide the typing of such documents and preparation of any other material including support material for the employers' bargaining position.

4.2.5 Establishing the Employer Team

4.26 This will always be dependent on the nature and scope of the particular negotiation so there are no hard and fast rules. However, the following are indicative of what needs to be considered.

a. For multi-employer bargaining, the size of the group needs to be representative of the industry. This includes coverage of the different sectors as well as covering the different "sizes" of enterprises. This can at times be difficult to achieve as time away from the business becomes more difficult the smaller the enterprise.

b. When bargaining for a single employer, the optimal size of your bargaining team needs to be considered, and you need to balance having the right expertise and resources, with a small and efficient negotiating team.

c. They should be endorsed by the company or the industry thereby giving them the mandate to negotiate on behalf of the company, industry or sector.

d. They all must have the ability to reach an agreement as representatives of the company or the industry. For multi-employer bargaining, they must understand that their own interests have to be subsumed within the broader interests of the industry. This separation can be difficult.

e. They must be available for the full period of the negotiations.

f. They must be knowledgeable of the issues in both the employer and union claims.

g. They need good industry knowledge as they are a resource for the spokesperson.

4.2.6 The Role of the Employer Spokesperson

4.27 This role and who fulfils it can vary. This role can be that of a "professional" negotiator from your employers' organisation, someone from within your company or industry or be a paid "consultant".

4.28 While the motivation of the person may be dependent on how they are sourced, the role they play is the same.

a. They are the representative of the employer or employers to be bound by the agreement. They must therefore know, understand and accept the limits of their authority – i.e. their mandate.

b. They speak on behalf of the group at the table.

c. They are the point of contact with the employees and any other parties involved.

d. They are the media contact.

e. They are responsible for managing the process. Familiarity with the relevant law, process and personalities is an asset.

f. They are trained in the "art" of negotiation and apply that training to the negotiation itself.

g. They are the focal point at the table for both good and bad.

h. They must remain in control at all times.

i. They have to manage the employer negotiating group and maintain a focus on the desired objective.

j. They are responsible for any wording that needs drafting and are responsible for the content of the final deal.

4.29 A good spokesperson can make or break a negotiation. Such people are seldom born, rather with training and support they develop.

4.2.7 Other Preparations

Establishing Effective Communication Channels

4.30 There is no substitute for effective communication before, during and after negotiations.

4.31 There are three key areas:

a. The employer or employers who will be bound by the agreement, including your middle managers and supervisors who will be on the front line of implementing the agreement.

b. Employees.

c. Others in the community who have an interest in the outcome (although care needs to be taken to ensure negotiations remain a matter between you and your employees).

4.32 If the negotiator is not the managing director, communication with employer or employers who will ultimately be bound by the agreement must take place throughout the negotiation process.

4.33 After all, they are the ones who provide the mandate – or limits of authority – for those who will represent them in the negotiation itself. Therefore they must have full opportunity for input in developing the employers' claims and providing rebuttal arguments against employee claims.

4.34 They must be communicated with after every negotiation episode to ensure they understand and approve the stance taken by those negotiating on their behalf. They must be given the opportunity to approve any change in the mandate they have given. As soon as a settlement is reached they must be the first to have the details communicated to them.

4.35 Communications can occur in many ways and their effective management can be a considerable advantage during the negotiation process.

4.36 You need a plan to handle the communication of information before you begin. Issues to consider include;

a. How much communication do you want to do? To what purpose?

b. Who are your audiences? Employees, their families, society at large, suppliers, customers, politicians, employee organisations, other employers etc?

c. What are the pros and cons of communications extending beyond those directly undertaking the collective negotiations? When and in what circumstances should the media and the community become part of your audience.

d. What is the best vehicle to deliver the message? Visual, written, spoken, internet?

e. Who is the best person to deliver the message to the target audiences?

f. Is the content and method of communication appropriate to the circumstances?

g. How will you manage gossip and the grapevine?

h. What legal limitations exist on what you can say and to whom?

i. What is the purpose of the communication?

j. Is it a proactive or reactive approach?

4.37 In many situations employees' organisations in particular are well able to maximise the media to their advantage. Negotiations can be directly affected by the effective use of communication but employers have been generally slow to learn this. "No comment" in the face of media enquiries is no longer acceptable. Again, this is relevant where there is media interest in your negotiations.

4.38 Preparations include:

a. Having the contact details of appropriate decision makers from the employer or employers affected by the negotiations.

b. Identifying media contacts for placing comment.

c. Preparing information material in a form the employer can distribute to their employees. (It is vital that employers feel they can directly communicate with their employees at all points of this process).

d. Identifying who is to give the message and their contact details.

e. Assembling of useful facts, e.g. industry statistics, marketplace conditions, activity of competitors, outlooks.

<u>Worst Case Scenario Preparation</u>

4.39 While all hope that negotiations will be successful, it is still necessary to be prepared if things go wrong.

4.40 It is at this time that a good, well- planned media response can be invaluable as communication through third parties becomes a key means of influencing events. Again this needs to feed quickly to any other employers to be bound by the agreement and within the company itself for enterprise bargaining, so that they know and understand what has developed (and why) and so they in turn can instigate their own plans to contact employees and communicate what the situation is.

4.41 Other preparations may include;

a. Building up stock both on and off site. This is a contingency against and protracted stoppage of work.

b. Arranging for alternative supplies or alternative manufacture.

c. Communicating with suppliers and customers.

d. Securing strategic work locations/ alternative operators.

e. Considering the possibility of strike action, either total or targeted at particular employers or operations. The employers' team can be especially important in developing a coordinated response.

f. Coping with any restrictive work practices or bans, e.g. refusal to work overtime, handle certain products, perform certain tasks etc. Industrial action may also manifest itself in staff absenteeism (sick days) particularly by key personnel.

g. Handling product/service boycott campaigns, and any international or community action seeking to damage the reputation of the employer.

h. Managing picketing.

i. Sabotage/ damage to plant or equipment.

j. Consideration of an employer instigated lockout (see Module 3, Section 3).

k. Seeking court relief (see Module 3).

4.42 Some of these raise issues of plant security and employers will be looking to their employers' organisation for advice on how to respond. A good legal knowledge of the law relating to strikes etc is mandatory for staff within an employers' organisation. It is vital that at all times employers act within the law even if the other side do not.

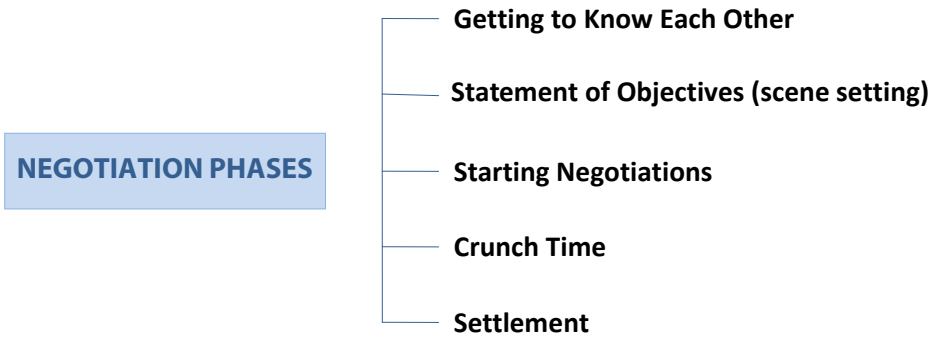
4.3 NEGOTIATION PHASES

4.43 There are generally accepted to be five phases to a negotiation. These may not be clearly divided and at various times each separate phase may be revisited dependent on the conduct of the negotiation itself and the personnel involved.

4.44 While these are somewhat arbitrary they will be likely to be present in any negotiation and recognition of the phases or stages should assist in countering the various tactics you may encounter.

4.45 One reason for considering phases or stages within a negotiation is that making or countering offers in a phase that is not conducive to matters actually being settled can lead to dispute or disagreement when approaching a settlement. Negotiators should be wary of making any responses on a proposed position from an adversary party unless such response is made formally and clearly to dispose of a particular matter.

4.46 The "phases" we wish to address are:



4.3.1 Phase One: Getting to Know Each Other

4.47 Although it is important to focus on the issues in any negotiation, it is important to recognise that those issues are being put forward and pressed by people who will have differing personal needs as human nature dictates.

4.48 To this extent it is important to give consideration to the personality(s) of your counterparts, as well as your own negotiating team members. Even people you know well within your company may need to be better understood going into a negotiation.

4.49 Establishing some of your opposition's personal traits will assist in separating the substance of an issue from the emotiveness of the issue based purely on defending a position that they themselves have dreamed up. Talking to people they have previously negotiated with (including your employers' organisation) can be very helpful.

4.50 Establishing communication channels with the advocate only is not sufficient, as many of the positions espoused will also be important to others on the negotiating team and were possibly developed by those individuals. You need some rapport with and knowledge of all those arrayed against your team.

4.51 You may find that individuals within the negotiating team have made promises in relation to certain issues which, if not met, will make settlement difficult, and some accommodation of these issues may be necessary to overcome such difficulties. It is important for example to know what has been promised to your employees.

4.52 Here we are not talking about conceding the point but placing greater emphasis on why the particular matter cannot be conceded.

4.3.2 Phase Two: Statement of Objectives (Scene Setting)

4.53 This phase of a negotiation will often give efficacy to individual claims and counter claims which when viewed in isolation may appear merely punitive or money grabbing. It also invariably sets the tone and type of bargaining that will characterise the negotiations, i.e. will they be confrontational or cooperative.

4.54 Within this phase of negotiation the broad picture is focused upon, and should be addressed with the clear objective of setting an appropriate framework for specified claims that will be pursued.

4.55 Negotiations should normally commence with an opening statement of the employer and consequently the person presenting the case for the employer should be in possession of all relevant information, and an agreed set of priorities.

4.56 The opening statement should address the issues confronting the employer (or the industry in multi-employer collective bargaining) regarding in particular the marketplace and competitors, and therefore develop the rationale why change is required as evidenced by your proposals.

4.57 Finally, the scene setting statement should address external factors which may be creating change requirements. You may emphasise for example the commercial pressures you operate under to set a scene for minimising additional labour costs or the impact of the freeing up of import tariffs.

4.58 Any "change" from that which has previously been the accepted norm creates insecurity and is regarded as a threat. How are you going to overcome that? What needs to be done prior to negotiations to analyse that process? Relying on the negotiation process to achieve that result may be misplaced as the negotiation process is often regarded as a confrontational arena where the "normal" impulse is to reject that which the other side claims.

4.59 It may be appropriate for this phase of a negotiation to be addressed by another individual other than the person who will advocate specific claims. In this circumstance the scene setting address could be by the most senior member of the representatives involved in the negotiation team. It could even be the managing director or owner who would then leave the detailed negotiations to others.

4.60 It should be recognised that in the negotiation arena, traditional roles and hierarchical relationships cannot be assumed as bargaining parties assume different roles in negotiation and the typical hierarchical supervisor/ subordinate role is not present. This is a style of conversation with your employees which you may not have had before and need to adjust to. Your staff may also be unfamiliar with direct negotiations with their employer and are also learning a new way of interacting.

4.61 Employees pursuing claims with employers will be in a different role and will be seeking equality in terms of their bargaining rights. With this in mind the scene setting phase is therefore one of establishing overall credibility in support of the proposed outcomes whilst recognising the bargaining rights of the other party(s). The aim is to build trust and cooperation that will not detract from the ongoing employment relationships that are present outside of the bargaining arena.

4.62 A matter that may be raised at this scene setting stage is what broadly you as an employer are working towards. An employer might say up front for example, "*we are seeking a comprehensive agreement, for not less than 3 years, which is closed to further claims during its life, and which contains a process for settling any disputes arising during its life without any disruption to work*". It may also be appropriate to identify the matters outlined in Module 5, Section 8 as the minimum expectations of an agreement employers could support.

4.63 Housekeeping issues such as negotiation timing, authority to represent etc, should also be dealt with at this stage. It is also relevant to confirm that the logistical, and support arrangements and amenities are acceptable and understood.

4.3.3 Phase Three: Starting Negotiations

4.64 There are no prescriptive guidelines for starting negotiations. This is subject to many variables ranging from the personalities of the people involved, to whether the issues being considered are simple or complex.

4.65 The negotiating procedure normally commences with one party presenting their claims or position. Historically employees always went first as invariably they initiated the negotiations and it has traditionally been the union seeking to change the status quo by wanting improvements to the existing terms and conditions of employment.

4.66 There is no rule that the employees go first. More and more employers are initiating discussions and the employer should, wherever possible, lead off the discussions. This can also help in maintaining control as you can establish the basis from which you wish to proceed and focus the talks back onto the position you have prepared, or the proposals you are pursuing.

4.67 Consequently you are taking a pro-active approach rather than being reactive, by responding to the other side all the time. This can provide a psychological advantage.

4.68 As the negotiation proceeds, issues which seemed to be standing alone may well become linked together, with their solution being contingent on the solution to another issue. Conversely there may be an attempt to separate seemingly linked issues (or issues you wish to link). In some negotiations all issues are connected. No one issue is considered resolved until all have been resolved.

4.69 It is vital to understand these dynamics as it will directly affect the way you respond. If you are not careful in this area you will find yourself making offers to settle issues you think are linked but which the other party regard as standalone - instead of having a resolution, the opposition is still pursuing an issue which when viewed on its own you may not be able to defend.

4.70 A skilled negotiator will study this issue closely before negotiations commence in order to determine where advantages or traps lie in the separation or combining of issues. This is part of the strategic preparation process outlined in Module 2.

4.71 For example if two claims are interlinked and a concession is made or given on one of the linked elements, it is often difficult to effectively isolate or defend the other matter as it has tacitly been conceded. It can be particularly difficult to refuse to deal with a matter if you have negotiated on something linked to it. If claims are interlinked then they should not be conceded without caution.

4.72 An option to consider is calling for negotiations to proceed on the basis that all matters or particular matters stand alone, or will be considered separately and to have the other side agree to this.

4.73 When negotiating with interlinked claims or complete packages (i.e. where you as the employer want to link matters), a rationale needs to be developed which provides credibility for the claim linkage.

4.74 This will often be based on costs associated with the proposals or linked to proposed flexibilities being sought where one concession relates to another.

4.75 When it comes down to actually dealing with issues in negotiations opinion varies as to whether it is best to begin with the minor or major issues; each choice has its advantages and disadvantages. One view is that negotiations should start with a minor issue that has the potential to be easily resolved because this will help establish a favourable climate for additional agreements - but what if all the easy issues are resolved and the major issue is still unresolved? Have you anything left to negotiate with?

4.76 Another view is that beginning with a major issue is best because unless it is satisfactorily resolved the other issues are unimportant and no real progress may be possible in any event.

4.77 The approach here can often be dependent on the type of negotiation being pursued i.e. confrontational versus cooperative. It also depends how much an employer wants to successfully finalise an agreement.

4.78 It will also be concerned with the needs versus wish list approach of the proposals being pursued and the behavioural tactics being used by the parties.

4.79 Irrespective of the approach taken, attention needs to be given to ensuring that all matters are disposed of as negotiations proceed. This will be further considered in the settlement phase.

4.80 It is vital that proposals being pursued or conceded are fully clarified to ensure mutual understanding. Such clarification of points for potential settlement must be more than merely "in principle" and must be reduced to written terms (a theme taken up in Module 6).

4.81 Implications of the implementation of new terms must be clearly disposed of to ensure that a settlement does not immediately lead to a dispute when the new terms and conditions are being introduced to the work setting.

4.82 To achieve mutual understanding of the effects of new or amended conditions it may be necessary at the stage of clarification for the parties to adjourn to seek further information before responding and reaching agreement. Unrealistic time restraints should not get in the way of clearly establishing the specific effects of a concession.

4.83 Another tip in these situations is to play close attention to reducing what has been agreed to writing, quickly and accurately (see Module 5).

4.3.4 Phase Four: Crunch Time

4.84 Once issues have been defined, disagreement and conflict will often take place. This is a consequence of negotiation - it is not always possible to agree amicably - and must be expected and regarded as natural. Good negotiators never try to avoid this phase because they realise that this period of give and take is when successful deals are made.

4.85 If properly managed, this disagreement and conflict can eventually bring the parties together. Handled badly, it can highlight and widen the differences, entrenching the parties in their positions and therefore making settlement harder to achieve.

4.86 This can be a stressful time which should not be a test of power, will or ego but an opportunity to reveal what people need.

4.87 In this phase of negotiation, negotiators should be attempting to ensure that the talks do not reach an impasse. Every avenue to continue dialogue on the points of difference should be explored whilst recognising that there will be situations where further, or any, concession is simply not tenable.

4.3.5 Phase Five: Settlement

4.88 Settlement can occur quickly. The relief accompanying a settlement must not overwhelm the need to ensure that the terms of settlement are clearly understood by both parties and are properly recorded in the draft collective agreement. NEVER leave the negotiation without this clear understanding. Time can cause confusion which can be avoided if the effort is put in at this stage.

4.89 Here good negotiators revisit what has been achieved and settled during the negotiation, consolidating the results of the various matters resolved during negotiation. This is a vital step towards the final written agreement. In a well documented and managed negotiation process the precise text of any new contractual arrangements should have been developed during negotiation.

a. One option for doing this is to have a PC or lap top in the negotiations with proposed text on it, or with the text of the preceding agreement in the case of negotiations (and where this is agreed).

4.90 If a proposed settlement is characterised by revisiting the specific words with a view to amending the original position then a settlement has not been achieved.

4.91 Check that all matters have been disposed of either by agreement, or by their withdrawal. Take responsibility for drafting the contract.

4.4 THE APPROACH TO NEGOTIATION

4.92 How you approach and handle a negotiation will often determine what you will achieve from the negotiation. "Approach" at this stage is not to be confused with style, which is itself the subject of its own treatment later in this Module.

4.93 Ideally what you need from a negotiation is:

a. A sensible agreement which is workable.

b. An agreement which is efficient in its delivery.

c. An agreement which preserves the relationship between the parties; preferably drawing them together rather than forcing them further apart.

4.94 There are two main common types of "approach" to negotiation, or types of negotiator. Which you take has important implications for your success in having collective bargaining deliver for your business.

4.4.1 The Positional Negotiator

4.95 This type tends to focus on the articulation of certain demands, defending their own position rather than attempting to understand the underlying concerns of the other side.

4.96 They measure success solely in terms of those demands to which their opponents concede, and winning is everything.

4.97 Negotiations are usually conducted in a state of aggression with the negotiator viewing the other side as an opponent, and an adversary who must be defeated.

4.98 Neither party in this environment is seeking or even wanting to make the other side happy. More often than not neither employer nor employees end up with what they really wanted to achieve.

4.99 Because conceding is seen as a weakness, negotiations tend to take a lot of time with the decision making process being slow as they continue to defend their own position.

4.100 This approach increases the possibility of no settlement being reached.

4.101 The positional approach is no longer seen as relevant, or as producing the required results of a successful negotiation. More and more the move is towards the Interest Negotiator, which is dealt with in more detail below.

POSITIONAL BARGAINING : WHICH GAME SHOULD YOU PLAY?	
SOFT	**HARD**
• Participants are friends	• Participants are adversaries
• The goal is agreement	• The goal is victory
• Make concessions to cultivate the relationship	• Demand concessions as a condition of the relationship
• Be soft on the people and the problem	• Be hard on the problem and the people
• Trust others	• Distrust others

• Change your position easily	• Dig in to your position
• Make offers	• Make threats
• Disclose your bottom line	• Mislead as to your bottom line
• Accept one-sided losses to reach agreement	• Demand one-sided gains as the price of agreement
• Search for the single answer, the one they will accept	• Search for the single answer, the one you will accept
• Insist on agreement	• Insist on your position
• Try to avoid a contest of wills	• Try to win a contest of wills
• Yield to pressure	• Apply pressure

4.4.2 The Interest Negotiator

4.102 The interest negotiator is conscious of the fact that the "other side" is human, holding, often deeply held, points of view and beliefs.

4.103 Although the interest negotiator may not agree with the other side's beliefs he/she recognises the right to have them, and tries to understand the basis and motivation for them. Recognising this assists the interest negotiator in discovering what the other person's "real", as opposed to their "stated", desire is. An interest negotiator looks beyond the words or postures to the issue being addressed.

4.104 This approach also helps create an atmosphere of trust and respect, where the "person" is not the subject of an attack; rather the negotiation concentrates on the "issues" to be resolved.

4.105 As we said earlier, the employment relationship is one that must continue after the collective bargaining negotiation has been concluded.

4.106 To be beneficial, this relationship must come through the negotiation if not enhanced, then at least intact. Concluding negotiations with each party having a sense of having achieved something makes for a better industrial relations environment than one where either side feels that they have lost out. There is a danger that party may try to get even later - not necessarily in another negotiation, but directly via behaviour on the "shop floor".

4.107 In order to achieve a mutually acceptable outcome, an "interest" negotiator will try to get a feel for how the other person is thinking. This is sometimes achieved by looking at the problem from the other party's point of view; to put themselves in the other person's shoes.

4.108 This is not easy as two people are never the same, never have the same background, or motivation.

4.109 This does not have to be a total transformation; rather it is an ability to understand the other point of view. Such an understanding then enables you to identify and advance solutions to your problem that will meet the other party's needs as well. Even more dramatic is that it can actually make you reassess the merits of your own position and make it more effective and sustainable. Consider these different points of view:

EMPLOYEE	EMPLOYER
• With living costs going up I need more money	• With costs going up I can't afford to increase wages
• I know people who get paid more to do the job I do	• I know companies which pay less for the work we perform
• The employer is rude, he/she never asks me how things are	• I am a polite person because I never intrude into my employee's privacy

4.110 So interest negotiators:

a. Avoid attributing blame to the other side. A problem, once identified, belongs to both parties, and both parties must solve it.

b. Involve the other side in the process of resolution thereby making them a part of the solution. When this occurs the parties feel good about the result, but more importantly, they will work to make it succeed and will be more prepared to work together on future issues.

c. Do not overreact to emotion. Listening, not reacting is critical, as are patient and considered responses. Realise that emotional outbursts can actually clear the air, like a thunderstorm and/or give the person a reputation of being a "hard" negotiator whilst enabling them to accommodate a settlement later on i.e. they are soft on people but hard on the problem. They remain objective, yielding to principle not pressure.

d. Listen. Listening is a key part of a successful interest negotiator's role. But to be effective the listening needs to be active. By listening effectively you will learn.

Listening

KEYS TO EFFECTIVE LISTENING	THE BAD LISTENER	THE GOOD LISTENER
Find area of interest	Tunes out dry subjects	Asks "What can I find out?"
Judge content, not delivery	Tunes out if delivery is poor	Judges content, skips over delivery errors
Hold your fire	Tends to enter into argument	Doesn't judge until comprehension is complete
Work at listening	Shows no energy output – attention is faked	Works hard, exhibits active body state
Resist distractions	Distracted easily	Fights or avoids distractions. Tolerates bad habits, knows how to concentrate
Keep your mind open	Reacts to emotional words	Interprets colour words; does not get hung up on them
Capitalise on fact that thought is faster than speech	Tends to daydream with slow speakers	Challenges, anticipates, mentally summarises, weighs the evidence and listens between the lines

4.111 Pay close attention to what is said. Seeking clarification to avoid any ambiguities or doubts through paraphrasing or restating shows that you have actually been listening).

4.112 Begin with open-ended questions then probe with follow-up questions. Keep asking them until you have the information you require.

4.113 Interest negotiators speak and address issues in a form and manner which the other side can understand. Be clear and precise, use words which convey your intended in the clearest possible terms. Avoid unnecessary technical terms. Do not try and achieve a position of superiority through bombastic language. If you try, the other side will stop listening. The minute that happens you have lost the ability to influence or change their minds.

4.114 Interest negotiators are not interested in a win/lose result they want a win/win outcome, i.e. an agreement which reflects the interests of both parties. This is achieved by their preparedness to not make judgements about what people want based merely on what they say. Interest negotiators look for the real interests that lie behind the request.

4.115 They ask why? They look behind the statement and the rhetoric to the real questions. What do they actually mean? What are they actually seeking to achieve?

4.116 Interest negotiators recognise the most powerful interests are human needs, security, recognition, etc and that by addressing and resolving those issues first other issues are often more easily dealt with. An example of this is the "not less than I have now" syndrome.

4.117 Interest negotiators do not ignore or treat as irrelevant the interests of others. Identification of those interests often holds the key to resolving an issue.

4.118 Interest negotiators know what they want to achieve but are flexible about how they get there. Create options; do not rely on only one solution being achieved.

4.119 Being an interest negotiator raises a fundamental question:

How can I come out ahead in a negotiation if I let the other party achieve their needs as well?

4.120 The answer lies in the fact that different people have different needs which can be met without belittling what one side or the other achieves. How many people have exactly the same needs as you?

4.4.3 Other negotiation types:

4.121 Other examples of the negotiation "type" can be illustrated as follows:

(1)	**Party A : Give/Get**	**Party B : Give/Get**
	Both parties are willing to give something in order to get what they want and enter the negotiation with that plan in mind. How much, and when they compromise are the details to be worked out. This formula has the most potential for success.	
(2)	**Party A : Give/Get**	**Party B : Get/Give**
	Formula (2) also has a good chance of success because both sides understand that a good settlement requires both giving and getting. One party is willing to give providing something comes back in return. The other party will give after having received. The difficulty in this formula is that the getter may decide to see how much can be gained without giving in return. If the getter goes too far, or waits too long to reciprocate, the giver may decide to revoke concessions previously made and the parties may reach a stalemate.	
(3)	**Party A : Get/Give**	**Party B : Get/Give**
	In this formula, both parties come into a negotiation with the idea they will give nothing until they receive. They will stalemate quickly and remain there unless one party is willing to risk giving in order to get. If neither party budges, there is no negotiation.	

4.5 NEGOTIATION TACTICS

4.122 Here we will address some common negotiation tactics or strategies and the issues that present themselves in their use.

4.123 While each of these tactics may be considered, and used or discarded in your own approach, it is important that as a negotiator you are aware and can effectively counter their use by your opponents.

4.124 In using various tactics a negotiator should always keep in mind the issues that your goals and objectives require you to resolve. Tactics are merely tools towards achieving a result and are not an end in themselves.

4.5.1 The Broad Picture

4.125 This sets out to place in your opponent's mind an inevitable sense of direction for the eventual outcome of the negotiations. Comments on the other party's position may be included which virtually exclude their overall proposals from being appropriate to the direction of the business. This tactic invariably sets out to deflate expectations.

4.126 However, it is vital that this approach sits credibly with the business' objectives and does leave room for negotiation on specific elements of a deal.

4.127 Where possible similar messages should be conveyed to those already communicated in the workplace and should provide focus points for revisiting when discussing individual proposals. Unless the broad picture is one portraying a survival mode for the business then it should accentuate the positive aspects of the employer's proposals.

Examples: *"Our negotiations take place in the context of the worst economic crisis in living memory, and a 35% drop in orders compared to last year."*

"Our competitors are producing goods X% cheaper than we have been able to, and our clients are demanding an increase in quality. Therefore it is vital these negotiations leave us in a competitive position, and increase quality and productivity to keep the business viable."

4.5.2 Time Restraints

4.128 This involves establishing the critical path timing of the negotiations. Not only relating to your needs but particularly to the other party. Enquiries or intelligence through the "ear to the ground" approach in the workplace may reveal timing issues that can exert pressure toward settlement.

4.129 From the business' viewpoint timing should not coincide with production or seasonal critical points where the employees are more able to exert pressure with potential business at risk. To establish your "at risk timing" issues the broadest consultation with supervisors and managers should occur.

4.5.3 The Expert

4.130 While normally negotiation positions should be through one employer advocate there may be issues that are technical in nature that need comment or rebuttal by the "expert" on your panel. Here care should be taken to ensure that these comments are restricted to clarification or rebuttal and not to making concessions on isolated claims. The "expert" may also be able to tease out some of the factors behind the employees' claims by judicious questioning based on knowledge of the operation. Some claims can be set aside by expert managerial interventions rather than by contract negotiation concessions if the right factors are established.

4.5.4 Good Guy/Bad Guy

4.131 Often seen as one of the more theatrical tactics, it can work for you, but you also need to know if it is being used against you. This tactic sees one person being friendly and seemingly wanting to progress matters whilst another is being obstructive. The approach by the "Good Guy" is often along the lines of:

> *"Look, I'd really like to fix this and get going but X is a real problem. Can we fix it so that we can give him something that will keep him quiet and off my back?"*

4.132 This can also be useful where apparent opposition from one of your negotiators is overridden in adjournment or hallway discussions.

4.133 Again care needs to be taken to ensure that any concessions fit within the overall package and do not lead to your employer priorities being picked off claim by claim.

4.5.5 Closing Conditions

4.134 This occurs when all appears resolved and an earlier apparently conceded claim or even some new proposal is floated. Can be effective but you should not leave one of your "need to have" claims to the end relying on this tactic.

4.135 From the opposing viewpoint your negotiating team needs to be wary of a further concession simply to reach a settlement which already appeared to be in train. The "there's just one more thing ..." approach, if conceded, can lead to even further demands.

4.136 This tactic is counteracted by ensuring that all proposals are dealt with in final form during the negotiations. Repeated, express, clarification that all claims are on the table and have been outlined can short circuit this tactic.

4.5.6 Use of Silence

4.137 There is a natural tendency in any meeting environment for the vacuum of silence to be filled. We all do this in conversation.

4.138 Leaving deliberate silences during negotiations can create a natural tendency for the other side to fill them. Using this tactic sometimes results in others proffering information in an unprepared manner and can be quite revealing.

4.139 Tactically your negotiation team should be aware not to fill a void being left by others, either by verbal or body language responses.

4.5.7 Packaging

4.140 This involves putting up a position where all elements of the proposed settlement are interlinked. The approach is often linked to the "Broad Picture".

4.141 Absolute adherence to this tactic often leaves limited scope for achieving settlement progressively based on concession and counter concession. Also if a package approach is taken and then claims are set aside or conceded one by one, the initial package has no credibility where there are a large number of issues to be addressed. Fall back positions on individual points are also difficult to manage in a "package" setting as a reworking of other issues will be needed to ensure the total cost remains the same.

4.142 Your preparatory research and preliminary discussions should tell you if this is a viable and appropriate approach to your negotiations.

4.5.8 Settlement Options

4.143 This involves putting up two or more ways of achieving settlement. Where there are two or more issues outstanding and concession point by point on all is unlikely, an overall settlement package constructed in several ways can leave the other party feeling more satisfied in that they selected the settlement option rather than having to concede on just one approach.

4.144 Extreme care needs to be taken to ensure that the end result of each option is no more or less favourable, so that the parties' positions are not worsened by the final choice. This can be a powerful tool but often takes some preparation or consideration during negotiations.

4.5.9 Restating Achievements

4.145 Where negotiations have become bogged down it is often beneficial to summarise progress to date. This shifts the focus from issues not agreed to the overall gains and benefits already agreed which will not eventuate if settlement is not reached.

4.146 It revisits the positive aspects of previous agreement rather than dwelling on the current differences of the parties and puts the overall negotiations into perspective.

4.5.10 Adjournments

4.147 Adjournments are extremely important aspects of negotiations. They affect the timing of the overall negotiations, allow for debate and gathering additional information, allow for emotions to cool and (dependent on their length) for information to be communicated to affected parties outside of the negotiations.

4.148 Adjournments (properly agreed) also leave the talks in progress and can break impasses when issues and attitudes are revisited in the recess. A great deal has been solved in hallways, when getting a drink or on the way to the bathroom.

4.149 However, it is important when considering an adjournment that the party seeking the adjournment realises that in resuming negotiations the other party will be expecting an amended position. If this is not to be the case then the party seeking the adjournment should be quite clear that its position is not likely to change and that the reasons for adjournment is not to develop a further position. A sound reason for adjournment may be discussions amongst the employer negotiating team or discussions with head office / your superiors / other experts in the management team.

4.150 Remember: Another perfectly sound and legitimate reason for an adjournment is getting tired, hungry or needing to go to the bathroom.

There is no prize for stamina in negotiations and no reward for being uncomfortable or unable to concentrate.

It is precisely when negotiations are the most physically uncomfortable or tiring, that you are in greatest danger of making a mistake or wrong concession. Do not hesitate to ask for a five minute break to avoid this.

4.5.11 Focus on Prejudices

4.151 This tactic relates specifically to personalities and behavioural traits of individuals and should be avoided by employer negotiators. But it does need to be recognised when used by other parties. This is seen where the other party makes personal comments about you and your negotiating team.

4.152 Areas likely to be subject to comment may include:

a. The ethnic or gender mix of the negotiating team.

b. Age or inexperience of negotiators.

c. Attack on authority to settle. This may be the case if the other side labels you as not having the authority to negotiate.

d. The "Fat Cat Syndrome", in which management is perceived as seeking concessions from those who can least afford them.

4.153 The use of such tactics diverts the negotiations from the real issues. Employer negotiators need to be wary of making concessions when negotiations are proceeding in this vein. An experienced negotiator knows how to deal with these unnecessary and unproductive comments, which most of the time lies in ignoring them and sticking to the issues.

4.5.12 Working Parties

4.154 This involves sidelining sometimes complex issues that cannot be resolved without considerable research and discussion. A working party or smaller group is asked to deal with these issues off line, and perhaps to bring them back to the negotiations later on. This is most relevant in major, multi-employer negotiations.

4.155 Care needs to be taken that the brief for the working party members is clearly laid down and that any findings will be by way of recommendations for negotiation by the whole negotiation group.

4.156 Establishment of a working party invariably raises expectations and can, if not properly managed, lead to almost continual negotiation.

4.157 Matters that are not going to be conceded or addressed positively should not be put to working parties. Don't agree to a working party if you have no ultimate scope or intention of negotiating on an issue. Many participants in working parties put a great deal of time and effort into reaching and defining solutions only to be particularly aggrieved when the outcomes are ignored or shelved at negotiations.

4.5.13 Questioning or Clarifying

4.158 A commonly used tactic, essential to any negotiations is that of questioning or clarifying claims. Questioning should be such that it requires open ended responses to elaborate on the claim and the effects of any concession. Draw out the other party's assumptions that the concession of the claim is based on the perceived need that is being addressed.

4.159 This invariably creates the opportunity for discussions on the resolution of the claim which is further clarified.

4.5.14 Nil Response

4.160 While there is no obligation on either party within negotiations to provide a response to all claims submitted, simply ignoring a claim can give rise to confusion. One party not responding to a claim may be a signal to the other side that it has been accepted (which may not be the case).

4.161 Ignoring a claim will not make it go away as many negotiators who use this tactic might hope.

4.162 Each and every claim must be addressed and considered and a response prepared and given - even if it is "No". You should also ensure that all claims you put forward are similarly responded to. Ask for a response if none is forthcoming.

4.5.15 Counter Proposing

4.2 Where claims submitted are not acceptable but are based on an area that does need attention and resolution, you can prepare and advance formal counter proposals.

4.163 These should be in the form of clauses suitable for inclusion within the eventual contract. These may be submitted prior to the negotiations formally commencing or may be developed as negotiations proceed.

4.164 Where they are submitted prior to negotiations they should only relate to specific employee claims in areas upon which you are prepared to negotiate.

4.5.16 Respond to Audience

4.165 Although both parties may involve a specific spokesperson or advocate to debate and address issues within the negotiations do not overlook the importance of the negotiators on the opposing side.

4.166 On many occasions these will be made up of your employees who will be acutely aware of the personalities within and workings of your business.

4.167 Responses should be pitched at those who are going to be directly affected by the outcome of the negotiations and with whom management has an ongoing day-to-day relationship. The negotiators will have a say in the make-up of the eventual collective agreement during the debate that ensues in adjournments and will also be feeding information back to those employees on whose behalf they are attending the negotiations.

4.168 Responses therefore must be couched in terms understood by them and credible to them in the business environment within which they work. Appealing to your employees is also vital where you detect external factors and influences that are of no relevance to your business operations (which may come from the agendas of employees' organisations).

4.169 A further factor that may arise here is that the employees' representative attacks the credibility of management or indeed the viability of the business itself, without any foundation for doing so.

4.170 Often this is characterised by threats of sanctions or damage to the business or management representatives themselves. Should this occur, address your employees directly to establish whether they buy into or disown the particular tactics being adopted. Ask directly whether the views being expressed are theirs and on what basis they would hold such views.

4.171 If the negotiation environment is not appropriate for this approach seek their comments in an adjournment.

4.5.17 Scare Tactics/Threats

4.172 Many negotiations reach a point where either party may resort to threats of actions which will result if no settlement is reached. Although such threats may be real, care needs to be exercised in adopting such an approach. Outright threats may build up sufficient pressure to achieve a settlement but settlements achieved in this fashion invariably provoke resentment and in some cases reprisal.

4.173 Another important consideration is to not over-react to threats, and to maintain your focus on your strategic priorities.

4.174 If the outcome of successful talks is of such importance that matters such as redundancy may arise where settlement is not reached, this should be put to the other party as a natural consequence considering the financial viability of the business rather than having the appearance of revenge or punitive action.

4.5.18 Extreme Proposals

4.175 Many negotiations commence with opening positions of each party being extreme positions. This tactic is invariably designed to lower the expectations of either party. While this can be a legitimate tactic when confronted with claims that are not "within the ball park", seek justification of the position being espoused until you expose the ridiculousness or extremity of the position.

4.176 If using such a tactic from your side, a revised position may have to be put, where parties are close to a breakdown of the talks.

4.177 To leave an extreme position on the table, when your adversary is taking matters back to their party for consideration of industrial action (for example), provides ample ammunition to fire up employees who are led to believe that you are not prepared to negotiate further. Conversely you can apply similar pressures if your opponent's position is untenable.

4.178 The effects of the revised position tactic are often seen in negotiations where final offer arbitration is the agreed process to resolve an impasse.

4.179 Final offer arbitration leaves the arbitrator with a selection of one or other of the two parties' positions without the ability to decide on a compromise package. Although rarely used these days, final offer arbitration is still present as a means of resolution in some collective contracts.

4.5.19 "No"

4.180 There will come a time when your response in negotiations will be "No". If that is the case, be very clear in your refusal. Saying "no" can be difficult; ensuring the other side know you mean it can be even harder.

4.5.20 Brainstorming

4.181 This tactic is best used during an adjournment to ensure your team is fully involved and is particularly effective when an impasse appears to have been reached.

4.182 Key Components:

a. DO NOT evaluate ideas.

b. DO NOT reject zany or apparently nonsensical ideas.

c. DO record names against ideas.

d. DO expand on each idea.

e. Eliminate options only after discussion and by agreement with others. Chances are the last option is going to be the most successful.

4.183 This means brainstorming within your employer negotiating team. You should not brainstorm in this way with your opposing negotiators.

4.6 NEGOTIATION PSYCHOLOGY

4.184 There has been a significant amount of research into people's behaviour and its relevance to bargaining, especially over the last 20 years.

4.185 The following attempts to summarise some of what has been discovered. It should be treated with caution because many studies have been rather artificial, each one tends to have its own unique features, and the context and other variables surrounding a particular negotiation can be very influential.

4.186 The following statements therefore are necessarily extreme generalisations and there are always exceptions, qualifications and quite sophisticated research behind them:

a. The most critical period in an initial encounter between two people is the first five minutes. Impressions formed in this time will tend to persist and be reinforced by later behaviour, which will tend to be interpreted not objectively but in the light of these first impressions. We tend to remember occasions when our first impression was mistaken and had to be revised later because there are so few of them.

b. Early initiation of cooperative behaviour tends to promote development of trust and a cooperative relationship; early competitive behaviour tends to induce mutual suspicion and competition.

c. Cooperation begets cooperation; non-cooperation begets non-cooperation.

d. A sequential change from low to high cooperativeness induces greater cooperation than a shift from high to low or a pattern of high unchanging cooperativeness.

e. Bargainers attain more satisfactory outcomes when they begin with extreme and preferably unexpected positions rather than more moderate positions.

f. Making an initial offer at one's expected settlement level produces undesired outcomes.

g. Skilled negotiators make lower concessions as the deadline approaches; unskilled, inexperienced negotiators are susceptible to collapsing suddenly and spectacularly as pressure mounts.

h. Most effective strategy appears to be making extreme initial demands coupled with gradual concessions. Making a large initial concession then remaining firm is less effective.

i. People who make small concessions during negotiations achieve more satisfactory outcomes.

j. Extremely quick settlements result in extreme outcomes, often not related to the strategic priorities of the negotiating parties.

k. Extremely quick settlements tend to favour skilled negotiators.

l. Both skilled and unskilled negotiators tend to estimate the needs of the opposition poorly.

m. Negotiators with extremely high aspirations tend to succeed.

n. Persons with extremely high aspirations who also possess power succeed phenomenally - if they do not deadlock (which is a risk).

o. Successful and unsuccessful negotiators report equal satisfaction with the final agreement.

p. Intelligence is unrelated to bargaining ability or behaviour.

q. Trusting bargainers behave more cooperatively than those who are less trusting.

r. Bargainers with flexible ethics behave more cooperatively than those who have very fixed views of ethics.

s. By making positive concessions, bargainers communicate their perception of the other as a strong, worthy and tough opponent and in so doing increase the likelihood of achieving positive concessions in return.

t. Formality is positively associated with a settlement in favour of the stronger case.

u. Presence of an independent (and respected) third party increases the likelihood of agreement.

v. The greater the trust and confidence in any third party the more effective his/her interventions are likely to be.

w. Adoption of a mediator's suggestion reduces the feeling that making a concession shows weakness.

x. The mere presence of an "audience" (including psychological presence) motivates bargainers to seek positive and avoid negative evaluation.

y. Audiences, especially dependent ones, generate pressures towards loyalty, commitment, and advocacy of their preferred positions.

z. Time pressures increase the likelihood of agreement and tend to be manifested in reductions in bargaining aspirations, demands, and the amount of bluffing that occurs.

aa. Threats and promises are not likely to increase the likelihood of immediate concession-making.

bb. The use of promises tends to increase the likelihood of bargainers reaching a mutually favourable agreement while the use of threats tends to reduce this likelihood.

cc. Negotiating on one's home territory appears to produce a "home advantage".

dd. People operating in a competitive situation prefer to sit opposite each other. But cooperative behaviour is more likely in other configurations.

ee. Spokespeople will communicate more effectively if they sit opposite each other.

ff. Members of opposing teams who met prior to formal bargaining where subjects were discussed but no positions were taken subsequently resolved a greater number of issues and more quickly than teams which spent the same time but where people were committed to positions on each of the issues involved.

4.7 EMPLOYER NEGOTIATING BEHAVIOUR

4.187 Every negotiator will develop his or her own style and approach to negotiations. Don't think that you have to follow any particular style; that is artificial and ultimately not sustainable.

4.188 However, there is some behaviour which should generally be followed and other behaviour which you should avoid. Listed below are some, but by no means all, examples:

a. Do not make concessions before negotiations begin. A particularly unwise concession is to give an undertaking on 'back dating' as a prerequisite for employees starting negotiations. That is, a commitment that the contract will come into effect from a particular date regardless of when settlement is actually reached.

b. Only one of the team should act as spokesperson at the table. One voice from your side adds to your effectiveness.

c. Ensure that the negotiations relate to the realities of your own operations (or industry); do not let them wander outside that.

d. Always act reasonably, sensibly and logically. Try to remain objective and avoid anger.

e. Act knowledgeably with respect to legal issues (see Module 3).

f. Use appropriate language taking into account surroundings, attendees and circumstances. Be brief and clear. Do not be overly formal, needlessly ponderous or verbose. Do not be servile.

g. Avoid provocative comments, personal abuse, threats etc. If tempers are becoming strained relieve the pressure by taking an adjournment.

h. Do not speak just for the sake of speaking: silence can be a useful tool. If you do not watch what you say you will make a mistake.

i. Listen carefully to what the other side is saying. Be attentive. Show signs of positive listening. Use questions to clarify issues. Paraphrase what the other party said to ensure that you both have the same understanding.

j. Show solidarity in your employer negotiating team. Do not criticise each other publicly. Do not blame others.

k. Use the expertise of your negotiating team. Whilst there is one leader and you do need to "think on your feet", no one is perfect. Others in your team can see things in the heat of the discussions that you may not see, and their input can be very valuable.

l. Do not make decisions at the table or on the spur of the moment unless you are certain. Adjourn and consider – with your team.

m. Never plead.

n. Do not agree to issues without fully understanding their implications and cost, both short and longer term. If in doubt, adjourn and discuss.

o. There is a time in all negotiations when you will have to say "no". If that is the case, say it clearly and unequivocally.

p. Everybody must take notes of what is said. Good notes provide a useful resource, both during and after negotiations. They also form a useful historical record. One team member might be allocated solely to this task.

q. Require the other side to support its claims with arguments if they are seriously pursuing them. Ask questions, probe and tease out their position.

r. Never Lie: If you do not know the answer admit it, adjourn and find out. Do not feel pressured to answer, or to make things up.

s. Keep a check list to ensure all points have been covered.

t. Work from your own drafts and proposals with the wording you want.

u. Use adjournments to avoid loss of control and to allow you to discuss, analyse and review the negotiations.

v. Maintain close communication with your management team, decision makers or industry employers (for multi-employer agreements). Remember you are their agent in the negotiations and you must keep them fully involved. It is their role to establish the mandate and your role to abide by it or seek their agreement to change it if circumstances warrant.

4.8 KEY LESSONS

Lesson 4.1	Prepare Adequately: Preparation provides a good picture of your options and allows for planned flexibility at the crunch points of negotiation.
Lesson 4.2	Pursue the Win/Win Principle: Each party needs to conclude the negotiation feeling something has been gained. You need to think strategically about what wins you are allowing your employees and their representatives to deliver.
Lesson 4.3	Avoid Intimidating Behaviour: Research shows the tougher the tactics, the tougher the resistance. Persuasiveness not dominance makes for a more effective outcome. Show respect, be seen to be reasonable.
Lesson 4.4	Be Patient: Give ideas and proposals time to work. Don't rush things, patience pays. Be calm.

Lesson 4.5	Don't Lose Your Temper: Strong negative emotions are a deterrent to developing a co-operative environment and creating solutions. Do not antagonise the other party by making them too defensive.
Lesson 4.6	Talking Too Much and Listening Too Little: "If you love to listen, you will gain knowledge, and if you incline your ear, you will become wise."
Lesson 4.7	Influence Instead of Arguing: Your position can be best explained by education, not stubbornness or combativeness.
Lesson 4.8	Don't Ignore Conflict: Conflict is the substance of negotiation. Learn to accept and resolve conflict, not avoid it. Avoidance will prejudice your position.
Lesson 4.9	Don't Act on Ego: Remember negotiators never "win" - they only assist their organisation to succeed. This is not personal.
Lesson 4.10	Stick to Your Mandate: Negotiators are acting as agents and must always abide by the instructions given by those who will be bound by the final agreement.

MODULE 5 –

WRITTEN COLLECTIVE AGREEMENT

The product of collective bargaining should be a written collective agreement. Module 5 outlines some important considerations in formulating an effective written agreement to ensure it best delivers on and protects the interests of employers in collective bargaining. There is also more general value in using individual written contracts whenever you hire your employees (separate to the collective agreement).

This Module will not however directly assist you in drafting a collective agreement for your company. Your employers' organisation can assist you in all phases of the negotiation process, including negotiating an effective written collective agreement.

5.1 INTRODUCTION

5.1 In business, we all know the value of a written contract. A written contract, agreed by both sides to any business arrangement, provides the following benefits:

a. A comprehensive written statement of the rights and obligations of the parties to the contract.

b. A precise identification of the dates for payment, and delivery of goods or services under the contract (i.e. what must be done, and when).

c. A precise identification of the goods or services to be delivered under the contract.

d. An identification of how any disputes will be settled that may arise during the life of the contract.

5.2 It is the same for employment and collective bargaining. The end product of collective bargaining negotiations should be a written agreement (the **Collective Agreement**), agreed to and signed by the employer and the employees, or the employer and the employee's representative.

5.1.1 Drafting by Negotiation

5.3 Drafting a collective agreement is not a separate process that starts after collective bargaining is finished. Reducing the outcomes of collective bargaining to writing as a draft collective agreement generally occurs at the same time as matters are negotiated.

5.4 This is the right approach. Producing agreed written outcomes in the form of draft agreement means that there is an accurate recording of what has been agreed. Any disagreements or misunderstandings are also dealt with at the time, and do not risk disrupting the finalisation of the agreement. This underscores the importance of someone taking accurate notes during the negotiation process.

5.1.2 Specialist Advice

5.5 Drafting collective agreements is a specialist skill. Your employers' organisation can advise on the best way to draft a collective agreement in your national system, and to turn your collective discussions (negotiations) into a written agreement. Your representatives will also have experience drafting multiple agreements and know how particular phrases have been interpreted.

5.6 This skill is balanced in practice with your efforts to create an agreement which can be clearly understood by your managers, supervisors and employees.

5.2 WHY USE A WRITTEN AGREEMENT

5.7 In some countries there may not be a history of using written agreements for employment – and the concept outlined here may be a new one, even to employers regularly making written contracts in their commercial activities. Some people may ask "*if negotiations have been concluded in good faith, there has been an agreement, and claims have been settled – then why do any more work?*".

5.8 There are a number of reasons to use a written agreement, not just for collective bargaining, but also for the employment of your employees generally (this is the written contract of employment and is best practice for employment under any national legal system).

5.2.1 Clarity

5.9 Collective bargaining is a complex process dealing with complex issues, and often a large number of issues. A written agreement is needed simply to keep track of such major negotiations, and agreed approaches to all issues.

5.2.2 Avoiding problems and accurately identifying rights and obligations

5.10 A written agreement provides clarity, avoids problems and disagreements, and provides a mechanism to solve any problems when they arise. It also the best tool to accurately identify obligations.

5.11 It allows everyone to know where they stand, and what they will be working towards during the life of the agreement. It also commits both the employer and the employees to one version of what has been agreed.

5.12 A written agreement also allows employers to guard against additional employee claims, and to ensure that employees stick to the outcomes agreed through collective bargaining. It also ensures that the wording of the agreement is applied consistently to different situations.

5.2.3 Enforcement

5.13 A written agreement is enforceable. It becomes an employer's legal obligation in regard to wages and terms of employment under national law.

5.14 No employer wants to face allegations they are not paying properly, and not meeting their legal obligations. This can harm a company's reputation.

5.15 This can be particularly damaging for companies supplying larger international clients. Many multinational companies servicing international markets increasingly demand not only some form of agreed wages and conditions, but compliance with the agreed terms.

5.16 A written agreement helps avoid problems:

a. It makes clear what the wages payable to an employee will be, and the other agreed terms and conditions of employment. The employer then applies the written agreement to meet their legal obligations.

b. It is fundamentally an instrument providing security for an employer against claims of underpayment or non-compliance with labour laws.

c. It can also support employers in litigating against employees and their representatives (where this is the course chosen).

d. For employees, a written agreement provides a tool to enforce agreed benefits.

5.17 Employers will be familiar with the concept of a written commercial contract providing the security of knowing that legal action can be taken if one side does not meet its agreed obligations. Similarly, a written collective agreement can provide both employers and employees with security in regard to accurately establishing employment rights and obligations.

5.18 For an employer, the agreement is written proof of what has and has not been agreed. It is equally prudent for employees to have such proof.

5.19 In summary, using a written Collective Agreement to conclude the negotiation process is the best practice, prudent approach to collective bargaining. It provides the most secure and prudent approach to negotiating how work is undertaken and paid for.

5.20 This is why employers in all parts of the world reduce their negotiations to writing, in the form of a written collective agreement.

5.2.4 Foundation for renegotiation

5.21 A written agreement also provides a clear statement of the status quo as the basis for the next generation of bargaining (see Module 6). This is a very useful starting point, particularly for an employer wanting to ensure that matters in the existing agreement are not re-opened.

5.22 No employer wants to spend the first days or weeks of the renegotiation process arguing about what the current agreement means and how it should be being applied.

5.2.5 Particular importance in collective bargaining

5.23 It is particularly important that collective bargaining be reflected in an effective, written collective agreement:

a. Where there are disputes about what has been agreed and what the employer or employees should be doing, they can involve hundreds or thousands of employees. Every measure should be taken to avoid ambiguity on rights and responsibilities.

b. Disputes on how an agreement applies or what has been agreed to can completely halt the operation of the employer, and involve all operational employees.

The importance of reducing your negotiated agreement to writing is linked to the general importance of using written terms and conditions of employment, and written contracts of employment with your employees.

It is good practice to use written contracts, or letters of appointment with your employees. This gives both employers and employees clear statements of the terms and conditions of employment, and minimises scope for future disagreement.

5.3 WHAT MAKES A GOOD WRITTEN AGREEMENT

This Module will not directly assist you in drafting a written agreement for your company. Your employers' organisation is best placed to assist you in drafting, negotiating and finalising a written agreement from your negotiations.

5.24 There is no single form of written agreement, although there are some things which have been proven to work and not work at the national level (your employer association will be expert in this area).

5.25 Some agreements will be long and complex written documents which will require significant support and implementation from employers and employees. Others will be much shorter, simpler documents reflecting fewer changes to the status quo, and fewer changes to how work is undertaken. Very simple documents can regulate the work of many thousands of people.

5.26 Regardless of the system, the country or the level of experience in bargaining, a good collective agreement will generally have the following qualities:

5.3.1 Clear, Precise and Enforceable

5.27 A collective agreement reduces collective bargaining to writing to create an accurate and straightforward record of what has been agreed, and the employment arrangements which will apply from the commencement of the agreement.

5.28 A collective agreement must be clear, precise and enforceable to perform this role and deliver on the potential benefits of collective bargaining.

5.29 This does not mean that an agreement needs be overly legalistic. It is equally important that users of the agreement can be able to read and understand it without specialist legal training. Using natural, straightforward language understood by you and your employees is particularly important (although it must also be the properly recognised language of your national legal system).

5.3.2 Lawful

5.30 A good written agreement complies with the law and does not contain any matters which are contrary to law, and which would not be enforceable.

5.31 Some key questions to consider:

a. Does the proposed period of operation of the agreement comply with national legislation covering collective bargaining? (see Module 3)

b. Does the agreement comply with legislation on minimum standards, minimum wages, hours of work?

c. Does the agreement comply with legislation covering collective bargaining?

5.32 These questions must be reviewed for each generation of collective bargaining, in relation to each proposed agreement. Your employers' organisation is expert in navigating the law and drafting written agreements which both comply with the law and protect employers.

5.3.3 Comprehensive

5.33 An effective written agreement is comprehensive, and can be relied on as an accurate statement of all the agreed matters. The agreement must settle all claims against the company, for the life of the agreement.

5.34 In some cases it is prudent to use the collective agreement to set out a comprehensive range of terms and conditions of employment, and to act as the single statement (perhaps with a written letter of offer) of employment arrangements.

5.35 However, this does not mean the agreement must be long and detailed – it may be nothing more than an agreement for a series of wage increases across a three-year period. But, such an agreement should make clear that there can be no additional claims during the life of the agreement.

5.36 If for example an employer has settled an employee claim with a series of three wage increases across three years, the agreement should preclude any further employee claims to cut hours, or extend leave during the three years it is to operate for.

5.3.4 Sound clause construction (and wording)

4.3 The construction of specific clauses inside an agreement has the objective of creating enforceable outcomes. Clause construction should avoid terminology which does not deliver enforceable outcomes and which merely provides for alternatives to be considered.

4.4 If clause construction is unclear then a third party may be forced to adjudicate on the meaning and a literal interpretation of the clause may deliver an outcome unforeseen by the employer. You want your agreement to have the meaning you agreed, not some adjudicator's attempt to interpret it.

4.5 Agreement clauses should be drafted in a clear and unambiguous manner. There are no benefits from negotiating by ambush or seeking to rely on the dispute procedure after the agreement has commenced.

4.6 By "ambush" is meant subtle clause construction leading to an enforceable outcome unanticipated by the employee party to the document i.e. the clause delivers an outcome different to that agreed during negotiations and advantages the employer, seemingly a windfall situation.

4.7 It is important to avoid legal jargon and ambiguity as you therefore avoid the creation of a document that can only be understood by the practitioners of wherefores and what nows and so ifs etc.

5.3.5 Able to resolve disputes

5.37 An effective agreement is able to effectively resolve disputes which may arise during its life whilst maintaining its contribution to productive, stable and sustainable commercial operations (see 5.5, *below*).

5.3.5 Some practical ideas

5.38 There are various options for an employer in how they approach drafting a collective agreement:

5.39 Take responsibility for drafting: Where possible this task should be undertaken by management for the simple reason that they are the ones who have to apply it.

5.40 One key way to have some control over the process is for the employer to volunteer to draft the agreement or to coordinate the drafting. This means that the employer has the first opportunity to try to express in writing what has been agreed. This ensures that it is the employer's understanding of what has been agreed which guides the process.

5.41 Prepare the text in advance: Another useful idea is to prepare the text of an agreement in advance. This means that your propositions are expressed in writing, and employee negotiators are responding to your agreement text. There are two broad options for this:

a. Draft the whole agreement in advance that you would like as an employer. Use this to guide your bargaining strategy, and strategically use sections of the draft agreement as your proposals during negotiations.

b. Only draft those sections of the agreement in which you as the employer are seeking changes or to introduce productive reforms. For example, if you want to change the organisation of working time, or add an additional shift – express this in writing to show your employees and their representatives how it would work. A proposition is much more easily argued if you can show your employees how it would work, and how it would look in writing.

5.42 Draft the text as you negotiate: Whether you have prepared some preliminary drafting or not, it is generally good to draft your written agreement at pretty much the same time as you negotiate agreed terms and conditions of employment. The proposed agreement itself should be finalised before the parties separate.

5.43 This means (for example) at the same time as you negotiate a bonus or incentive payment, you work up the agreed written paragraphs which will include this in your agreement. This is a much better idea than trying to draft the written version after complex negotiations.

a. Remember, the drafting does not have to be perfect during the negotiations, but it is important to have your employees broadly committed to a form of words at this stage.

5.44 Come back to complicated matters: Notwithstanding the process of simultaneous negotiation and drafting, sometimes you will not be able to agree a form of words for a particular matter, even if you have agreed generally to its inclusion in the agreement. Complicated negotiations on the terms and conditions of employment can turn into complicated negotiations on the best form of wording. One practical tool you can use is leaving a complex matter, and coming back to it at the end. This can be useful if finalising one item threatens to bog down your negotiations.

5.45 Draft provisionally: It is prudent to have a final look over the operation of the text you have agreed with your employees or their representative prior to finally agreeing to the exact form of words. You may want to have another look at the form of words and their meaning, you may want to get a second opinion from others in the management of the company, or you may want to show the text to your employers' organisation for advice (and confirmation what is proposed conforms with the law).

5.46 This does not mean reopening negotiations or trying again to change the firm position of those you are negotiating with (that would be negotiating in bad faith). But, it means allowing the ink to dry on a proposed agreement before you assent to it.

5.47 This means the text you negotiate with employees or their representative should be provisional, and subject to a final look over the proposed agreement by you as the employer (and by the employees from their perspective).

5.48 The key to doing this effectively is for both the employer and the employees to understand in advance that this final checking process will occur. Employees need to be told up front that the final sign off on the proposed agreement will not come until after the text is finalised (perhaps 24 or 48 hours afterwards). This avoids problems in the negotiation process.

5.49 Arbitration: In some situations government mediators or arbitrators may become responsible for drafting your agreement, perhaps after a dispute or on application from either you or your employees. This raises unique considerations, and unique concerns in trying to secure text which actually suits your business. Your employers' organisation can provide expert and experienced advice in these situations.

5.4 AGREEMENT APPROVAL / VOTING

5.4.1 Introduction

5.50 A collective agreement generally requires the approval of (a) the employees who will work under it and (b) the employer.

5.51 Employer approval is relatively straightforward. Depending on the national system an appropriately responsible officer of the company can sign copies of the agreement and lodge them with the labour authorities, exchange letters with an employee organisation, or complete official forms signalling the company's formal approval of the agreement.

5.4.2 Options for Employee Approval

5.52 Employee approval of a collective agreement is more complex. How do you secure the approval of hundreds or thousands of employees who will work under a collective agreement?

5.53 There are essentially four (4) options possible under different national systems:

a. Individual signatures: Each employee subject to the agreement individually signs the agreement, thereby signalling they approve of its terms:

i. It is still a collective agreement because it has been negotiated collectively and given to each employee in exactly the same terms.

ii. The agreement becomes part of ordinary employment documentation.

iii. (Employers need to check this option with their employers' organisation – this may not be possible under all systems, or for all forms of collective agreement).

b. Voting: Employees vote on or otherwise approve the proposed agreement negotiated on their behalf. This follows the negotiation process, and is a prerequisite for the agreement entering into force (and terms and conditions of employment changing).

c. Through an appointed representative: Employees appoint or approve a representative who both negotiates and approves the agreement on their behalf. This is the bargaining agent or representative and may be an established employees' organisation.

d. Through a nationally recognised representative organisation: Employee organisations may be officially recognised as negotiating on behalf of employees in a particular region or industry and gain an automatic right to both negotiate and approve agreements. This would not require approval or appointment at your specific workplace. This particularly applies in relation to national or industry wide agreements.

5.54 It is important to understand in advance all the steps in the collective bargaining process your agreement will go through, including how it will be approved. Again, your employers' organisation can advise on this.

5.4.3 Your Employees Must Approve

5.55 Regardless of the system, the employees who will work under the agreement should know of it and generally approve it entering into force. A voting or approval system delivers this employee approval for a proposed Certified Agreement.

5.56 Even where a representative organisation is empowered to approve the agreement it should be encouraged to actually work with your employees and secure their genuine support for the proposed new conditions of employment.

5.57 It is important for your ongoing work and relations with your staff whilst the agreement is in force that your employees understand and are committed to the rules they are going to work under.

5.58 Mass meetings or even votes should be encouraged to ensure the agreement you can agree on with a representative is actually an agreement that your employees will be happy to work under.

5.4.4 Due Process

5.59 Whilst an employer should not seek to interfere with the representative choices of their employees, or their choice on approving an agreement, an employer may have a legitimate interest in ensuring employee representatives are appointed legally, and that their representatives act fairly and honestly in dealings with the employees they represent.

5.60 An employer should monitor the process by which employees approve their representatives, and the claims and statements made by those seeking to represent employees. Where there are irregularities or possible transgressions of the law, the employer may raise this with those seeking to represent employees or even with national authorities.

5.4.5 Majority Agreement

5.61 Depending on your national law, approval of the agreement may require formal approval by the majority of employees. This can be by way of tightly prescribed processes such as secret ballots, or more open processes at the discretion of the employer and/or any employee representatives.

5.62 This is an area in which your employers' organisation can help you understand not only the law, but also practical considerations and the best way to ensure your employees approve an agreement you have negotiated.

5.63 The rights and interests of minorities also need to be considered. This can include those supporting different representation, or opposing representation, or not supporting the proposed agreement. Whilst the majority will should prevail in the making of the agreement, the minorities need to have a chance to participate, be heard and to vote. This is especially relevant where the minority may have no association with the bargaining representative.

5.64 Remember: Today's minority may form the core of tomorrow's majority. For example the ranks of those not supporting an employee organisation can rapidly swell if the organisation performs poorly for employees.

5.65 Which majority?: One complex issue which can arise is which majority needs to approve an agreement or the appointment of a bargaining representative. Complications include:

a. What will constitute a majority? Is it 50% of those voting or eligible to vote, is it 50% + 1 vote, or some higher level of support required?

b. Is it a majority of all those who will work under the agreement, or just of those voting at the time?

c. Is it the majority of those voting on the day, or must a majority of employees actually vote? Must every employee vote?

d. Does this include temporary or seasonal employees?

e. Do you include management, support or ancillary employees in those voting?

f. How do you define the group to be covered by the agreement – is it all employees of the company, all those at a particular worksite, or only those doing particular work?

5.66 Each of these issues has potential implications for the approval of your agreement and how it is negotiated. General advice is:

a. Establish what the law requires in relation to the scope of who must approve an agreement or any representation order.

b. Establish in advance the scope / coverage of any agreement (and any approval vote or ballot), and clearly communicate this to your employees and any organisations seeking representation.

5.4.6 Approving the Agreement and Voting

5.67 Where an agreement is to be approved or a representation order finalised there must be some system for employees to signal their assent to the agreement or order. This might be a vote, or a show of hands, or by a process of return mail to the employees' houses.

5.68 The use of voting and balloting will very much be a function of national law and practice, and national political and workplace cultures. There is no one way to approach the employer's role in this process, and considerations will differ between workplaces of different sizes.

5.69 Some broad considerations generally however include:

a. Non-interference: An employer should not seek to interfere in or determine the outcome of a collective agreement or representation ballot. This can expose employers to serious legal sanctions, and have longer-term negative consequences for relationships with your employees.

b. Oversight: This said, an employer has an interest in ensuring any processes are fair and rigorous. It is legitimate for an employer to supervise the approval process, to take complaints from unhappy employees and provide advice on resolving them.

c. Supporting the Ballot: Whilst the ballot must be independent of the employer, the employer may have the necessary resources to support

the balloting process (the employer may, for example, have all the employees' home addresses, or be in the best position to print and count ballot papers.

i. It is legitimate for an employer to offer its resources to help a vote occur. A vote may be impossible without some employer organisation and logistical support.

ii. However, the employer must not interfere and be protected from any allegations of interference. A good idea is appointing independent officers to undertake this process, or using independent oversight (see below).

d. Secret Ballot: Depending on national and workplace culture, an employee should have a right to approve or not approve an agreement free of coercion, intimidation or undue influence. This includes freedom from coercion by employee organisations and their members.

e. Independent Oversight: One option to ensure the vote for a proposed agreement is fair is to have it supervised by someone independent of both the employer and any employee representatives. This might include a local religious leader, charity or NGO or other respected independent organisation or person (note: there may be a cost associated with someone assuming this role).

f. Costs: It should be established up front who will meet the costs of any balloting, and how much disruption there will be to work (or whether it will occur during non-working time). Generally employers budget on some additional costs from the agreement approval process.

The aim of the agreement approval process is to get it right the first time. If you have negotiated an agreement with a legitimate employee representative, which has done its work in informing and consulting its employee members, and you have properly applied any legal requirements or voting or approval – the aim should be to have the agreement approved in a straightforward manner by the majority of the employees – the first time.

5.4.7 Independent Approval of Agents and Representatives

5.70 Your national system might provide a regulated process for employees to appoint their bargaining representatives. Under your national labour legislation, you as the employer may have certain things you must do to support this process and things you may not do to interfere in the process.

5.71 Employers should try to:

a. Meet their legal obligations in full, such as providing access to employees, allowing the distribution of information, etc.

b. Concentrate on effectively negotiating the best possible agreement rather than trying to change or influence your employee's choices on representation.

i. Trying to stop your employees choosing a proposed representative, or trying to have them choose one representative over another risks substantial legal penalties under many labour law systems.

ii. It is also almost always futile and counterproductive. Trying to stop employees appointing a particular bargaining representative is likely to encourage them to do so. It may also do longer-term harm to employee's trust in you as the employer.

5.72 However, employers may have a role in ensuring their employees have all possible information on the representative choices they are making, and in ensuring all possible representatives have an opportunity to seek their support. Your employers' organisation can advise on what you may and may not do in the approval of employee representatives.

5.4.8 Know the Law

5.73 The agreement approval process (and the process of choosing an employee representative) is often quite tightly controlled by national laws and practice - which will determine many of the matters outlined above. It is important that any employer know in advance the requirements of their legal system and the costs and deadlines involved in agreement approval.

5.74 Your employers' organisation will be able to provide practical advice on approaching the approval of proposed agreements and the appointment of bargaining agents or representatives under your national system.

5.5 COMMUNICATING WITH YOUR EMPLOYEES

5.75 A written collective agreement is not just a pact between an employer and an employees' representative. It must also be an agreement between the employer and the actual employees who will work under the agreement.

5.76 This means that employees need to feel part of the agreement. Linked to the preceding section on approval, it is important at all stages of the operation of the agreement that your employees:

a. Agree to the terms of the written agreement negotiated between the employer and employees / an employee organisation.

b. Understand what has been agreed.

c. Have access to copies of the agreement, and some understanding of what it means.

5.77 The importance of effectively communicating an agreement to your employees (before and after approval) is increased in situations where there might be competing employee representatives, where representation is unstable, or in which employee leadership changes.

5.78 It is important in these situations that employers try to have their agreement operate directly with the employees concerned and that the employees understand and agree to the terms of the agreement negotiated on their behalf.

5.79 Employers need to be able to work directly with their employees in many situations, even where an agreement may have been negotiated by an employees' organisation, and effective communications and trust are critical to this.

5.80 Dependent upon the degree of change arising from the document, an educative process - particularly with supervisory staff and payroll personnel – can be put in train to deliver the negotiation results. Ideally a member of the negotiation team should preside over this process to ensure continuity and clarity of delivery of the agreed outcomes.

5.81 Implementation may affect employees in differing ways and where a new or substantially revised contract is being introduced a summary may need to be prepared to indicate the actual effects on employees where circulating the document alone will not be enough.

5.82 Many employers arrange staff meetings or departmental briefings to address the changes and advise of any administrative requirements that need to be met. Critical within this process is the involvement of pay-roll personnel who can explain and address issues relating to new pay rates and conditions.

5 ideas for effectively communicating your written agreement:

1. Start the communication process during the collective negotiations, prior to any collective agreement being drafted. This includes communicating to employees well prior to the detailed negotiation of an agreement how the business is placed and some of the key commercial considerations which are impacting on the employer.
2. Work with any employee's organisation you negotiated the agreement with to implement the agreement, and to have it explained to and understood by your employees. The joint, cooperative involvement of employee organisations can maximise employee trust in your explanations of how the agreement works.
3. Have the agreement printed in the language or languages used by your employees, and a copy of the agreement given to each staff member. A copy should also be displayed in the workplace.
4. Where employees may not read or write, hold information sessions to explain the operation of the agreement and take questions from employees. Again use of employees chosen or preferred language will be important, even if it is not the language the agreement is formally written in.
5. Communicate the outcomes of any questions which arise during the life of the agreement – and the ongoing timetable and status of the renegotiation process.

(In some cases the written agreement will be very simple, such as for example an agreement that simply implements a wage increase with no changes in terms and conditions of employment. In these cases efforts to promote and explain the agreement may be more straightforward and simpler).

5.83 Languages: Some employers will encounter differing languages amongst their employees, between employees and managers, and between employees in different locations. A number of measures may be taken in such situations:

a. The official, legal version of the agreement should be in the language of record of your country. It is a legally enforceable document and needs to be able to be used in a court of law if required.

b. Translate the agreement into the languages used by your employees who will work under the agreement.

c. If necessary create a simplified, shortened guide to the agreement to provide a simplified summary for the employees.

d. Where there is illiteracy, ensure the agreement is explained to employees in the languages they actually use.

5.6 DEALING WITH DISPUTES DURING THE LIFE OF THE AGREEMENT

5.84 Collective bargaining should resolve the matters in dispute between the employer and employees – for example comprehensively settling a union wage claim. This is the purpose of bargaining; resolving claims in a way that contributes to productive, stable, and sustainable commercial operations, and leads to the making of collective agreements which are observed and avoid any industrial action during their life.

5.85 But what happens to any disputes or disagreements arising during the life of an agreement (after the collective bargaining process is concluded and an agreement has commenced)? There are a number of reasons why disputes may arise during an agreement, but two particular issues are:

a. Additional employee claims during the period of operation of the agreement (for example seeking to cut hours of work, or an additional period of leave after an agreement has commenced).

b. Disputes arising about the operation of the agreement or the conduct of work under the agreement (for example employees claiming an additional payment or allowance is required for working particular hours and the employer interpreting the agreement differently).

5.86 At all times the goal for an employer should be productive, efficient, trouble free working, and the operation of the collective agreement, as agreed, and without problems. This goes back to the overall aim of collective bargaining, which is to *ensure the performance of work properly contributes to productive, stable and sustainable commercial operations*.

5.87 This means effectively dealing with issues that arise during the life of the agreement. There are two important tools to address the issues raised above. All employers should consider addressing these issues in their agreement to the extent allowed under national laws.

5.6.1 "No Extra Claims" and "No Strikes"

5.88 A deal should be a deal. When an agreement is reached, neither employers nor employees should make any further claims. Having settled employee claims and entered into a collective agreement, the employer is entitled to expect a period of productive work, free of further employee claims or industrial action. An effective collective agreement will deliver these outcomes.

5.89 An employer should expect that their collective agreement is in *full and final settlement of all matters and monies relating to the employment and term and conditions of all staff subject to the agreement for the term of the agreement* (until its expiry date).

5.90 An employer or employees act in bad faith if they make further claims once a deal is done and has started to operate. This is against the spirit of collective bargaining. Whilst additional claims are rare, disputes can happen and this needs to be considered in advance in drafting an effective and secure collective agreement.

5.91 An important step in avoiding any additional employee claims is ensuring your collective agreement contains a "No Strike Clause" or "No Extra Claims Clause". This is a set of legal words which closes the agreement to further employee claims. There are a number of ways such a clause can be drafted, but in essence it must do two things:

a. Expressly state that the agreement is in full settlement of all union claims during the life of the agreement.

b. Pledge both the employer and employees to not ask for any additional claims or take any strike action or bans during the life of the agreement in pursuit of such claims. There should also be a presumption against the making of such claims, and good bargaining will over time make this a non-option for employees.

5.92 Cautions:

a. A no strike / no extra claims clause may not be possible in all countries, and may not be lawful under your national labour code. Your employer association can advise on your options.

b. It is important that such clauses are observed in practice, and that agreements are closed to further claims. This can be difficult, and one of the measures identified is securing individual employee signatures agreeing to the collectively negotiated terms and conditions.

5.93 Examples of such clauses include:

It is a condition of this agreement that the parties, for the period of this agreement, will not pursue any extra claims with respect to salaries and conditions to have application within the life of this agreement.

The parties to this Collective Agreement agree that they will make no extra claims whether covered by this Collective Agreement or not for its duration.

5.94 Care needs to be taken to use wording which comprehensively covers the type of claims and actions to be prohibited, whilst effectively dealing with potentially legitimate issues such as OHS disputes and disputes regarding the interpretation of an agreement and work under the agreement (see below).

5.95 Some of these clauses are exchanged for a right to arbitration of some disputes or concerns which may arise during the life of the agreement – see below.

5.96 Two further points to note:

a. It is possible to construct a no extra claims / no strike clause which allows some limited changes to the collective agreement. Examples may include leaving open the possibility of changing the wages clause of the agreement if the national minimum wage increases to overtake wages in the agreement[7], or increasing allowances if the cost of living increases.

b. If employers want to allow such claims it is important that they be clearly identified, and be well understood by both sides in entering into the agreement.

c. It is however generally more prudent to avoid such provisions and to ensure an agreement operates comprehensively, without scope for reopening in any circumstances. This will send the clearest signals to employees.

[7] In most systems, an employer would be obliged to increase a wage under an agreement if overtaken by the minimum wage, regardless of the wording of the agreement.

5.6.2 Dispute Settlement

5.97 What about other disputes arising during the life of an agreement? There are two further situations in which disputation may arise during the life of an agreement.

5.98 Interpretation or Compliance Disputes: The first example is disputes about what the text of the written collective agreement actually means in practice. These disputes arise in the interpretation and implementation of an agreement. This includes:

a. Disagreements on the level of wages payable under the agreement.

b. Disagreements on whether conditions for a bonus have been met.

c. The application of additional payments or allowances under the agreement to particular patterns of work.

5.99 Day-to-Day Disputes: These are the day-to-day problems which arise in any employment – including terminating the employment of staff, or disputes about amenities. An example would be where strike action is threatened following the dismissal of a long standing staff member. In a sense these disputes have nothing to do with the collective agreement, but they do have the capacity to determine its ultimate success or failure in the workplace – and the extent to which in practice, the performance of work contributes to productive, stable and sustainable commercial operations.

5.100 The key point is that such disputes have to be solved, or they may threaten to undo the collective agreement, or threaten the next generation of negotiations.

5.101 The way this is dealt with in an effective collective agreement is to use a Dispute Settlement Clause. This clause provides an agreed process to deal with any disputes which may arise during the life of the agreement. For example:

DISPUTE SETTLEMENT PROCEDURE

How you and the Company will resolve disputes

The following procedure should be followed to resolve disputes relating to your employment:

1. You must speak to your Manager.

As soon as practicable after a dispute arises you must speak to your Manager and give him or her the opportunity to resolve the dispute.

2. If that does not work or is inappropriate.

If it is inappropriate for you to raise the dispute with your Manager, or if you try to do that but it does not resolve the dispute, you must as soon as practicable take the matter up with the General Manager.

3. If the matter is not resolved you may approach the Human Resources Manager.

4. After that, you can go to external dispute settlement.

If you and the Human Resources Manager cannot agree to resolve the matter, either you or the Company can refer the matter to (an arbitrator or mediator) for dispute settlement.

5. Representation.

At any time you can obtain the assistance of someone of your choice to represent you in resolving the dispute.

6. General matters.

An employee representative may invoke this procedure when a dispute involves the interests of more than one member, or is concerned with a matter of interpretation or principle.

7. Work must continue.

Except in cases involving termination of employment, work must continue in the manner required by this agreement while the dispute is being dealt with. The fact that work continues will not prejudice you or the Company.

5.102 Looking at the above extract from a collective agreement, we can see various key components:

a. Escalation (1) to (4): Steps (1) to (4) see the employee raise his or her problem with succeeding levels of management in an attempt to resolve the concern. This is an internal process which will successfully resolve many problems without going outside the company.

b. External Dispute Settlement (4): If the problem cannot be resolved internally many dispute settlement clauses will provide some mechanism to have it resolved externally, by someone independent of both the employer and the employees. Many countries maintain conciliation and arbitration services for this purpose. Other options include a nominated conciliator and mediator agreed in advance by both the employer and employees. Matters to consider (and include in the written collective agreement – well before any dispute arises) include agreeing in advance who will settle disputes, how that person will be paid, and confirmation that the employer and employees will abide by the decision or recommendation.

c. Employee Organisations (6): The above example applies to individual employees, but also recognises that some disputes may be raised by employee representative organisations. Employees may also be represented by anyone of their choosing, including an employees' organisation (5).

d. Work must continue as normal (7): One of the critical things which an employer should always demand in any dispute settlement process is that while the dispute is being addressed, work must continue as normal. Employees and their representatives must follow agreed processes to resolve any disputes or potential disputes.

5.103 Some further considerations:

a. The clause should generally be kept as simple to understand as possible, for both the employees and your middle or line managers. Use plain and simple language wherever possible.

b. If there are unique considerations for your business, put them in.

c. If there is a regional or remote factory, including an option of taking a problem through head office or visiting head office staff can be useful.

5.7 ENFORCEMENT

5.104 (See also Module 6).

5.105 When collective bargaining works well and matures, collective agreements all but enforce themselves. Because employers and employees know they are coming back to negotiations in the medium term, and will have their own agendas over time, they have no choice but to comply with what they have agreed and to observe the agreement. This is enforcement as a function of self interest and can be a powerful force.

5.106 An effective grievance procedure also supports the enforcement of collective agreements. This process ensures that any disputes as to what the agreement means in practice and its application to particular circumstances can be resolved in a quick, orderly and well understood manner.

5.107 There are some other tips on effective enforcement where the bargaining relationship may not be so well developed:

a. Draft clearly in writing. Take your time, avoid ambiguous wording and double check what you are agreeing to.

b. Have a non-expert check the agreement, and check how they interpret the various provisions.

c. Double or redundant drafting. Where you think there may be doubt, or employees may try to change the meaning of what has been agreed – draft the clause two separate ways, using alternative wording to the same effect. i.e. try to say the same thing twice.

   i. An option to consider is wording along the lines of "for the avoidance of doubt..... (and then setting out a re-expression of what has been agreed)".

d. Consider having the employees sign the agreement individually, with sanctions applying to *individuals* for not sticking to what has been agreed (your employers organisation can advise on your options to do this under your national system).

5.8 CHECKLIST OF IMPORTANT MATTERS FOR ANY COLLECTIVE AGREEMENT

5.108 What you include in your Collective Agreement will be determined by the scope of your collective negotiations, how much you seek to change the organisation and conduct of work, and by what your national laws allow. It must also be in the language of your workplace.

5.109 This said, there are some key things which you should generally seek to include in any collective agreement:

a. A clause establishing the coverage of the agreement – detailing which operations and which employees it applies to.

b. Definitions of any specialist, enterprise specific or agreement specific terms (words or phrases) used in the agreement. Terms used in the document need to be defined where their meaning is not clearly apparent on a simple reading, or where the concept may cause disputation or confusion in the future.

c. A term of the agreement (period of operation), including a commencement date, and date on which the agreement formally comes to an end (expiry date). This might include an agreed statement of what will happen if the end date is reached without a new agreement coming into operation.

d. A very clear identification of the level of wages to apply during the life of the agreement, including any wage increases and the dates at which they will apply. (Unless your agreement is not about wages, and does not change the level of wages).

e. A no extra claims paragraph (see Module 5, Section 6), which closes the agreement to any extra claims, and which commits employees to not make claims or advance them through bans, strikes etc for the life of the agreement.[8]

f. An agreed process for settling any disputes which may arise during the life of the agreement (see Module 5, Section 6).

g. Clearly identified space for the employer, employees and any representative to sign the agreement, and (if your system requires it) witnesses to the signatures.

[8] To the extent allowed in particular circumstances.

5.9 KEY LESSONS

Lesson 5.1	Create a written agreement to reflect the outcomes of the collective bargaining process.
Lesson 5.2	Be very clear with employees (and their representatives) at the start of the process that you will require them to enter into a written document concluding the collective bargaining process and settling their claims for the life of the agreement / for some agreed period.
Lesson 5.3	Create a simple, straightforward, but legally enforceable agreement.
Lesson 5.4	Try to make an agreement which can be accurately understood and applied by both employees and their direct managers / supervisors.
Lesson 5.5	Try to have your employees approve the agreement, either through individually signing up to it, or by some other approval process following negotiation.
Lesson 5.6	Don't leave anything open for further claims, further negotiations or further strikes or bans.
Lesson 5.7	Insist on industrial peace. It should be a term of an agreement that it will settle all claims for the period agreed, and that employees will not pursue any strikes, bans or disruptions to work during the period agreed.
Lesson 5.8	Secure the written agreement of your staff as well as their employee representative (if any). This is particularly important where there are competing organisations or structures and key personnel seeking to represent employees.
Lesson 5.9	Work with your employers' organisation. They are the experts in collective bargaining and written collective agreements, and are best placed to advise you on what to include and not include in an agreement.

MODULE 6 – IMPLEMENTATION, EVALUATION & RENEGOTIATION

Completing negotiations and finalising a written agreement is not the end of collective bargaining. Collective bargaining must be an ongoing, continuous process, and each agreement should in time be replaced with a new agreement – which is also a product of collective bargaining (and collective negotiations).

Module 6 outlines a process and considerations for implementing agreements and for strategically approaching the next stage in the evolution of collective bargaining within a company.

6.1 INTRODUCTION

6.1 So, you have a fresh, new collective agreement – what now?

6.2 Collective bargaining is an ongoing process, and requires employers and workers to not rest on their laurels, and to undertake a continuous cycle of:

a. Implementing the agreement.

b. Monitoring the performance of the agreement.

c. Renegotiating the next generation of agreement.

6.3 The key priority is to make the collective agreement you have negotiated work for you as an employer, and to ensure it contributes to productive, stable, and sustainable commercial operations (the purpose for participating in bargaining in the first place).

6.4 The best written agreement in the world, and the most amicable conclusion to negotiations, will be meaningless unless the agreement is properly implemented, and actually contributes in practice to more productive, more stable, and more sustainable commercial operations.

6.5 The challenge is to ensure the ongoing implementation and operation of the agreement meets the original goals of collective bargaining for you as an employer. Module 6 provides some useful tips to ensure this occurs, and to effectively approach the renegotiation of a collective agreement.

6.2 IMPLEMENTATION

6.2.1 Comply with the agreement

6.6 The first and primary task once you have negotiated a collective agreement is to comply with it and to follow what you have agreed. This applies to the employer, employees and employee representatives.

6.7 Implementation of the settled contractual terms is of vital importance. This process delivers the end results of the negotiations and care must be taken to ensure that final implementation is precisely in tune with the outcomes agreed at negotiation.

6.8 This means moving out of the negotiation phase into the implementation phase and complying with what you have agreed to on paper.

6.9 You may not have successfully secured everything you wanted (and the same may apply to your employees). In collective bargaining it is rare for anyone to be completely happy, or to have obtained everything they wanted.

6.10 However, one of the benefits an employer gains from collective bargaining is that negotiations on terms and conditions of employment should remain "closed" for the period agreed. This means that the employer, employees and trade union, agree to abide by the agreement and not pursue any further claims. This will only work if both parties abide by the agreement negotiated. (See Module 5).

6.11 When an agreement is reached, negotiations are closed, and the challenge is to now work to what you have agreed. Just like a commercial negotiation, once the price and terms have been agreed to, that ends the bargaining phase.

6.12 So – the first lessons are to:

a. Stick to what you have agreed and comply with your new collective agreement. This means implementing the changes you have agreed, when you have agreed them to start. For example, if a pay increase of 3% is agreed to start from 1 July, it should start on 1 July.

b. Implement agreed changes quickly, and in accordance with the agreed implementation dates. Do not fail to deliver on employee expectations.

c. Stick to your side of the bargain. Do not pursue or reopen matters from the negotiation process.

d. Ensure your employees stick to their side of the bargain. They should comply with the agreement, deliver agreed work practices, and not pursue or reopen matters from the negotiation process.

6.13 Some settlements may also affect the operation of departments. In these instances supervisory staff will need to be well versed in the operational changes and their effects on the staff. It is essential that where any concession has been gained by the employer that it be introduced as soon as is practicable after settlement. To delay or in fact not implement new conditions will lead inevitably to a lack of credibility for the negotiating team when next time they seek change when not having availed themselves of the new arrangements. It can also lead to employee anger and disputation.

6.2.2 Ensuring Compliance

6.14 Your employees will look to you to honour the agreement you have made by accurately implementing what has been agreed. The credibility of future negotiations may depend on properly meeting your obligations in the short term. The collective agreement may also be legally enforceable.

6.15 Of course all employers intend to abide by what they have agreed. But mistakes can be made, particularly at the local or plant level, which can threaten relations with employees. Mistakes can lead to misunderstandings and a longer-term breakdown in trust and confidence in the employer.

6.16 An option to consider is to periodically audit the extent to which your payroll and working arrangements are complying with the terms agreed, and correcting any errors (perhaps every six months). This might include for example checking the working roster against the agreement and making sure employees are being paid correctly. This can be something management does of its own accord, and can be valuable in ensuring longer term employee support for the bargaining process.

6.17 This audit process may be very important where you have plants or operations away from the head office, particularly in rural and regional areas. Managers who may not have been involved in negotiating an agreement may

be less capable of accurately applying its requirements, accurately and on time. Measures to check on the implementation of the agreement may be especially prudent in these situations.

6.2.3 Training on the new collective agreement

6.18 Some employers have provided training to their middle managers and supervisors on applying their collective agreement, and also training to staff on what the agreement means.

6.19 Such training can remove ambiguity on what the agreement requires and ensure all management staff are applying the agreement consistently. It can also help identify questions on the application of the agreement quickly and enable you as the manager to head off any problems in advance.

6.2.4 Use what you have won

6.20 It is vital for employers to actually make use of the concessions they have won from the bargaining process. Where an employer secures an option to improve the organisation or conduct of work, they need to use it in practice after the commencement of their new collective agreement.

6.21 Too many employers appear to run out of energy after collective bargaining, and can fail to actually use what they have fought for, and sought from their employees.

6.22 An employer who fails to actually use the positives in their agreement risks:

a. Losing the capacities they have negotiated for – either from the next generation of agreement, or in practice. Where you don't use your rights under the agreement, there is a risk your employees will not treat such employer capacities as available to you under the agreement. They may dispute your right to do what has been agreed, unless you assert that right from the commencement of the agreement.

b. Their employees not taking their propositions seriously, and not treating them as genuine obligations.

c. Serious employee relations consequences where an employer may in future try to act on their rights, and use their capacities under the agreement.

6.2.5 Outstanding Matters

6.23 What about outstanding matters from the negotiation process? How should an employer address changes they still wish to make, but which could not be included in the current agreement (for example wanting to add an extra shift, or operate a factory on a continuous basis).

6.24 The keys to approaching these matters are patience, persistence, communication and adopting a longer-term perspective.

6.25 Options include:

a. Commencing early discussions with your employees towards the next generation of agreement, and promoting the changes you wish to include in the next collective agreement. This can start at any time after an agreement commences.

b. Actively pursuing further changes of work practices / hours etc in the next set of scheduled negotiations.

c. Being very clear with employees why the changes you seek are important, why the company is committed to them, and your commitment to delivering them.

d. Commencing a longer-term process of working directly with employees to promote the proposed change and its benefits, so that it will enjoy employee support when it next comes to negotiating the agreement.

At all times employers can legitimately communicate directly with their employees in addition to communicating with their representatives. This is not bargaining in bad faith, and is an essential part of effective management and operations.

6.3 MONITORING AND CONTINUOUS IMPROVEMENT

6.26 The second key task after an agreement has commenced is to ***effectively monitor*** its operation.

6.27 It is important that employers approach the renegotiation of collective agreements with at least as good an understanding of how the agreement has operated in practice as that of employee representatives.

6.28 It is also important that employers approach future negotiations with their own priorities for how work is undertaken, and for the rules governing working time, remuneration, work practices etc.

6.29 One of the keys to this is monitoring how the current generation of agreement is working in practice. Employers need to know from the day an agreement commences the areas is which it is and is not contributing to productive, stable and sustainable commercial operations.

6.30 This means observing how the agreement operates in practice in the workplace and the extent to which the performance of work under the agreement is contributing to productive, stable, sustainable commercial operations. It means knowing where things can be improved in the next generation of agreement.

6.31 For an employer to get the most out of collective bargaining in the medium to long term, they need to know:

a. What is working well under the current agreement.

b. What is not working under the current agreement.

c. Opportunities for change / further improvement.

d. What employees and unions think of working under the agreement – and areas where they may seek changes in future negotiations.

6.32 Strategic collective bargaining also requires a continuous process of linking how work is being performed to your priorities as an employer for the next generation of agreement.

6.33 An employer should monitor his/her current collective agreement to ensure they can get the most out of the next round of collective bargaining, and to ensure they have the best possible renegotiation strategy. This is the key to the effective renegotiation of collective agreements.

6.34 The outcome of monitoring should be a clear, agreed understanding by the management of your organisation of what the organisation wants from the next agreement.

6.35 Monitoring should generate a list of agreed priorities for the next generation of agreement making. Your experience (arising from monitoring) is the raw material of the strategy you will use in the next round of negotiations.

6.36 In addition to specifically monitoring the performance of a collective agreement, an employer also has access to vital commercial and operational information. This might include, for example:

a. Manufacturers' information on the level of output a machine or process is capable of yielding.

b. Accounting information on the costs per unit produced.

c. Accounting information on the time taken to produce a unit.

d. Accounting information on wastage, input costs and lost time (opportunities for efficiency).

e. Market information on the cost per unit required by clients.

f. Market information on the level of output and delivery times required by clients.

g. Client feedback on competitors' costs and charges.

6.37 All of this commercial and operational information is potentially relevant to what an employer should be seeking from a future collective agreement.

One option for this monitoring process would be to maintain a weekly or even daily diary on the process and performance of work, any problems, things which are working well, things which are working badly etc. The diary could also record ideas from the management and the employees on how work might be improved.

When it becomes time to draft a strategy for the next generation of agreement, the diary can provide important input for employer claims and bargaining priorities.

Also critical is the performance of the enterprise against customer expectations. Another useful tool in analysing how your agreement is performing, and how it may be improved, is to examine the performance of work against critical customer demands.

Was the company able to fill an order on time and to specification?

How did working time, rosters, shifts, skills etc under the agreement meet these needs? What could be done better? How might this be reflected in a future agreement?

6.4 COMMUNICATION

6.38 Effective collective bargaining is not something which happens each couple of years like a dentist's check up. Rather, it should be built on a process of continuous communication and building relationships between employers and employees.

6.39 A further priority during the life of a collective agreement should be ongoing communication directly with employees, and as appropriate with their representatives.

6.40 Some process of communication with employees and their organisations will help understand how the collective agreement is performing from the employees' perspective, and some of the issues employees are going to seek to have addressed in the renegotiation of the agreement.

6.41 An option to consider is establishing a consultative committee on the operation of the agreement – which may also become a vehicle for the renegotiation of the agreement (the next generation of the agreement).

6.5 RENEGOTIATION

6.5.1 Strategic Renegotiation

6.42 Section 6.6 outlines the need for agreements to have an expiry date, and to have some formal life or duration. At some point during or after the life of a collective agreement, it will need to be ***re***negotiated. This means a fresh process of negotiation towards a replacement agreement which will operate for a further period of years. Some people refer to this as a second generation of agreement, followed by a third generation, a fourth generation and so on.

6.43 So, how should an employer strategically approach the renegotiation of an agreement to get the most out of it, and to ensure the agreement can best ensure the performance of work contributes to productive, stable and sustainable commercial operations?

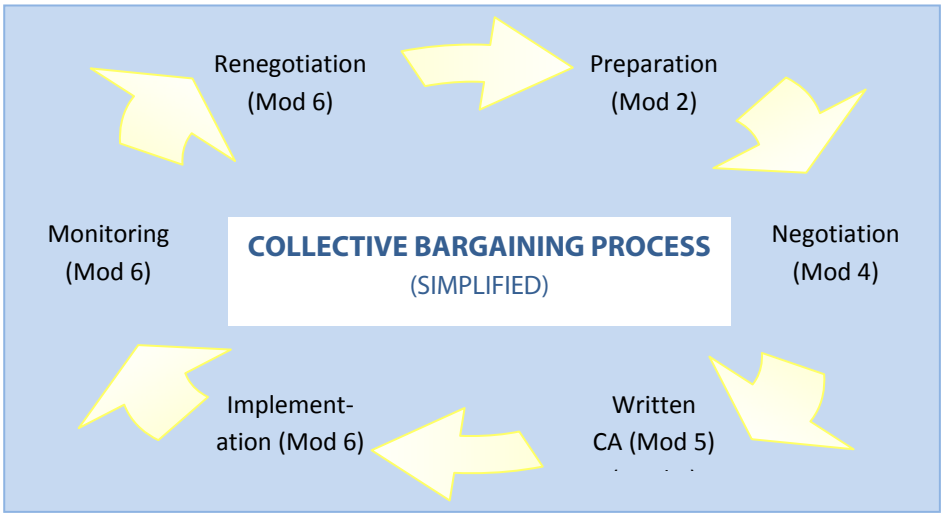
6.44 How should an employer approach renegotiation to ensure that bargaining continues to yield real operational and commercial benefits?

6.45 The answer is essentially to approach the renegotiation of an agreement the same way an employer should approach the original negotiation of an agreement – that is with strategy, preparation, pragmatism and commerciality.

6.46 Renegotiation is simply a further round or generation of collective bargaining. The same lessons and strategic considerations apply. The considerations in Modules 2 and 3 apply equally to the renegotiation of agreements as they do for the negotiation of agreements.

6.47 Renegotiation is a fresh negotiation process, to be approached strategically and realistically with the benefit of the lessons in this guide. The lessons of Module 2 on strategy, Module 3 on legal compliance, Module 4 on effective negotiations and Module 5 on a sound written agreement are all particularly important.

6.48 It is worth recalling the cyclical model outlined in Module 1:



6.49 This is a cyclical process of continuous negotiation and renegotiation, implementation, monitoring and review. Just as your business must continuously improve and adapt, so must your employment arrangements.

6.50 The difference is that this time you have experience of what works and doesn't work under the first collective agreement, and new perspectives on what your business needs to ensure the performance of work properly contributes to productive, stable and sustainable commercial operations.

6.5.2 Renegotiate prior to expiry

6.51 It is good practice to commence the renegotiation of your agreement well prior to when it is due to expire, and have a new replacement seamlessly replace the old, without any gaps or disruptions.

6.52 As we set out earlier in the guide, it is important to not treat collective bargaining as a periodic event to be addressed only when required. This should be a continuous process, in which smart employers continuously negotiate and consult with their employees. In this scenario, renegotiation is easy, because many of the issues have been worked out over months of continuous discussions.

6.53 Where there is a formal negotiating structure (for example a joint negotiation committee of employees and management) there is no reason why it could not meet throughout the life of the agreement and well prior to the pending expiry date. It then finalises its work in accordance with a timetable that will allow for the adoption and approval of a replacement agreement, prior to the expiry of the current agreement.

6.54 Even where continuous discussions are not possible or practical, employers should commence formal renegotiation well prior to the scheduled expiry of their current collective agreement. Perhaps six (6) or more months prior to scheduled expiry of a collective agreement, the employer should initiate the renegotiation process. (The exact period will reflect how long you think the renegotiation discussions will take).

6.55 Two points should be noted:

a. Consistent with the key lessons of this guide, the employer should only initiate this process armed with their strategy and claims for the replacement agreement. This means in particular understanding the operation of your agreement (the Evaluation) and knowing where further changes are needed (your renegotiation strategy and claims).

b. Timing is again important, you want to conclude renegotiations (and any strike action) well away from the commercially critical stages of your year, and in particular away from negotiations with your suppliers.

6.5.3 Renegotiate based on experience

6.56 This Module recommends effective implementation (6.2) and continuous monitoring (6.3) of collective agreements arising from collective bargaining.

6.57 This is the foundation for effective renegotiation. Properly understanding how your current agreement is operating, and how it is contributing and not contributing to your commercial operations, is critical to knowing what an employer should be seeking from the next collective agreement.

6.58 The two concepts link together: understanding how the current agreement is operating provides the basis for strategic re-negotiation. It tells an employer what they should be seeking from the renegotiation process, what they should be seeking to improve from a current agreement, what they should be seeking to take out, and what they should be insisting remain in place.

6.59 The information an employer gathers about how the current agreement is operating helps them develop their strategic priorities for the next generation of agreement. It ensures that employers approach the renegotiation of agreements with their own agenda and priorities, and at least as prepared as employees and their representatives.

6.5.4 Change and uncertainty

6.60 A particular challenge may arise where employee representation changes, or employee leadership is replaced (meaning the personalities in the bargaining relationship will have changed).

6.61 This is a difficult situation to manage. The good faith and personal good dealings which contribute to effective, mutually beneficial, collective bargaining can be difficult to maintain where the key personalities change.

6.62 The best insurance an employer can have in these situations lies in:

a. Having an effective, enforceable written collective agreement, which accurately reflects what has and has not been agreed.

b. Maintaining your own notes as an employer during the bargaining process on what has and has not been agreed.

c. Working directly with employees in explaining the meaning of the agreement, communicating on its implementation and constructively dealing with any problems which may arise.

6.63 In the end this is an issue of risk management and the employee representation structures and personalities in the situation concerned. Employers should carefully monitor their risks in regard to changes of personalities, strategies and structures for employee representation.

6.5.5 Renegotiation Clause

6.64 Some collective agreements include a specific clause or paragraph on arrangements for the renegotiation of the agreement. This may for example set out arrangements for:

a. Scheduled meetings between the employer and employees prior to the expiry of the agreement. These negotiations would be towards the next generation of the agreement.

b. The creation of a collective bargaining committee to work towards the next agreement prior to the expiry of the current agreement.

c. An exchange of written claims by a certain date prior to the expiry of the previous agreement.

6.65 On balance, these are issues of process which should generally be capable of being worked out between an employer and employees without needing to be addressed in a written agreement. Using a written agreement to address these issues may reduce the flexibility available to the employer in future negotiations.

6.66 There is also a risk of agreeing to renegotiate with employee representatives whose membership and support in the workplace has substantially fallen away during the life of the agreement. What of situations where for example:

a. Representation collapses during the life of the agreement to the point where the majority of employees choose not to associate with an employee organisation, and would support collective bargaining directly with the employer? How would an employer deal with a clause in the agreement promising to renegotiate with an organisation in this situation?

b. A majority of employees leave the membership of "Organisation A" during the life of the agreement for a new organisation, "Organisation B", and want "Organisation B" to negotiate on their behalf. How would an employer deal with a clause in the agreement promising to renegotiate with "Organisation A"?

6.67 In most cases an employer will best leave their options open by not agreeing to any renegotiation clause in an agreement.

6.68 However, some employee organisations may insist on this being addressed in an agreement. In these cases, employers need to carefully consider the arrangements proposed, and what might happen in the future. The experience and advice of your employers' organisation will be very useful here.

6.69 One scenario in which it may be prudent to address renegotiation in an agreement is where there are employee organisations or employee leadership. Having employees committed in writing to a renegotiation process may prove useful. Again, your employer' organisation can advise on this.

6.6 LENGTH OF AGREEMENT / EXPIRY DATE

6.6.1 Include a commencement date and an expiry date

6.70 The more accurately and comprehensively a collective bargaining negotiation is reduced to writing, the better it will be able to contribute to productive, stable and sustainable commercial operations during its operation.

6.71 (To the extent allowed under your national law and practice) it is advisable to include in any collective agreement:

a. The date on which the agreement will commence (the *Commencement Date*).

b. The date(s) on which pay increases become payable, or changes to work apply from.

c. The date on which the agreement is due to come to an end (the *Expiry Date*).

d. Arrangements for the continued operation of the agreement after the nominal expiry date (if the agreement has not been replaced, or another agreement commenced).

e. (Renegotiation clauses are addressed in 6.5).

6.72 The period between the Commencement Date and the Expiry Date is the Life of the Agreement, or more accurately the Nominal Life of the Agreement – for as we shall see an agreement does not necessarily end on its expiry date.

6.6.1 How long should an agreement apply for?

6.73 Just like a commercial contract, no collective agreement can last forever. Every agreement needs an expiry date (a date which concludes the nominal life of the agreement). Some national systems will require an agreement to set such a date, and many will limit how long a collective agreement may apply for (for example a maximum period of up to three years).

6.74 How long an agreement applies for will generally be (within the limits of your law and practice) a matter for negotiation with your employees. Competing considerations may include:

a. A longer agreement might provide greater commercial certainty, and allow an employer to project predictable labour costs into their commercial contracts across a period of years.

b. A shorter agreement might allow greater flexibility in labour costs in light of changing economic and market experience.

c. A longer agreement may "guarantee" industrial peace for a longer period.

d. A shorter agreement may exposes employers to union claims sooner and can create employee expectations of regular, large pay increases to sign on to each generation of agreement.

6.75 At all times both employers and employees must make an informed guess on what they will require and may encounter across the life of an agreement:

a. Employees are making an educated guess on the level of inflation and on price increases across the life of the agreement, and are agreeing to a level of payment which should meet their needs across the life of the agreement. They are agreeing to not agitate for higher outcomes and need to be sure they have secured the best deal they can for the proposed period of the agreement.

b. Employers are making an educated guess on the employment and labour costs they can bear across the life of the agreement, and the work practices, hours of work, shifts etc, they will need to meet their commercial obligations and be competitive. They are making an educated guess on cash flows, orders, staffing levels, market prices etc.

6.76 There is no simple answer to how long an agreement should apply for in your workplace. This judgement will need to be made in each case with the advice of your employers' organisation. However, some general suggestions include:

a. The longer the better: Generally, if negotiations have been approached strategically and commercially, and an employer has confidence about the sustainability of the agreement over a projected economic and market cycle, then the longer an agreement can be secured for the better. Industrial peace and predictable labour costs are important benefits for an employer.

b. Annual is too short: Employers should avoid annual negotiations if possible. This does not deliver sufficient industrial peace and stability, nor does it sufficiently ensure the performance of work properly contributes to productive, stable, and sustainable commercial operations. Annual negotiations are more likely to lead to annual disputes. However, this may be unavoidable in some systems, and there may be an inescapable expectation of annual negotiations.

c. First agreement shorter – subsequent agreements longer: For employers who are new to bargaining, one useful option can be to enter into a shorter agreement the first time (perhaps for 12 months).

i. This is about relationship building and establishing a culture and practice of collective bargaining.

ii. There may be wage rises under such an agreement, but an employer may not choose to pursue major changes to hours of work or shifts for example.

iii. The second and future agreements may become more significant, and would better contribute to productive, stable and sustainable commercial operations. These later generations of agreement may have a longer duration.

6.6.2 Check your national law

6.77 How long a collective agreement can apply for may be determined by your national law, practice and culture. Your employers' organisation will be best placed to provide advice on what is possible and what is advisable in your national system.

6.6.3 What happens when the agreement expires?

6.78 What happens when the expiry date in the agreement is reached? What happens if there is no replacement agreement, and the final date arrives?

6.79 The answer to this may depend on national law and regulation, and it will depend on what the employer and employees want to do (and have agreed to do).

6.80 But generally, reaching the end date in the agreement should not mean that work should stop, or pay increases and performance improvements should be reversed. It should not mean the agreed terms and conditions come to an end.

6.81 As a matter of good relations with your employees, it will generally be important to continue to apply the agreement and its increased benefits to employees, even after the expiry date. In particular, employers should not reverse any pay increases under the agreement (which is often not allowed under national laws, with the agreed terms becoming an individual entitlement of employees).

6.82 Continuing to pay under the agreement can give employers and unions additional time or breathing space to approach the negotiation of a replacement agreement.

6.83 Advice should be obtained well prior to the end date of an agreement on your options to continue applying its terms. Armed with this advice, employers should then initiate discussions with trade unions.

6.84 **A caution**: Whilst an employer can and generally should continue to apply the terms of agreement after its nominal expiry date, there may be some legal restrictions.

6.85 Employers should seek advice from their employers' organisation prior to the expiry date of the agreement on their options from the expiry date, and what they must do after an expiry date.

This Module outlines a process for the continuous evolution and improvement of collective bargaining and the collective agreements which flow from it. This can be vital for business innovation and competitiveness, and particularly important for those new to collective bargaining and pursuing their first generations of collective agreements.

However, this is not for everyone. Some companies are going to be happy with their existing agreement (for example) and happy to maintain it over a period of years with only periodic increases in pay. Other companies may reach a perceived limit of what they can change through bargaining – and want a period of stability without further major changes in how work is undertaken.

There is nothing wrong with such approaches if that is what an employer judges to be its best approach, and this can be agreed with employees. These remain legitimate forms of collective bargaining – and stable workplace relations can often contribute to productive, stable, and sustainable commercial operations.

Most of the suggestions in this Guide apply regardless of whether an employer is seeking major changes through a collective agreement, or whether they are seeking stability and little or no innovation from one bargaining cycle to the next.

Three cautions should be noted however:

- Bargaining which is too stable and delivers sustained periods without any changes in the performance of work, risks stagnation, and a business becoming less competitive than more agile competitors.
- Employee representatives compete for support based on what they can change, and how much more they can get for employees. Employee representative organisations will only agree to participate in very stable bargaining for a limited period, before it begins to seek active changes to how work is performed and paid for.
- An employer needs to be careful to always manage their business and the day to day concerns which arise and to not delegate their management to their collective agreement document.

This reinforces the importance of managerial prerogative and of some fundamental managerial matters not being open to collective bargaining or a collective agreement.

6.7 DISPUTE SETTLEMENT

6.86 Another important issue to consider prior to finalising your collective agreement is what happens if disputes or disagreements arise during the life of the agreement.

6.87 Disputes can arise in three main ways:

a. A trade union or employees might make a new claim, in addition to the matters addressed in the collective agreement, or to reopen the collective negotiations.

b. A dispute or disagreement might arise about the implementation or meaning of the agreement.

c. A dispute or disagreement might arise during the ordinary conduct of work under the agreement that affects the relationship between the employer and employees. Such a dispute may threaten productive, stable, and sustainable commercial operations. (the reason for participating in collective bargaining in the first place).

6.88 Adopting a strategic approach to collective bargaining can identify these potential problems in advance, and create specific mechanisms within a collective agreement to deal with them when and if they arise.

6.89 It is possible to include a specific clause or mechanism in any agreement to effectively deal with these issues when they arise. (See also Module 5.6).

6.8 POLITICAL DIMENSION

6.90 Finally a word on the political and public policy dimension of collective bargaining. Employers are at the front line of collective bargaining in any country, and are directly exposed to the operation of their national legal system and the day-to-day practice of collective negotiations.

6.91 Employers experience employee bargaining claims, industrial action in support of claims, and how their national system deals with such developments.

6.92 As users of national level collective bargaining systems, employers are entitled to have expectations about how they will perform. Employers are entitled to expect a system of collective bargaining which:

a. Actually contributes to their capacity for productive, stable, and sustainable commercial operations.

b. Deals peacefully, efficiently and equitably with collective claims, their negotiation, and their finalisation into a collective agreement.

c. Effectively balances employee rights to bargain and take industrial action with ensuring most matters are finalised peacefully and expeditiously and that employers are able to operate productive, stable, and sustainable commercial operations.

6.93 It is legitimate for employers to reflect individually and collectively on how collective bargaining is operating and how your national system may be improved.

6.94 If you don't like the system or laws controlling collective bargaining, you can try to change them through your employers' organisation. One key role employers' organisations play in many countries is as an advocate of changes to labour laws and industrial relations to improve the system.

6.95 Option: Under the auspices of your employers' association, meet as a group of employers and review your country's laws on collective bargaining, industrial action, minimum wages etc. Review them against your experience and identify areas employers would like to see improved. Your employers' association might then advocate such changes to the government.

6.96 For example, in some countries employers have advocated in support of:

a. Being able to negotiate four-year agreements, instead of three to last across the life of major construction projects.

b. Simpler paperwork and administrative requirements to enter into a collective agreement.

c. Capacity to have agreements more rapidly after they are agreed to by employees.

d. Capacity to vary a collective agreement for minor matters by agreement without having to return to a vote of all employees.

e. More effective tools to deal with unannounced strike action, and bring unions to the negotiating table.

6.97 Some questions you may wish to consider in reviewing your national collective bargaining system may include:

a. What key problems did you experience during the collective bargaining process? Can or should the law be changed to better deal with such situations?

b. Is there anything you and your employees want to agree to, which is not allowed under your national law? For example, if employees and employers can agree to a four-year agreement, but the law only allows three-year agreements, this may need to be re-examined.

c. Can the administrative and paperwork burden of collective bargaining under national law and practice be reduced? Is this a concern for you?

d. Can a union's right to strike be better balanced with employers' rights to operate commercially sustainable businesses and to continue to offer work to any non-striking employees.

6.98 Remember:

a. Just because negotiations may have been difficult, and your employees may have secured gains, does not mean there is something wrong with your national system. This is not an activity where one side wins on all its claims and the other loses on all its claims.

b. However, your experience of bargaining may have identified legitimate problems with the operation of your national law and practice on collective bargaining which should be addressed.

c. This is not saying employers should criticise their national government or legal system. Far from it.

But employers are deeply involved in how collective bargaining actually operates, and have important practical input to governments on how the system should operate into the future.

d. A right for employers and unions to have such input to government is an accepted international concept. ILO Convention 144 for example requires processes of consultation with employers in regard to various ILO instruments, often touching on the operation of collective bargaining at the national level[9].

6.9 KEY LESSONS

Lesson 6.1	After you have concluded your negotiations and your agreement starts, focus on: - Implementing the agreement and meeting your agreed obligations. - Monitoring its operation. - Developing strategies for negotiating the next agreement.
Lesson 6.2	Take active steps to ensure you are complying with your agreement and applying it accurately.
Lesson 6.3	Do not pursue outstanding or additional matters after your agreement commences, but work towards addressing them in your next collective agreement.
Lesson 6.4	Work on communicating your agreement, and how it works to your employees.
Lesson 6.5	Consider training employees and their managers on what the new agreement means.
Lesson 6.6	Renegotiate your agreement based on the operation of the existing agreement and areas which need to be improved.
Lesson 6.7	Approach re-negotiation armed with the same strategic approach you took to the original negotiations.
Lesson 6.8	Ensure your agreement can effectively deal with any disputes which arise during its operation.

[9] This is an obligation on countries which have ratified the specific ILO Convention.

GLOSSARY OF TERMS

ACT/EMP

The ILO (see below) department responsible for working with and supporting the activities of employers and employers' organisations.

BARGAINING REPRESENTATIVE

This is a person or organisation who bargains on behalf of either you as an employer, or your employees. It may be an employers' organisation, employees' organisation, an employee or delegation of employees, or a private consultant or individual. Many national laws grant significant rights and protections to bargaining consultants.

CLAUSE

A paragraph or section of a collective agreement (often numbered) addressing a specific topics. e.g. the wages clause of an agreement, the leave clause of an agreement etc.

COLLECTIVE AGREEMENT

The collective agreement is the product or outcome of the collective bargaining process. It is a written agreement or statement of the terms and conditions of employment which have been agreed.

COLLECTIVE BARGAINING

Collective bargaining is a process of determining terms and conditions of employment by agreement between an employer or employers and employees.

COMMENCEMENT DATE

The agreed commencement date for the application of the agreement. The date it is agreed the agreement should apply from. This is generally expressly identified in the agreement.

ENTERPRISE AGREEMENT

A collective agreement applying to a single employer, group, or workplace. See also Multi-Employer Agreement

EXPIRY DATE

The date it is agreed the agreement should end (generally required under national law). This is generally expressly identified in the agreement. Where the expiry date is reached without the finalization of a new collective agreement, agreements often continue to apply.

FREEDOM OF ASSOCIATION

Freedom of Association refers to laws which protect the rights of you and your employees to join together and advance your shared interests in bargaining. Many national systems contain significant legal protections

ILO

The International Labour Organisation. A major body of the United Nations, in which your government participates. ILO treaty obligations require various countries to protect and support collective bargaining through their national legal system.

INDUSTRIAL ACTION

Any concerted stoppage of work, including strikes and bans in support of collective bargaining claims. See also Lockout.

IOE

The International Organisation of Employers. The global business organization representing the interests of employers, and the permanent representative organization of employers recognized by the ILO. Your national employers' organization will be a member of the IOE.

LABOUR MANAGEMENT PLAN

A planning tool to examine and identify the commercial, operational and employment priorities of your organization, which in turn informs your collective bargaining strategy. See Attachment B.

LIFE OF AN AGREEMENT / TERM OF AN AGREEMENT

The life or term of an agreement is the period between the commencement date and the expiry date contained in the agreement. Where the expiry date is reached without the finalization of a new collective agreement, agreements often continue to apply.

(see also Expiry Date, Commencement Date, and Life of the Agreement)

LOCKOUT

Employer initiated industrial action in support of employer claims during collective negotiations.

MULTI-EMPLOYER AGREEMENT

A collective agreement applying to multiple employers – often on an industry, national or regional basis. See also Enterprise Agreement.

OHS

Occupational Health and Safety

TERM OF AN AGREEMENT / LIFE OF AN AGREEMENT

The term or life of an agreement is the period between the commencement date and the expiry date contained in the agreement. Where the expiry date is reached without the finalization of a new collective agreement, agreements often continue to apply.

(see also Expiry Date, Commencement Date, and Life of the Agreement)

TERMS AND CONDITIONS OF EMPLOYMENT

The body of arrangements and entitlements for the employment of employees. Terms and conditions include: pay, holidays, time off, working time, allowances, bonuses and incentives etc. They may be set in legislation or via collective bargaining.

TRADE UNION

One term for an employees' representative organization.

LABOUR MANAGEMENT PLAN

Introduction

The establishment of a Labour Management Plan involves establishing where the organisation is presently situated in a labour relations setting, where you would like to see the enterprise in the future and the obstacles you need to overcome to achieve your objectives within the Labour Management Plan. To enter into negotiations without careful planning, clear cut objectives and thorough preparation is the equivalent to boarding a bus without asking what its destination is.

Whether it is marketing, financial or production planning, an enterprise will spend considerable time planning to ensure the desired outcomes are achieved: labour negotiations and Labour Management Planning should be no different. You require a good understanding of your own enterprise's current position, the desired enterprise objectives and the methodology of achieving those objectives. To achieve that understanding, there are some fundamental questions the enterprise must ask itself.

1. How does your organisation function?
2. Does a Labour Management Plan exist and if so how does it assist in the achievement of enterprise objectives, or is labour management managed on an ad hoc basis?
3. Is the enterprise efficient and operating at a level of excellence? If not, why not?
4. How successfully does the enterprise manage its labour resources compared to capital resources?
5. Have obstacles to the best possible utilisation of labour been identified? Where are they, are they a management issue, are they matters related to the employment contract or are they concerned with the physical layout of the plant and office facilities?
6. What does it actually cost the enterprise to employ an individual? What costs do you believe should be measured and how do these costs relate to the product price and in turn does this affect the ability of the enterprise to compete?
7. Has the enterprise undertaken any labour unit cost evaluation?

These thought provoking questions need to be considered because you must know and understand what your current practices are before you can contemplate future change.

We have identified the areas to be considered to ensure that change occurs within a well understood structure. The prerequisite to change is the establishment of a **Labour Management Plan** for the enterprise, which requires as a first step, an audit of the current labour relations arrangements. Such an audit can involve an investigation of the workforce composition, employee representation, applicable contracts, policies and statutes, workplace attitudes, workplace practices, employer representatives, industrial relations history and a review of current employment contract features.

What do we mean by these terms?

Workforce Composition

It is important to know the components of the enterprise's workforce.

Skill of Employees	What recognised skills do the employees have, what trades (if any) are they derived from e.g. apprentices, multi-skilling, management skills, and where are such skills physically located in the enterprise? What other skills have been identified outside of these activities? Are there issues of literacy and numeracy?
Unionisation	Is there a union presence in the enterprise, and if so how many unions or other organised work groups are there, and are they grouped together or spread throughout strategic parts of the plant/enterprise?
Gender	What is the composition of the workforce on a gender basis and their concentration in different areas of the workplace?
Ethnic Composition	What is the ethnic composition of the workforce?
Age of Workforce	Does the enterprise have an ageing workforce, a young workforce or a mix of the above?
Wage Payment System	Are employees rewarded on a monthly salary or hourly paid basis, or a combination inclusive of performance payments? Can the workforce be distinguished through the wage payment system, and at what hierarchical level does the distinction occur? In addition, what is the method of payment i.e. cash, direct credit, cheque or some other means.
Employment Status	How are employees designated? Are they full-time, part-time, casual or temporary and is their engagement commensurate with any applicable agreement and are the definitions consistent?

Employee Representation

It is necessary to have an understanding of the current employee representation structure.

1. What representation arrangements exist and is such representation expressed through the traditional union shop floor/site delegate?

2. If there is existing union representation, how recently, and in what form, has such representation arisen? Do you have proof of the representatives' authority to represent employees? Is such representation stable?

3. What are the existing unions at the enterprise level?

4. Do you deduct union fees from employees' pay/salary? If not, how is membership evidenced? Have any employees withdrawn their authority to have union fees deducted? Have they resigned?

5. How many employees are represented by a union, what is the largest group, and does representation cover traditional union affairs of the workplace? Are union members increasing or decreasing? If so, to what effect? Is there a dominant group with strategic power?

6. What is the structure of representation at the enterprise level? Is there a delegate system and if so is it autonomous or does it rely upon an external union? Are there any delegates' rights such as provision of an office, computer, etc.? If there is no internal union presence but an external presence, then is such presence subject to a regional or a national office of a union?

7. What rights of access to the workplace by union representatives exist on site? Has such right of access been used in the past? What are the employer's procedures for right of entry? Has right of access in the past been either constructive or destructive towards the workplace relationship?

8. What other union rights exist on site? e.g. paid stop work meetings and how often are they held?

9. **Consultative Bodies:** Are employees' representatives on any internal consultative committees such as health and safety, or quality management groups? Are these representatives, union delegates or employees and do their deliberations or outcomes have any impact on employment issues?

   How effective have the consultative bodies been and have they resolved issues or alternatively have they generated issues for management to resolve?

Applicable Agreements, Policies and Statutes

Analysis is required of enforceable rights and obligations irrespective of whether such rights and obligations are drawn from collective employment agreements, policies or statutes.

1. Do you have one or more agreements at the enterprise? How is the application of the agreement defined? i.e. does the agreement cover particular areas of the workplace arising from historical work coverage? Why? And is this desirable for the future? Are there areas of the workplace serviced by outside contractors?

2. Do individual employment contracts exist? Are they evidenced by written contracts or informal contracts, e.g. does the individual contract consist of a letter of appointment plus oral agreements or do the contracts contain a comprehensive outline of employment benefits and obligations?

3. Are the individual employment contracts similar or different from each other, and if they are different, why? Are there any inconsistencies with the collective employment contract(s)?

4. If there is more than one agreement: do they have concurrent expiry dates? Why do the current agreements have the expiry dates that they do, and do such expiry dates suit the cycle of your business? Would employment relations and associated factors be improved through a longer or shorter-term of contract?

5. If there are a variety of occupational groups, have any agreement differences been identified and are such differences conferring improved benefits to one group as opposed to another? An audit of the conditions of employment is necessary to identity differences between employment agreements and occupational groups e.g. additional leave entitlement after six years of service when an alternative occupational group may qualify for additional leave after seven years of service. The reason for such differences must be identified for the purpose of contract renewal.

6. What statutes legally impact on you and your employees whilst at work? What statutory obligations are created? Do they need to be reflected in the agreement?

   Have these statutes been addressed inside your employment contracts or policies and if so how? Have inconsistencies or other problems emerged through the application of such statutes? Have any legislative changes or judicial decisions impacted on the way you have been carrying out your business? If there has been such impact, what changes are required of the agreements or policies to capture such change?

Is your organisation itself established by legislation e.g. a local authority? What implications does this have on your employment agreements?

8. Do you have any polices that apply at the enterprise that are separate from a formal employment agreement? What policies and procedures do you require?

   For example, does the business provide vehicles or have vehicles operated by employees of the enterprise: Are there practices in regards to retirement of employees, purchasing of goods by staff, and particular leave requirements enabling the enterprise to close completely for a Christmas/holiday period?

   If the answer to any of these or other questions is yes, then a comprehensive analysis of existing policies and procedures is required. How are such policies and procedures evidenced? - that is, are they in writing and made available to all employees? Having carried out such analysis you can then determine whether such issues should be dealt with inside an employment agreement or addressed in a policy document such as house rules or an employee handbook. Inconsistencies in application may appear as claims from employees.

9. Has a need to change the policies and procedures arisen through developing case law or actual practice, and has there been an impact into the enterprise requiring amendments to existing procedures and policies? For example, are disciplinary issues addressed inside a house rule or policy document?

10. Does the organisation have comprehensive but complicated procedures for discipline and do such procedures create insurmountable procedural hurdles?

Workplace Attitudes

An attitude in itself cannot be measured but the manifestations of an attitude can i.e. behaviour and therefore attitudes existing in the workplace, correctly interpreted, will provide a strong indicator to the workplace propensity to accept change.

What has been the historical response to proposals for change? Have such initiatives been resisted? Where has such resistance occurred in the workplace? If we can understand the historical or current reasons for resisting change then we can adapt practices to ensure the management of change in fact occurs positively.

The employer needs to identify those areas which detract from a constructive environment. If there are factors from past disputes or disagreements still unsettled then the employees' focus is more likely to be concerned with the past as opposed to the present or future.

Are there outstanding grievances or disputes in the workplace?

Have these matters remained unresolved for an unacceptable period? or have solutions to grievances or disputes been provided at such a distance from the original grievance or dispute that the solution lacks acceptance? Has there been a use of third parties for resolution of such grievances or disputes?

Are working party issues or consultative committees in existence and will their deliberations pave the way for progress on other issues?

What is the workforce attitude to the division of the workplace? Is the workforce divided between sales, operations, administration, maintenance and so on and is there further division between white and blue collar workers? How are such divisions manifested and do such divisions impact on the efficiency of service, product knowledge and so on?

Attitudes to resolving disputes often reveal a "them" and "us" syndrome.

Workplace Practices

When considering workplace practices and the attitude within that term, one first identifies the customs within the enterprise. For example, is there an attitude concerning work ownership or demarcation? Such attitudes convey rigidity of purpose and insecurity.

Who does what work, when and how? Is there multi-skilling and do the systems themselves create inefficiencies rather than the individual within the system or organisational structure?

Is there a willingness to participate in a range of tasks and a willingness to be deployed and be mobile? If there are barriers can they be identified? Will contract changes overcome these barriers or is some other solution required?

Employer Representatives (Managers, Supervisors, etc)

A workplace audit is concerned with identifying the status quo and where possible identifying those barriers which create obstacles and barriers to achievement of enterprise goals and objectives. The presence of entrenched attitudes are often seen as the single major barrier to reform initiatives and generally such barriers are identified at the shop floor level.

However, what is the propensity for managers and supervisors to accept change? Do they have a perception of ownership; such as ownership of knowledge or ownership of methodology of task completion? Do your managers and supervisors initiate change or react to change? Is their supervisory style confrontational or acquiescent?

For example, if reform initiatives are being proposed by top management are such matters conveyed further down the hierarchical structure in a positive or negative manner? What is the work environment like? Is there a positive feeling of hope that changes will be beneficial or a view that changes will "not work"? Do the managers and supervisors feel they have the ability to influence outcomes? Often middle-management, when communicating enterprise direction, will blame those "up there" when conversing with the shop floor.

Is the management style consultative or autocratic and does the style adopted lead to a workplace characterised by disputes?

If you conclude that the path to achieving reliability, flexibility and innovation has failed then you need to look at the total organisational setting.

Industrial Relations History

The legislative environment within which an enterprise functions has in some instances determined the industrial relations environment at enterprise level e.g. wage fixing. Has the employer had control of their environment or has it been driven by external factors? For example, there has been a historical linkage between pay rates having application in the State and those rates applying in local government. Commonly, this has been referred to as state linkage. As a consequence, the ability to negotiate has been constrained by such linkages as the ability to trade off conditions for wages or salary movements have been diminished.

Other historical relationships can arise through an enterprise being part of a homogenous industry; for example, a port enterprise, plastics manufacturer, hospital or whatever. The industry tends to determine the environment in such situations rather than the enterprise and as a consequence there could be or have been industry responses to wage or other negotiations whereby the enterprise has been unable to affect the outcome.

When examining the enterprise industrial relations history one must also observe previous issues and the solutions to those issues as such behaviour can create expectations of the employer or for that matter, the workforce, in the future. The propensity for employees to engage in strike action or alternatively for the employer to utilise lockout shapes people's perception of their own industrial relations history.

An examination of the previous employment-related negotiations is a historical event that you may or may not wish to repeat and therefore such negotiations and the environment within which they occurred needs to be examined. The economic, industrial relations and organisational climate are factors influencing the industrial relations history.

Review of Agreements

It is appropriate to review existing agreements because specific provisions of the agreement may create organisational barriers and adversely affect the ability to deploy labour throughout the enterprise and alternatively may distort the rewards that such labour responds to.

If there is an inability to deploy labour across barriers, do such barriers arise because of the attitudes of the employees or because of contractual barriers located in collective agreements.

An enterprise is dynamic as it responds to its position in the marketplace and to the human relations element which makes up the enterprise. Is the current employment agreement capable of variation to meet any new challenges that may arise?

Is there flexibility inside it or a provision to introduce flexibility? Does the agreement enable the enterprise to respond quickly to the marketplace? Has any existing flexibility (e.g. shift work) been used during the currency of the agreement and what was the success and at whose initiatives did the pursuit of such flexibility arise?

Those aspects of a contract which are derived from statute as opposed from negotiation and agreement of the parties must likewise be reviewed. The objective of an agreement is to create enforceable obligations on the parties to it. Clauses giving rise to consideration and deliberation rather than unambiguous entitlements or obligations lead to confusion and perhaps unrealistic expectations.

Identification and Evaluation of Change

In an ideal environment an enterprise will have an enterprise plan which sets out the objectives of the enterprise. Such a plan is concerned with the future and may address such things as efficiency in the workplace, market share, the goals and objectives of the corporation or enterprise in terms of growth, profit enhancement and perhaps workplace reform whereby the performance of the organisation is dedicated to quality throughout their operations.

An appropriate enterprise plan is likely to refer to both medium and long term objectives which in turn are determined by the circumstances of the enterprise. Having completed the audit of current practice it can be determined what changes are required to meet the general plan. The audit allows you to determine what options are available to either achieve or enhance progress towards the general plan. It also allows you to evaluate those options and the methodology for implementation. Identification of options from the audit could well entail identification of barriers.

Identification of Options	Not only should all options be identified but such options should be evaluated, costed, and a timeframe for change determined. The strategic options arising from priorities determined require consideration and finally all of the options must be evaluated. It is possible that hours of work have been identified as a barrier to achieving components of the enterprise plan – for example inability to work on a Saturday may hinder the extension of operating hours. Alternatively the wage payment system may reflect service-based increases rather than payments for increased productivity. Consequently the wage payment system may need to be reviewed. Demarcation or work 'ownership' in the workplace and the culture of the organisation that gives rise to demarcation disputes could very well be observed as barriers to achieving enterprise goals. The foregoing may be identified as barriers, but tackling them head on may not be the best option. Barriers can be overcome by working around them rather than trying to deal with them directly.
Point of Change	Having identified the list of changes required to meet the enterprise's plan, priority of change must be established. The timeframe for change may emerge from competitors in the marketplace who are performing more efficiently in the delivery of their products. Alternatively the marketplace could be changing arising from a change in consumer preference. An ability to respond will ensure that as a minimum, market share will remain undisturbed. An additional timeframe may be the legislative environment and the activities of the Government at a macroeconomic level.

Strategic Options Arising From Priorities:	Having established the changes required to meet the general plan, evaluated such changes, and established priorities for change, it is now appropriate to determine what the change vehicle shall be. For example, what form of bargaining is contemplated? An audit of current practice will enable you to form not only an appreciation of priorities and the timeframe within which they can be achieved, but also determine what would be the most appropriate form of bargaining. What are the advantages and disadvantages of those bargaining options e.g. national collective agreement, regional, branch, industry, enterprise, individual etc.?

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