Notices and Demands

At the outset, review the union’s demand to reopen negotiations. Has the union given a 60 day notice prior to the termination of the old agreement? Has a 30 day notice of the existence of a labor dispute been furnished to the Federal Mediation and Conciliation Service and the State Mediation Association? If not, management may not be under a duty to bargain. Similarly, if the former contract provides for a longer notice period, such as 90 or 100 days, then management is under no duty to bargain unless the notice required by the contract is furnished.

Moreover, the notice requirements cut both ways. Because employers often find themselves in a defensive posture in bargaining with the union, employers seem to forget that bargaining is a two-way street requiring both an offense and a defense. Far in advance of the reopening of the contract, management should review the contract for changes or additions which the employers wish to make in the contract and serve on the unions a notice of modification or termination of the collective bargaining agreement. Certainly, the employers should not be trapped into a notice of modification of the agreement served by the union, which only includes a wage reopener and which might foreclose bargaining on those subjects which the employers might wish to change. Many employers once faced with a notice of modification by the union also file a notice of termination of the entire agreement so that the entire contract is open for negotiation. A positive bargaining position by the employers is extremely helpful in aiding the employers’ defensive bargaining position in repelling the union’s demand. If the employers propose changes in the agreement for their benefit, then the proposed offensive changes may also be used as bargaining trade-offs for the union’s proposals. Therefore, the employers will have benefited by a positive bargaining stance even though the proposed changes by the employers may not ultimately be incorporated in the agreement.

If management wishes to open negotiations for its benefit, a sixty (60) day written notice (or longer, if required by the existing contract) should be given by management. However, if the management slips up and does not give the notice of termination, the management may be able to rely on the union’s notice of termination in order to leave the entire contract open for bargaining since the notification by either party terminates the contract. Also, the Federal Mediation and Conciliation Service and the state mediation agencies must be notified within thirty (30) days of the sixty day notice of the existence of a labor dispute, and in no event should either party resort to strikes or lockouts until after sixty days notice to the opposite party, the expiration date of the contract, and the passage of 30 days after notice to the mediation services. Even after these notices, there can be no strike or lockout if a no strike-no lockout agreement is in effect in a contract which prohibits such acts.

Once management is satisfied that the appropriate notices have been given, they should immediately review the union’s demand and respond to the union. Management should furnish the union with its demands within a reasonable time. Once the union’s demand list is provided, the demands should be classified into mandatory and permissive subjects for bargaining. In preparation, those mandatory subjects disagreeable to management should be listed and management’s counterproposals also listed in writing.

Some union and management negotiation committees have established a procedure which limits the subjects of bargaining to the initial list of demands exchanged by the parties in order to avoid last minute demands complicating the subsequent bargaining.