There is absolutely no substitute for preparation in collective bargaining.

Unions recognize this and are literally armed to the teeth with data and factual information with which to support their positions. The union negotiator is normally seasoned in the art of negotiation.

The employers must methodically prepare for the bargaining encounter. The usual arrangement for bargaining in the construction industry is by multi-employer management trade associations represented by a management bargaining committee.

The bargaining of a collective bargaining agreement is one of the most important functions of a management trade association and its bargaining usually affects all of its members. Therefore, it is imperative that the management trade association thoroughly prepare and bargain with the union.

Renewal Contracts

Once the first bargaining agreement is entered into, renewal agreements follow. It is customary in agreements to give either party the right to reopen the negotiations in order to change various aspects of the existing agreement.

Regardless of whether the agreement contains a no strike clause, the National Labor Relations Act establishes a “cooling off” period and requires four mandatory steps before the parties to a renewal collective bargaining agreement may resort to strikes or lockouts.

First, the party desiring to initiate a change must give notice to the opposing party sixty (60) days prior to the expiration date of the contract of a proposed termination or modification of the agreement.

Second, the party must offer to meet and bargain with the opposing party during the 60 days notice period at reasonable times and places.

Third, the party desiring to initiate a change must notify the Federal Mediation and Conciliation Service and any state mediation service of the existence of a labor dispute within thirty (30) days after the initial notice is given to the opposing party.

Finally, neither party may strike or lock out for a period of 60 days after the initial notice is given to the opposing party or until the termination date of the contract, whichever is later.

Relatedly, the N.L.R.B. has held that the parties to the agreement may not strike or lock out until 30 days subsequent to the notice to Federal Mediation and Conciliation Service and the state mediation agency, and this is true even if more than 60 days have elapsed since the initial notice to the opposing parties.

It is suggested that any time a modification or termination is in the offing by the union, the employer should also give the described notices.

Failure to give such notices could result in unfair labor practice charges. In the case of a strike during the “cooling off” period, the striking employees could lose their status as employees of the employer, and can be discharged.

The union might also be liable to the employer for damages caused by the illegal strike. In the case of a lockout during the “cooling off” period or if the notices were not timely given, the employer could be forced to make back payments of wages to employees for the duration of the illegal lockout.

If a contract provides “that absent notice to the contrary the agreement is to remain in effect from year to year,” there may not arise a duty to bargain unless the 60 day notice to terminate or modify the contract is given by one of the parties.