

Negotiating and bargaining

Collective bargaining requires the exercise of negotiating skills. Bargaining skills are also necessary during the process of negotiating collective substantive agreements on terms and conditions of employment. Negotiating skills are required in many other aspects of HRM, including, for example, agreeing individual contracts of employment and outsourcing contracts, but this chapter concentrates on those used in collective bargaining. This chapter covers the nature and process of negotiation and bargaining, bargaining conventions, the stages of negotiation and, in summary, the skills required.

THE NATURE OF NEGOTIATING AND BARGAINING

To negotiate is to converse with a view to finding terms of agreement. To bargain is to go through the steps required to come to terms on a transaction. Collective bargaining is essentially a process of negotiation – of conferring and, it is hoped, reaching agreement without resorting to force (although hard words may be exchanged on the way).

Within this negotiating process bargaining takes place. This means coming to terms on a settlement, which in a pay negotiation may be somewhere between the union's opening demand of, say, 4 per cent increase and the employer's first response of, say, 2 per cent. The point at which a settlement is achieved between these figures will

depend on the relative bargaining power of the two parties, the realism of the offer or response, the level of bargaining skills the parties can deploy and the sheer determination of either party to press its point or not to concede (this may be a function of bargaining power).

NEGOTIATING

Negotiating take place when two parties meet to reach an agreement. This can be a convergent process (in commercial terms this is sometimes referred to as a 'willing buyer – willing seller' situation) where both parties are equally keen to reach a win–win agreement. Clearly, if this can be achieved rather than a win–lose outcome, the future relationships between the parties are more likely to be harmonious. Certainly, the primary aim of any negotiator should be to proceed on this basis.

But some negotiations can be described as 'divergent' in which one or both of the parties aim to win as much as they can from the other while giving away as little as possible. In these circumstances, negotiating can be a war game. It is a battle in the sense that the bargainers are pitting their wits against each other while also bringing in the heavy artillery in the shape of sanctions or threatened sanctions. As with other battles, the negotiation process can produce a pyrrhic victory in which both sides, including the apparent winner, retire to mourn their losses and lick their wounds. It is a game in the sense that both sides are trying to win, but there are various conventions or rules that the parties tacitly adopt or recognize, although they may break them in the heat of the battle.

Negotiations can normally be broken down into four stages:

1. preparing for negotiation: setting objectives, defining strategy and assembling data;
2. opening;
3. bargaining;
4. closing.

Before analysing these stages in detail it may be helpful to consider the process of bargaining and list the typical conventions that operate when bargaining takes place.

The process of bargaining

The process of bargaining consists of three distinct, though related, functions. First, bargainers state their bargaining position to their opposite numbers. Second, they probe weaknesses in the bargaining position of their opposite numbers and try to

convince them that they must move, by stages if this is inevitable, from their present position to a position closer to what the bargainer wants. Third, they adjust or confirm their original estimate of their own bargaining position in the light of information gleaned and reactions from their opposite numbers, in order that, if the time comes to put an estimate of bargaining position to the test, the ground chosen will be as favourable as possible.

The essence of the bargaining process was described by Peters (1968):

In skilful hands the bargaining position performs a double function. It conceals and it reveals. The bargaining position is used to indicate – to unfold gradually, step by step – the maximum expectation of the negotiator, while at the same time concealing, for as long as necessary, his minimum expectation. By indirect means, such as the manner and timing of the changes in your bargaining position, you, as a negotiator, try to convince the other side that your maximum expectation is really your minimum breaking-off point. Since you have taken an appropriate bargaining position at the start of negotiations, each change in your position should give ever-clearer indications of your maximum expectation. Also, each change should be designed to encourage or pressure the other side to reciprocate with as much information as you give them.

Bargaining conventions

There are certain conventions in collective bargaining which most experienced and responsible negotiators understand and accept, although they are never stated and, indeed, may be broken in the heat of the moment, or by a tyro in the bargaining game. These conventions help to create an atmosphere of trust and understanding which is essential to the maintenance of the type of stable bargaining relationship that benefits both sides. Some of the most generally accepted conventions are listed below:

- Whatever happens during the bargaining, both parties are using the bargaining process in the hope of coming to a settlement.
- While it is preferable to conduct negotiations in a civilized and friendly manner, attacks, hard words, threats, and (controlled) losses of temper are sometimes used by negotiators to underline determination to get their way and to shake their opponent's confidence and self-possession – but these should be treated by both sides as legitimate tactics and should not be allowed to shake the basic belief in each other's integrity or desire to settle without taking drastic action.
- Off-the-record discussions are mutually beneficial as a means of probing attitudes and intentions and smoothing the way to a settlement, but they should not be referred to specifically in formal bargaining sessions unless both sides agree in advance.

- Each side should normally be prepared to move from its original position.
- It is normal, although not inevitable, for the negotiation to proceed by alternate offers and counter-offers from each side which lead steadily towards a settlement.
- Concessions, once made, cannot be withdrawn.
- Firm offers must not be withdrawn, although it is legitimate to make and withdraw conditional offers.
- Third parties should not be brought in until both parties are agreed that no further progress would be made without them.
- The final agreement should mean exactly what it says – there should be no trickery, and the terms agreed should be implemented without amendment.
- So far as possible, the final settlement should be framed in such a way as to reduce the extent to which the other party obviously loses face or credibility.

Preparing for negotiation

Negotiations take place in an atmosphere of uncertainty. Neither side knows how strong the other side's bargaining position is or what it really wants and will be prepared to accept. They do not know how much the other party will be prepared to concede or the strength of its convictions.

In a typical pay negotiation unions or representative bodies making the claim will define three things:

- the target they would like to achieve;
- the minimum they will accept;
- the opening claim which they believe will be most likely to help achieve the target.

Employers define three related things:

- the target settlement they would like to achieve;
- the maximum they would be prepared to concede;
- the opening offer they will make which would provide them with sufficient room to manoeuvre in reaching their target.

The difference between the union's claim and the employer's offer is the negotiating range. If your maximum exceeds their minimum, this will indicate the settlement range. This is illustrated in Figure 52.1. In this example the chance of settlement without too much trouble is fairly high. It is when your maximum is less than their minimum, as in Figure 52.2, that the trouble starts. Over a period of time a negotiation where a settlement range exists proceeds in the way demonstrated in Figure 52.3.

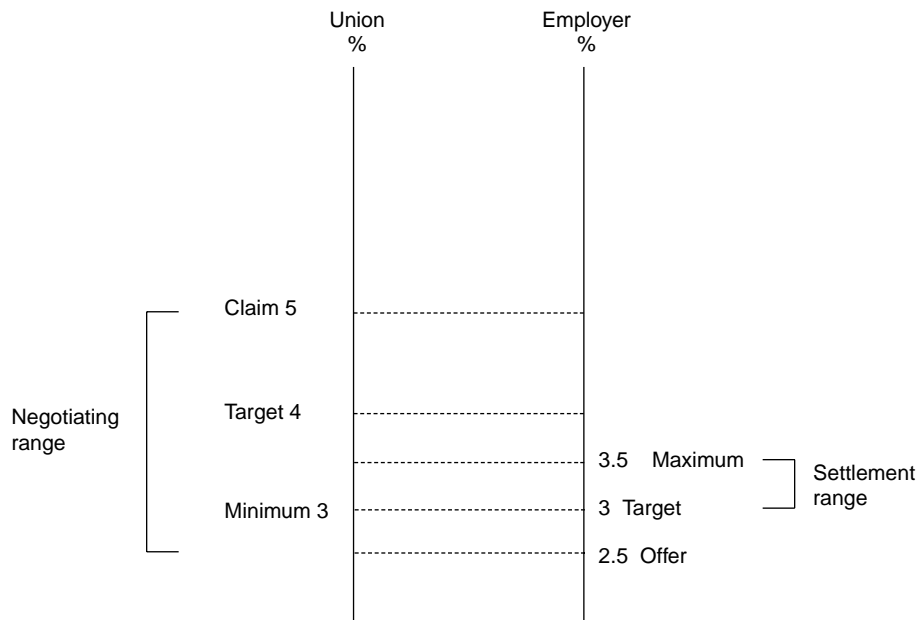


Figure 52.1 Negotiating range within a settlement range

Objectives

The objectives in the form of a target settlement and initial and minimum/maximum offers and agreements will be conditioned by:

- the perceptions of both parties about the relative strengths of their cases;
- the relative power of the two parties;
- the amount of room for negotiation the parties want to allow;
- the employer's ability to pay;
- the going rate elsewhere;
- the rate of inflation – although employers are reluctant to concede that it is their job to protect their employees from inflation, the cost of living is often one of the chief arguments advanced by a union for an increase.

Strategy

Negotiating strategy should clearly be designed to achieve the target settlement, with the maximum the negotiator is prepared to concede being the fall-back position. Two decisions are required:

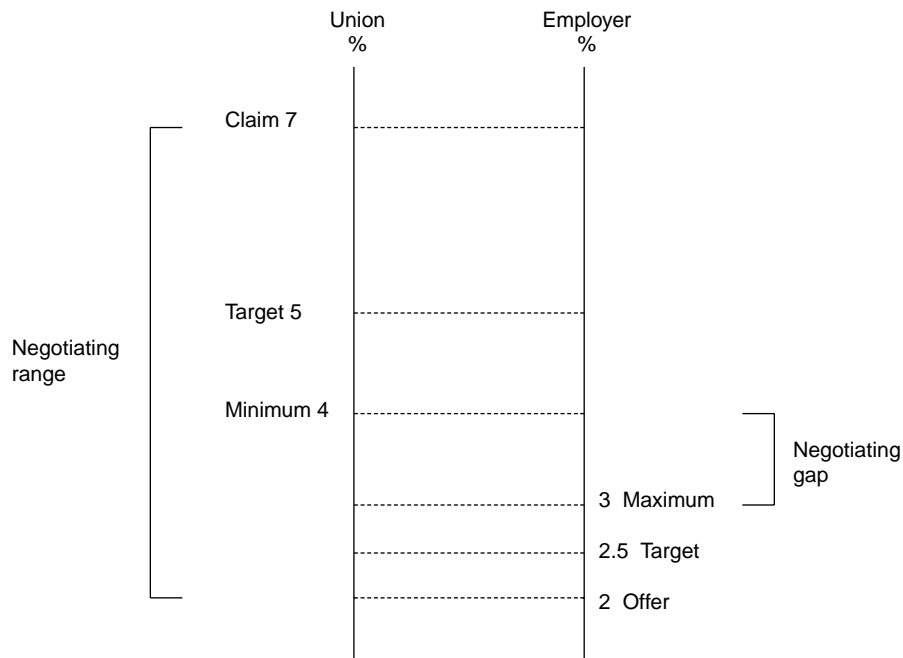


Figure 52.2 Negotiating range with a negotiating gap

1. The stages to follow in moving from, in the union's case, the opening claim to the final agreement, and in the employer's case from the initial to the closing offer. This is dependent on the amount of room for negotiating that has been allowed.
2. The negotiating package the employer wants to use in reply to whatever package the union has put forward. The employer's aim should be to provide scope for trading concessions during the course of negotiations. From their viewpoint, there is also much to be said for having in reserve various conditions which they can ask the unions to accept in return for any concessions they may be prepared to make. Employers might, for example, ask for an extended period before the next settlement in return for an increase in their offer.

Preparation steps

Negotiators must prepare carefully for negotiations so that they do not, in Aneurin Bevan's phrase, 'go naked to the conference table'. The following steps should be taken:

- List the arguments to be used in supporting your case.

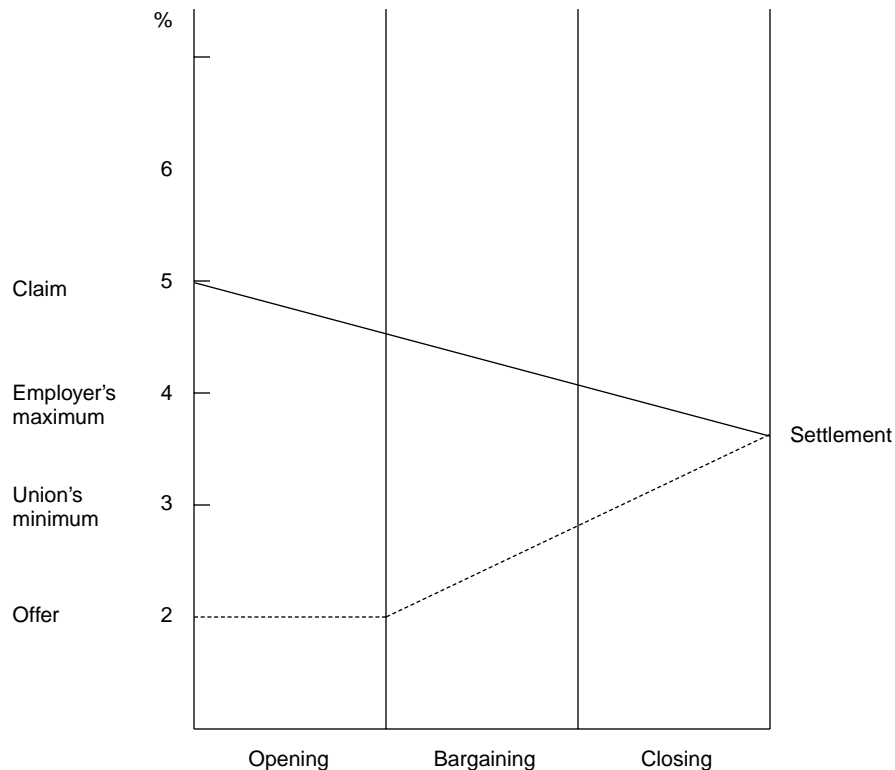


Figure 52.3 Stages of a negotiation

- List the likely arguments or counter-arguments that the other party is likely to use.
- List the counter-arguments to the arguments of the other side.
- Obtain the data you need to support your case.
- Select the negotiating team – this should never have fewer than two members, and for major negotiations should have three or more: one to take the lead and do most of the talking, one to take notes and feed the negotiator with any supporting information required, and the others to observe opposite numbers and play a specific part in negotiations in accordance with their brief.
- Brief the members of the negotiating team on their roles and the negotiating strategy and tactics that are to be adopted – if appropriate, prepared statements or arguments should be issued at this stage to be used as required by the strategic plan.

- Rehearse the members of the team in their roles; they can be asked to repeat their points to other members and deal with responses from them; or someone can act as devil's advocate and force the leader or other members of the team to handle awkward points or negotiating ploys.

At this stage it may be possible to meet one or more members of the other side informally to sound out their position, while they sound out yours. This 'early warning' system can be used to condition either side to modify their likely initial demands or responses by convincing them either of the strength of your own position or their determination to persist with the claim or to resist.

Opening

Opening tactics can be as follows:

- Open realistically and move moderately.
- Challenge the other side's position as it stands; do not destroy their ability to move.
- Explore attitudes, ask questions, observe behaviour and, above all, listen in order to assess the other side's strengths and weaknesses, their tactics and the extent to which they may be bluffing.
- Make no concessions of any kind at this stage.
- Be non-committal about proposals and explanations (do not talk too much).

Bargaining

After the opening moves, the main bargaining phase takes place in which the gap is narrowed between the initial positions and the parties attempt to persuade each other that their case is strong enough to force the other side to close at a less advantageous point than they had planned. The following tactics can be employed:

- Always make conditional proposals: 'If you will do this, then I will consider doing that' – the words to remember are: if... then...
- Never make one-sided concessions: always trade off against a concession from the other party: 'If I concede x, then I expect you to concede y'.
- Negotiate on the whole package: negotiations should not allow the other side to pick off item by item.
- Keep the issues open to extract the maximum benefit from potential trade-offs.

Closing

When and how negotiators should close is a matter of judgement, and depends on an assessment of the strength of the other side's case and their determination to see it through. There are various closing techniques:

- making a concession from the package, preferably a minor one which is traded off against an agreement to settle – the concession can be offered more positively than in the bargaining stage: 'If you will agree to settle at x, then I will concede y';
- doing a deal: splitting the difference, or bringing in something new, such as extending the settlement time scale, agreeing to back-payments, phasing increases, or making a joint declaration of intent to do something in the future (eg introducing a productivity plan);
- summarizing what has happened to date, emphasizing the concessions that have been made and the extent to which movement has been made and stating that the final position has been reached;
- applying pressure through a threat of the dire consequences which will follow if a 'final' claim is not agreed or a 'final' offer is not accepted;
- giving the other side a choice between two courses of action.

Employers should not make a final offer unless they mean it. If it is not really their final offer and the union calls their bluff they may have to make further concessions and their credibility will be undermined. Each party will, of course, attempt to force the other side into revealing the extent to which they have reached their final position. But negotiators should not allow themselves to be pressurized. If negotiators want to avoid committing themselves and thus devaluing the word 'final', they should state as positively as they can that this is as far as they are prepared to go. But bargaining conventions accept that further moves may still be made on a *quid pro quo* basis from this 'final position'.

NEGOTIATING AND BARGAINING SKILLS

Negotiating skills

The main negotiating skills are:

- *analytical ability* – the capacity to assess the key factors which will affect the negotiating stance and tactics of both sides, and to use this assessment to ensure that all the facts and argument that can be used to support the negotiator's case or prejudice the other party's case are marshalled;

- *empathy* – the ability to put oneself in the other party's shoes to understand not only what they are hoping to achieve but also why they have these expectations and the extent to which they are determined to fulfil them;
- *planning ability* – to develop and implement negotiating strategies and tactics but to be prepared to be flexible about the tactics in the light of developments during negotiations;
- *interactive skills* – the capacity to relate well with other people, to be persuasive without being domineering, to make a point without using it as an opportunity to make the other side lose face, to show respect to the other side's arguments and points if they are valid while questioning them if they are dubious, to respond quickly to changing moods and reactions so that the opportunity can be seized to make progress towards consensus (and the achievement of consensus is the ultimate aim);
- *communicating skills* – the ability to convey information and arguments clearly, positively and logically while also being prepared to listen to the other side and to respond appropriately.

Bargaining skills

The basic bargaining skills are:

- the ability to sense the extent to which the other side wants or indeed expects to achieve its claims or sustain its offer;
- the reciprocal ability not to give real wants away (bargaining, as was mentioned earlier, is about concealing as well as revealing) – in the market place it is always easier for sellers to drive a hard bargain with buyers who have revealed somehow that they covet the article;
- flexible realism – the capacity to make realistic moves during the bargaining process to reduce the claim or increase the offer which will demonstrate that the bargainer is seeking a reasonable settlement and is prepared to respond appropriately to movements made by the other side;
- respect – the ability to demonstrate to the other party that the negotiator respects their views and takes them seriously even if he or she disagrees with them;
- sensitivity – the ability to sense changes in moods and directions or weaknesses in arguments and respond quickly to press home a point.

Acquiring the skills

Negotiating and bargaining skills are developed through experience. To a certain extent they can be taught in the classroom through role plays and simulations but

these can never replace the reality of sitting down with the other side and discussing claims and counter-offers, making points, handling confrontation and working out and applying the tactics required to reach a satisfactory settlement. It is useful to be aware of the need to apply the skills listed above but they only become meaningful during actual negotiation.

The best way to learn is by being a subsidiary member of a team with the scope to observe and comment on the tactics, approaches and skills used by both sides and, increasingly, to make planned contributions. A good team leader will nurse the tyro negotiator and will review the nature of each negotiating session to assess what went right or wrong, and why. This is how the writer learnt his negotiating skills and it served him in good stead when faced with the task of leading negotiating teams at plant, local and national level in the stimulating, exciting but sometimes frustrating process of negotiation.