

Article Information

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Top 12 Enterprise Bargaining Tips

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In 1975, the United States Postal Service issued a new stamp evoking the sense of purpose which then underlay enterprise bargaining. Two overlapping circles, one red, one blue, identified a purple aspect of overlap as if that sweet spot is available in every collective bargaining negotiation. At the time, the then-US President Gerald Ford commented "Our people cannot live on islands of self-interest. We must build bridges ... One of the longest and sturdiest bridges in this land is collective bargaining ...".

Partner, Tim Lange, discusses his top enterprise bargaining tips.

The Australian industrial relations system has trodden its own path to collective bargaining. While industry-level conditions continue to be the default demand of unions, there is room for workplace-level accord to arise out of industry-level conflict. To capture that potential, a significant effort to engage and deal with the enterprise workforce must be employed.

How can an enterprise successfully negotiate a true enterprise-level bargain? The principal challenge can come from the habit of many unions and employee opinion-leaders in the past to doggedly insist that conditions appropriate in the past must be maintained in the same form and only added to, or else the sky will fall in. Enterprise bargaining negotiators, including the workforce, must be drawn away from "... islands of self-interest".

Australia's *Fair Work Act 2009* includes a level of firepower (the Good Faith Bargaining rules) to bring the bargaining back to the enterprise level, but is only helpful where the enterprise prepares to keep its bargaining partners to those rules - no regulator is obliged to enforce those rules for the benefit of either side. A party that wants to demand good bargaining behaviour will need to make the running on this.

Our top dozen tips for pursuing successful enterprise bargaining with unions and individual workforce members are set out below.

First, bargaining teams should have a reliable and complete bargaining record of negotiations (that is, evidence) - that enables legal options to be assessed and applied. Without it, it can be difficult to keep unions to the rules. Developing the evidence in a hurry to later support a legal option is expensive and leads to lower quality results.

Second, bargaining teams need access to accurate and quick costing mechanisms so that expectations can be tempered early on ambitious union claims.

Third, bargaining teams need to have access to a reality check mechanism outside the team, and be subject to taking final approval on any claims through that mechanism, which is aligned to the business strategy. There is a danger in teams getting drawn into a negotiation and a belief that a deal has to be done at all costs, losing a wider perspective on what value is actually being bought by agreement to the proposals on the table. Always consider whether a deal that fixes costs at a certain level can be sustained.

Fourth, the business needs a realistic expectation of what legal options can deliver in any one bargaining process - the industrial relations system in Australia is designed to generally let damaging industrial action occur, within limits. An unrealistic view of what legal options deliver in preventing industrial action can mean practical options and decision points that could reduce industrial action and bring an earlier agreement are overlooked.

Fifth, the central underlying perspective should be that it is a majority of voting employees who make the agreement, not the union. While employees may believe a union will get them the best outcome and may believe the union has their long term interests as its primary motivation, the union should not be left as the sole conduit of information to employees. Practically, the union will often be able to deliver a deal and needs to be engaged. However, direct engagement with the employees has to be done in parallel, and long term, to avoid the union maintaining a monopoly on employee attitudes. As part of this process, regard needs to be had to emerging and established employee opinion leaders, who are not always union delegates.

Sixth, bargaining needs to be done with an eye to what not just the current round delivers but what the next round and the one after that will deliver. Employees and unions need to be socialised to thinking about future issues and business drivers setting the bargaining parameters, beyond the current round of bargaining.

Seventh, scope should be created in agreements for management of difficult issues and people during the agreement term, so that entrenched workforce problems are tackled proactively at times when damaging protected industrial action is not available. This also means dispute resolution and “status quo” during dispute clauses need to be a central technical focus – these can have a serious impact on the capacity to manage the workforce at any time.

Eighth, the strategy to approach any bargaining exercise needs to be developed well before it starts. ‘Sacred cow’ conditions and entitlements need to be challenged, and strategic options or challenges assessed, such as whether scope or usual length of agreements should change, whether IR risk should be imported from or exported to subcontractors and the cost of doing so, whether bargaining would occur at or around union election times etc..

Ninth, while the value legal options can deliver needs to be kept in perspective, use of Good Faith Bargaining rules to challenge any union campaigns involving misinformation need to be kept on the table. An employer should want unions to know that they will not have it all their own way if they get overly creative with communications that distort the bargaining process or unfairly portray the employer position to employees.

Tenth, shaping a deal with regard to the demographics of the workforce rather than to rolling over the terms of the last enterprise bargain has to be considered. For example, a younger workforce with higher personal debt may be tempted by a bonus mechanism that is not attractive to an older group with longer service with the company – consider where a majority of votes can be obtained.

Eleventh, consistency in what is agreed across multiple bargaining rounds and business groups is critical. It avoids cherry picking exercises by unions. It lets the business operate in bargaining on the same “best practice” basis as in other areas. Knowing when consistency is needed and when to be flexible is a key coordination exercise that is a critical part of the industrial relations advisory function.

Last, hearts and minds of employees are the issue in achieving a good result. They can only come around to the business imperatives as a legitimate bargaining parameter if they are engaged with the business. Work on gaining genuine engagement of employees in the business imperatives will not be wasted in the long run. By contrast, allowing the export of sole responsibility for managing workforce participation to unions will only result in a union stranglehold on employee attitudes and votes.