

## **Elements and Indicators of “Bad Faith” Bargaining**

The National Labor Relations Board reviews the “**totality of conduct**” of the parties at the bargaining table when investigating a charge of “bad faith” bargaining. In the NLRB’s determination, an isolated instance, or even several instances, does not necessarily constitute “bad faith”.

The Board looks at a whole series of incidents over time, as indicative of true bad faith. The challenge is to prove through the history of bargaining that the intent of the employer was not to reach an agreement with the union. All that the National Labor Relations Act mandates is for the parties to come to the bargaining table with the intent of bargaining in good faith to reach a collective bargaining agreement. It does not mandate actually reaching an agreement, but does require engaging in the process.

Intent is always hard to prove. But the following is a list of elements and indicators of bad faith conduct.

- **Cancellation of bargaining sessions**
- **Delays/Extended periods of unavailability for bargaining**
- **Imposing conditions on bargaining**
- **Insufficient authority to bargain**
- **Refusal to provide information**
- **Refusal to meet and unreasonable meeting sites**
- **Boulwarism**
- **Surface bargaining**
- **By-passing the union/direct dealing**
- **Regressive bargaining**
- **Unilateral changes**
- **Withdrawal of accepted offers**
- **Refusal to sign a written agreement**

Some of these items may constitute an unfair labor practice on its own - such as the refusal to provide information. But taken together, they become compelling in determining bad faith.