

# How to Break a Deadlock at the Table

There are a number of tactics and techniques that can be used to get negotiations moving towards a settlement when things get bogged down. However, there are also a number of things that should not be said, *either at the table or in a public forum or press*. Such statements that should be avoided are the use of phrases or terms as: the parties are deadlocked; we are at a log-jam; or, gridlock, stalemate, standoff, bottleneck – all of which could be interpreted that the parties are at a legitimate impasse. This should be avoided (private sector) or toned down so that management cannot claim that the Union itself is indicating that the process has exhausted itself. The following ideas are in addition to or in place of (although not mutually exclusive) to formal mediation.

## Some helpful techniques:

- **Use more pressure tactics in conjunction with a contract campaign.** The goal is not just to communicate to management what the Union needs for a settlement, but the use of ever escalating pressure on management *should force them to want to settle*. Make them so uncomfortable that the best option for them would be to reach agreement.
- **Trade one item for another.** Given that the proposals have been prioritized throughout the process, it may be appropriate to let go of a particular item without abandoning the major goal(s) of the Union in this set of negotiations. “We are willing to move on item X if management is willing to agree to our proposal Y.” But be aware that in doing so the Union is signaling that “item x” is not a top priority issue.
- **Group together several items in a package.** Packaging proposals is a good tactic to indicate areas of compromise on both party’s proposals. It does not lock either side into these positions, but gives a clear indication of what is important for a settlement. For such a package to be considered as serious, it should be a *balanced* one that incorporates items from both party’s remaining proposals.
- **Make minor changes in order to save face for one side or the other.** At times, some relatively minor wording changes allows one party to accept or change its position on an item that it would find hard to admit up-front to such a change. “Well, with that change, we think that we can accept it.”
- **Suggest resolving an issue with a side-letter rather than placing it in the body of the contract itself.** Often side-letters are used as an addition to a contract and should always be printed as a part of the contract. They have the same binding effect as if in the body of the contract, and can be grieved and arbitrated as any provision in the contract – unless specifically stated otherwise. The duration of a side-letter (renewal or sunset provisions) should be clearly understood by the parties when agreed to. Side-letters are often used to indicate that a provision is either a pilot program or experimental, or applies to a specific employee or group of employees, or is an unusual item that breaks new ground. Psychologically it allows either party to more easily accept something as a part of the Agreement as a side-letter.
- **Bring in a new face to the table.** A good tactic is to introduce a new face to the bargaining table. That person could be: a higher level Union officer; the president of the central labor council; a community activist; an officer from another in-house Union; a member of the clergy; an expert on the particular issue in dispute; or anyone that might send a clear message that many more people are interested and impacted by this set of negotiations. The chief negotiator should be careful not to make it appear that real bargaining does not start until the Union president gets involved, since that would

undercut the committee as well as the Union's own chief negotiator. So this tactic must be weighed and examined for how it fits into the overall strategic plan, and for what is expected to be accomplished by using it.

➤ **Open negotiations.** A very effective way to pressure the employer is to have open negotiations – that is, to invite and encourage anyone (including bargaining unit members or even non-bargaining unit members) to attend and observe negotiations. There is nothing that most management teams loathe more than to have a room full of bargaining unit employees watching them. Not only does it convey a sign of unity and support, but it also provides the rank and file the opportunity to view for themselves how the process works and at the same time put significant pressure onto management. The experience is educational and empowering as it demystifies contract negotiations. Care must be taken that the Union never refers to those in attendance as “observers” since management might then have grounds to object. Nor should the Union ask in advance if they can have open negotiations – since the Union already has that right and can only give it away by asking and basically inviting management to say “no”. It is best for the Union to simply explain, if questioned, that those in attendance are a part of the Union's bargaining committee. The Union has the undisputed right to formulate its negotiating committee as it wishes. Then management has no option to refuse to negotiate with all present. If they do object and refuse to meet, the Union could then file an unfair labor practice charge.

➤ **Step up the pace of negotiations.** Increase the frequency and length of bargaining sessions. However, marathon sessions (long sessions that often involve bargaining throughout the night) are not always the wisest way to proceed since fatigue and confusion impacts judgment and a good settlement. However, meeting every day or every other day with extended hours may be the better way to proceed.

➤ **Move the site of bargaining.** Another strong message is to propose moving the site where negotiations take place. Moving the site communicates that a new level of seriousness is involved in the process and it provides both parties a sense of a fresh start. Some suggested sites might include: a hotel (cost is involved); a neutral site (library, church hall, or VFW) if the parties have been meeting either at the Union's hall or management's offices; the Federal Mediation and Conciliation Services offices (usually located in-town but parking is often an issue), or any other place that can be identified and mutually agreed to.

➤ **Change the tone.** Changing the tone or mood at the table from friendly to business-like and serious creates a totally different bargaining climate.

➤ **Remove all low priority issues.** Clear the decks and focus on what is absolutely necessary for a good settlement. Lower priority items should have been settled or withdrawn by the later stages of bargaining.

➤ **Go “Off the Record”.** There is nothing to lose in trying an “off the record” discussion between the parties (with all committee members in the room) to try and unearth the reason for the lack of progress. Such talks change the atmosphere and relaxes everyone. No record or notes are taken and these talks cannot be used in litigation, but they help to reveal to each other what the real impediments to an agreement really are.