

Post-Bargaining Document

Here's the classic case: The language in the contract (or different portions of the contract) can be read to support both labor's *and* management's position. The arbitrator wants to decide the case based on the precise words of the contract. But he or she cannot, and turns to the parties and says, what other evidence do you have to support your position?

The management advocate calls in the company's chief negotiator who says, Here are my notes. The union negotiator says, Here are my notes.

This still does not resolve the dispute; it only reinforces the position of the parties.

One of the advocates, though, has another piece of evidence. Their side prepared a report which went to the rank and file or to upper management.

This post-bargaining document can be persuasive, as the following case illustrates.

The case involved a tire manufacturer that had multi-plant locations. One of the plants had a more favorable rate than all of the other plants for contributions to the supplemental unemployment benefit fund.

The company wanted to harmonize all of the plants, understandably at the lower rate. Both sides had highly-skilled negotiators. When the management advocate called the chief negotiator for the company, he gave persuasive evidence about how critical this negotiation goal was. And of course, that he read the language to mean that management achieved its goal.

The union, too, brought in its big guns. Their lead negotiator testified that, "Yes, it was a big deal to you and us. And you - the company - did not get it."

But the union had the trump card. Their lead negotiator went one step further and testified that when negotiations were concluded, but before the ratification vote was held, he prepared a document entitled "Summary of the Contract.

That document summarized the entire contract for the whole company and was circulated to union members. The union's lead negotiator then testified that, he wrote into the summary the specific exception that applied to this one plant's contributions to the supplemental unemployment benefit fund. In other words, his document clearly states that the contribution is preserved.

Every member of the union team testifies that the union would never have inserted this into the summary and deliberately duped its membership in order to get the ratification vote. Such a deception would have come back to haunt them.

The arbitrator now had a piece of evidence which could be the basis for his decision. He found for the union.

In summary, if you put the evidence in this case into a hierarchy, it would be ranked in this order:

1. notes taken contemporaneously by negotiators at the bargaining table
2. testimony from people at the bargaining table
3. post-bargaining summary

This case was decided for the union because items 1 and 2 were not conclusive for either side, and item 3 was.

Finally, it should be noted that hearsay objections are common in these situations. The only way to overcome the objection is to ensure that the person who prepared the summary is on the witness stand and subject to cross-examination by the other side.

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