

CHAPTER 1

Preparing the Organisation's Negotiation Team

It is probably a little obvious to say that the organisation's negotiation team can make or break the process, however, it is also fair to say that the importance of the team composition and preparation is often underestimated by organisations.

Staff employment costs are frequently 30% or more of the regular running cost of an organisation and an enterprise agreement may determine a significant proportion of that cost. Yet it is not unusual to see relatively junior HR staff, and/or staff with little or no industrial relations experience, made responsible for negotiating agreements that have significant cultural, operational and financial impacts.

In this chapter, we look at the steps an organisation can take to select, prepare and coordinate the negotiation team in order to maximise success and minimise risk.

Selecting the Organisation's Team

It is always useful if you have an indication of the number of employee representatives expected at the negotiation meeting. Typically the larger the organisation and scope of the agreement (e.g. covering a number of different locations, work classifications

etc.), the greater the number of representatives you can expect. While you do not want to be hopelessly outnumbered, nor do you need to have a cast of thousands representing the organisation. However, you do need to ensure that you have both operational understanding of the relevant (impacted) work areas and sufficient understanding of industrial relations processes and requirements. So instead of thinking too much about team numbers, think carefully about the experience, knowledge and skill set that you require within that team.

Typically a team should be able to cover:

- Operational knowledge of the relevant work function/ area(s).
- Operational knowledge of each location covered by the agreement (if multiple).
- Historical knowledge of previous agreement negotiations (not always easy to find, but can be very useful in meetings).
- Technical knowledge of the industrial relations legislation and regulation(s) and agreement requirements.
- Someone with the ability to appropriately draft clauses or make amendments to existing clauses.
- Financial/cost analysis and modelling skills.
- Negotiation experience, preferably with enterprise agreements.
- Someone with the authority to make decisions.

- Someone to take notes and minutes (sometimes considered a luxury, but invaluable for complex discussions—it is very hard to negotiate, listen properly, read the room and take notes at the same time).

Preparing the Organisation’s Negotiating Team

With the above activities in mind, you should now assign these activities/roles to the team members to ensure you have all requirements covered. Most importantly a team leader needs to be identified, as this person (generally the most senior/experienced in the team) will act as the lead negotiator and spokesperson in meetings and in other key dealings with employee representatives.

It is most important that the organisation treats the negotiation as a priority. Ensure that managers provide the team members with time not only to attend the negotiation meetings but to actively participate in preparation and other associated team activities (meeting debriefs, strategy discussions, research etc.).

Negotiation training is also advised for those who have little or no experience in the area. Specific enterprise agreement negotiation training is something you do need to seek out, or find a provider who can tailor a more general course to the specifics you need. Usually, your local chamber of commerce and industry or industry association will be able to provide you some direction on this.

If at all possible, it is also a very good idea to provide all team members with some information and understanding of the

enterprise agreement process and legal requirements (e.g. are there compulsory clauses, what is 'good faith bargaining?'). While negotiation training can help to provide structure and process, this training and information should provide context and highlight some of the specific IR, political and economic influences of an enterprise agreement negotiation. Even for more experienced team members such a session can still prove very useful, as the legislative environment changes constantly. Employer associations and specialist law firms often have great information sessions and updates on the enterprise agreement environment.

Negotiating Team Kick-off Meeting

This is an important meeting. It brings together everyone on your team, and lays out the general plan for the project and beyond. You should put some thought into this meeting, and treat it like any other kick-off meeting. That is to say, start how you mean to go on. Be realistic about the project and the process, but also positive. There's no good starting off all doom and gloom; you want people on your side, working enthusiastically and energetically to make the negotiation the best it can be.

This is well and truly one of those times when the quality of the inputs can have a big impact on the final outcome—so you want good quality, helpful research. Unless you're planning on doing this yourself, you'll need other people to help you. And given it's probably something they will be doing on top of their day-to-day duties, the more they understand the implications of the negotiation, and the purpose of the research, the more likely they'll be able to provide valuable input.

A couple of other key things that should happen from this meeting:

- Identify key dates.
- Agree on a meeting schedule.
- Agree what initial research will need to be done (this can always be supplemented in later meetings, but it's important to have a list that is as robust and accurate as possible at the beginning).
- Agree who will do what research.
- Agree on any communications that need to go out to the wider organisation or individuals and who these should come from.
- Develop the stakeholder analysis and communications plan and start the communications now. Be mindful of the audience and tailor the complexity of the message and the forum accordingly but keep to a consistent and regular theme. Even if nothing is happening, keep up the communication!

Agreeing the Team Roles

There will be different roles for each team member both pre, during and post negotiations. Be clear on what you expect from each person on the team, both in terms of what he or she will do and how they will do it. Make sure that each person understands how his or her part contributes to the successful negotiation.

Ensure you carefully engage both the technical skills and the personal strengths (e.g. perseverance, empathy etc.) of each individual.

Negotiation Team Behaviours

Further expanding on team roles, it is crucial to discuss and agree the team approach and behaviours. A negotiation should be approached in an organised and professional manner, so agree in advance how you are going to act and react in different situations. For example:

If things get off-track or heated (we discuss the meetings in greater detail in Chapters 7 and 8), talk about taking ‘time outs’ and breaks to allow everyone to calm down.

Stay professional at all times. Avoid raised voices, offensive language and never ‘get personal’ or take things personally. If historical interactions have meant that a particular relationship is broken beyond repair, consider if that person is the right person to be on the team.

Leave your ego at the door. A negotiation is about reaching agreement—it’s not about being adversarial or aggressive. It’s not about showing how clever you are. It’s not about power moves and putting people in their place. Model the sort of behaviour you expect to see from the other parties. And if you behave badly, then don’t get upset if the other party does too.

If specific discussions become stalled, seek agreement to move onto the next item. This will encourage the meeting to progress.

You will also find it useful to agree on discrete signals between team members should a team member get off track or perhaps start to say something they shouldn't.

Show a united front at all times. Do not disagree, undermine, argue or show discord with your team members in front of the other parties—again, call a time out if required (e.g. “can we take a few minutes, our team should discuss that further”).

Debrief after all meetings. Talk about what did and didn't go well. Assign any tasks (e.g. further research, drafting of clauses) and discuss the strategy for the next session.

Case Study – Lessons Learned

A complex negotiation became very heated with a manager and a union official ending up in a stand up, yelling match across the meeting room. Eventually an official from a different union and another (external) representative of the organisation were able to stop proceedings by repeatedly insisting a break was taken.

Although the attending employees agreed that the first union official may have ‘baited’ the manager, they were clearly dismayed and shocked to see the manager react in such a manner and surprised that the more senior manager did not act as the organisation’s lead and intervene. They also stated that it made the negotiation feel far more aggressive and personal and they were worried about the ongoing implications of their participation as employee representatives.

As a result, both managers were replaced within the organisation’s team.

Key Points to Consider:

- The negotiation should be seen as a priority by management, with team selection and appropriate levels of resourcing reflecting this.
- The team should be supported by being provided with training and information on the current enterprise agreement process and environment.
- It is important to help influence the tone of negotiations by establishing positive behaviours within the organisation's negotiating team.
- Communication is critical—within the team, to the leadership team and the broader organisation and stakeholders.

Checklist – Preparing the Organisation’s Negotiation Team

- ☑ Determine the skills, knowledge and expertise required for the team.
- ☑ Assign team responsibilities and roles.
- ☑ Identify and address any skill (etc.) gaps in the team.
- ☑ Ensure team members have their manager’s support and are provided adequate time for enterprise negotiation activities.
- ☑ Provide IR information and training (as appropriate) to the negotiating team.
- ☑ Discuss and agree team behaviours.
- ☑ Develop a communication and stakeholder plan now and start communicating now!!