

Making Changes for Bargaining Unit Employees An Agency Perspective

The only constant in managing within a Federal agency is change.

Congress or the Administration creates new policies or programs; your headquarters makes funding or FTE decisions which change the way the organization operates; or technology or some unforeseen event requires new systems, structures or organizations.

Almost any management change may impact a working condition, provoking the union's interest. Since many employees in any organization, government or not, abhor change, we shouldn't be surprised if a Federal union thinks our bright idea to deal with a management need is the actual end of civilization as they know it. Or if not civilization, at least the status quo.

A lot of Federal managers who have gone through impact and implementation (I&I), mid-term, procedures and arrangements or other bargaining not involving renegotiation of the term agreement (contract). They often walk away frustrated with the time, effort and cost involved in trying to get a change through the bargaining process.

While the Federal Labor Relations Authority's decision creating the so-called "Covered By" Doctrine has limited Impact and Implementation bargaining to some degree, agencies still engage in significant negotiation whenever a reorganization occurs (frequently) or a space move results from a decision (more frequently) or when the contract is silent or ambiguous (more frequent yet). If you're not familiar with "Covered By" take a look at [OPM's definition of the FLRA's rule](#).

This two-part article suggests on how agency management can take steps to shorten the bargaining time and pain from idea to implementation when you want or need to make a change.

1. Identify very specific goals for the initiative

The clearer you define your goals, the less likely you are to get bogged down in the process. Clear goals are easier for your chief negotiator to communicate and to stay focused on at the table. Also, the clear your goals, the better able you'll be to decide whether you can give to get agreement. Clear goals make preparation easier by focusing on what we want and allowing us to bargain our interests.

2. Get a briefing from your labor relations or legal staff about what the I&I process entails at your agency.

If there is a labor relations staffer available to you, it is likely that person knows more about this process than any other part of labor relations because they're in it all the time. In addition to statutory requirements governing bargaining, your contract likely contains language affecting change bargaining.

3. Prepare more thoroughly for I&I than for term negotiations particularly in the framing of the proposal and in the anticipation of the union's reaction to the initiative.

This process is often called "single issue" bargaining because, unlike contract negotiations, there is little to trade. The agency wants what it wants and, frequently in this kind of

bargaining, only that. The union, for its part and legally limited to negotiating the scope of the proposal, will try to add subjects to the negotiation, stop any perceived effect on working conditions or limit management's flexibility in implementation to minimize the change. Knowing this, your initiative is itself a bargaining proposal, and must be carefully prepared and even more carefully written.

4. Do not presume that having a statutory right to make a change guarantees a certain and specific outcome within a specific timeframe or indeed that you have such a right in the first place.

Most I&I bargaining arises from agency management's belief that what they want to do is protected from bargaining by "management's rights". While this may be a technically correct assumption, unions get to bargain over the procedures and arrangements management will follow when it implements the change.

This is the "hook" that gets the matter on the table and can bog you down in legal trivia. If you want to get your initiative done, stay away from "negotiability" arguments like the plague. In making changes, the only "neutral" you want to deal with and only then as a last resort is the Federal Service Impasses Panel (FSIP) if you and the union can't reach agreement. A mediator may help but is too easy for the union to use to delay the process.

5. Recognize that in I&I generally and particularly in time critical matters, you are usually a seller in a buyer's market.

It is rare that the union will like your proposed change on its face. Come to the table with lots of arguments in favor of your initiative. First try to find things the union will like and sell them. Second, come prepared to convince the union that you'll get what you want from the FSIP so maybe there's something in it for them by dealing before it gets that far. More about bargaining preparation in later articles.

Grouping initiatives, information requests and other issues affecting change bargaining.:

6. Consider grouping multiple initiatives and look for other leverage strategies when available to gain advantage

It is not unusual for agencies to have more than one impact and implementation (I&I) bargaining track going on at the same time.

In the larger agencies, many efforts may go on concurrently at different levels under a master agreement. Perhaps the greatest lost opportunity in Federal labor relations is a failure to combine issues and engage in multi-issue negotiations. However, this approach has both risks and rewards. On the upside, with more to trade, valued trades may cut across issues. Also lesser issues may stay that way.

In single issue bargaining, issues can gain a perceived importance way beyond their true value. On the downside, teaming up issues may drag out implementation of some initiatives until all are resolved. Every negotiator with whom I have discussed I&I with has agreed that more issues result in better outcomes.

7. Provide as much information as possible to the union at the time of notice to avoid 7114(b)(4) delays

Data requests are frequently used to delay bargaining.

This tactic was introduced by NTEU and quickly adopted by the others. The idea is to accompany a bargaining request with a burdensome data request then litigate any agency denial. The "Particularized Need" requirement set forth by the Federal Labor Relations Authority ([See OPM's description](#) of this tactic) has limited this ploy to some degree.

However, a smart management will forestall the use of this by putting together any and all information as part of the preparation process, then provide the information to the union at the time the initiative is proposed.

8. Follow contract notification and other applicable procedures or, in their absence, provide a clear, specific, written notice outlining the change and require in return a clear, specific, written response by a date certain.

Frequently, the union will come back to your notice with a request to bargain, as well as a data request. Often in this stratagem, it is difficult to identify what the union wants until after lengthy question and answer meetings.

Their interests or issues or at long last proposals must drawn out. When the contract has notice requirements, follow them to the letter. The best approach is to write your initiative in proposal form identifying exactly what will happen. Demand in return a clear counter. This will move things along.

9. Do not get bogged down in ground rules

Another common union ploy is to request ground rules bargaining as a precursor to substantial negotiations on your initiative. Here the agency can prove that an ounce of prevention is worth a ton of cure. Mid-Contract and I&I bargaining deserve a clause in the labor agreement.

It's worth an impasse to get a time line on these negotiations. The Patent and Trademark Office has, or at least had, language that provided the parties three days to reach an agreement on I&I issues and if they failed to reach agreement, an expedited impasse resolution process results. If you do a lot of I&I, it's worth the pain in term negotiations to get such language.

10. Be aware that provoking negotiability disputes and invoking impasse procedures lengthens the process. Anticipate and avoid these procedures whenever possible.

How do you avoid this problem?

One big step is to decide during preparation what you are willing to give to get what you want. Then you should do a reality check on whether the concession will be enough, whether your management will go along with it and whether the gain is worth the pain. I'd really like a nickel (OK, \$10.00) for every time managers I worked for waited to have any concession dragged out of them in bargaining. Knowing early stresses decision makers but can give the chief negotiator a leg up in planning an endgame strategy to move a negotiation to a quick conclusion.

I hope you find these helpful. If you're a labor relations advisor, consider passing them along to line management. Remember, the better structured the approach, the more likely a faster and more favorable result.

