

Table of Contents

	PAGE
<i>Dedication</i>	iii
<i>Acknowledgements</i>	v
Introduction: Collective Bargaining in Canada	1
Chapter One Setting the Stage for Collective Bargaining	7
Establishing the Collective Bargaining Relationship	10
Certification	10
Voluntary Recognition	11
The Bargaining Obligations and Statutory Freeze	12
The Collective Agreement within the Constellation of Workplace Legislation	13
Chapter Two The Collective Agreement	15
What is a Collective Agreement?	15
Changes during the term of the collective agreement	16
The Collective Agreement, Workplace Legislation and Management's Rights	17
Workplace Legislation	17
Management's Rights	17
Mandatory Provisions in a Collective Agreement	18
Recognition Clause	18
Grievance and Arbitration Clause	20
No Strikes – No Lockouts	28
Duration	29
Chapter Three Background to Bargaining	31
The Bargaining Framework	31

The First Collective Agreement	32
Renegotiating an Existing Collective Agreement	33
Getting Started – The Union Bargaining Committee	35
The Bargaining Committee	35
The Bargaining Proposals	36
Getting Started – The Employer’s Bargaining Committee	40
The Bargaining Committee	40
Internal Rules in the Bargaining Process	42
Location for Negotiations	43
Continuance of Pay for Negotiations.	44
Chapter Four Preparation for Negotiations	47
Ongoing Preparations	47
Negotiation Objectives.	47
Union Negotiation Objectives	48
Employer Negotiation Objectives.	48
Getting Started	49
The Current Collective Agreement.	50
Workplace Issues.	51
The External Environment	51
The Collective Agreement	52
Economy	55
The Political Environment.	55
Strategies	56
Labour-Management Committees	59
Amendments to the Collective Agreement	60
Chapter Five Principles of Negotiations.	63
Identification.	64
Evaluation	64
Resolution	66
Rules for Negotiators	68
Rule 1: Negotiate Positively.	68
Rule 2: Be Objective	69
Rule 3: Never Assume Knowledge on the Part of Others.	69
Rule 4: Always Maintain Your Integrity	70
Rule 5: Negotiators are Real People	70
Rule 6: Watch your language	71
Rule 7: Keep Your Perspective	71
Rule 8: Don’t Lose Your Sense of Humour.	72
Rule 9: Remember Why You Are There	72
Rule 10: Try to Learn Each Time You Negotiate	72

ix

Rule 11: Don't Believe Everything, But Don't Call Them A Liar	73
Rule 12: Always Leave Someone a Graceful Off-Ramp	73
Rule 13: Keep Records	73
Rule 14: Respect Confidentiality	73
Rule 15: Respect the Administrative Details	74
Chapter Six Negotiation Sessions	75
The Bargaining Obligations	75
The First Negotiation Session	77
The Second Negotiating Session	81
Structured Questions	81
Deciphering the Context of Proposals	83
The Single Spokesperson Rule	84
The Note-Taker	84
First Contract Negotiations	85
Dividing Economic and Non-Economic Issues	86
Managing High Volume Negotiations	87
Concluding the Second Meeting	87
The Third and Subsequent Negotiation Sessions	87
Managing the Issues	88
Managing the Team	90
Breaking the Log-Jam	90
Your Draft or Mine?	91
Closing the Deal	91
Dealing with Difficult People	93
Chapter Seven Negotiation Conflict and its Resolution - Systems and Process	95
The Negotiation Obligations	96
Conflict During the Bargaining Process	97
Remedies for Bad Faith	98
First Contract Arbitration	99
Settlement Impasse	100
Freely Negotiated Agreements	100
Conciliation/Mediation	101
Characteristics of a Successful Conciliator/Mediator	101
Appointment of a Conciliator/Mediator	102
Conciliation Boards	104
Fact-finding	105
Industrial Inquiry Commission	105
Strike or Lockout	106
Interest-arbitration	107

Legislated Outcome/Arbitration.	109
The Tactics and Strategies of Dispute Resolution	
Neutrals	111
Relationship Conflicts	111
Data Conflicts	112
Interest Conflicts	112
Structural Conflicts	113
Value Conflicts	114
Strategies and Tactics of Neutrals in Trying to Resolve	
the Parties' Problems	114
Practice Tips	115
Narrowing the Scope of Issues	119
Settlement and Ratification	120
No Settlement	121
 Chapter Eight Strikes, Lockouts and their Resolution	123
What is a Strike	124
What is a Lockout	125
Remedies for Illegal Strike and Lockout	126
Discipline for Misconduct	127
Picket Line Activities	128
Replacement Workers	129
When the Strike is Over	131
Settlement & Ratification	132
Resolving Strikes and Lockouts Through Mediation	133
Mediation Process	136
Strike Issues and Dynamics	139
Picket Line Behaviour	140
Preventative Dispute Resolution Training	140
 Chapter Nine Collective Bargaining in the Public	
Sector	143
Legislative Structure of Public Sector Collective	
Bargaining	145
Collective Bargaining Limitations in the Public Sector	147
Dispute Resolution in Public Sector Negotiations	148
Statutory Interference with Collective Bargaining	149
Back-to-Work Legislation	150
The Changing Collective Bargaining Landscape	150
Compulsory Dispute Resolution – Interest Arbitration	151
Criticism of Interest Arbitration	151
The Narcotic Effect	152
The Chilling Effect	152

Secondary Effect	153
Interest Arbitration Criticisms – An Evaluation.	153
The Interest Arbitration Process and Arbitral Decision-making	154
Comparability	155
Replication	155
Incrementalism	156
Total Compensation	157
Statutory Criteria	158
 Chapter Ten Why Collective Agreement Language Matters	161
Plan the Discussions on Language.	162
The Value of Plain Language	162
How to Achieve an “Easier-to-Read” Collective Agreement	163
Consideration No. 1 – Use short, concise sentences.	163
Consideration No. 2 – Restructure multi-part phrases into subsections.	164
Consideration No. 3 – Be more organized – use headings	164
Consideration No. 4 – Avoid legalese and other multisyllabic words	166
Consideration No. 5 – Use your negotiation team to review draft language.	167
Consideration No. 6 – Use consistent language throughout the agreement	167
Consideration No. 7 – When in doubt, get help.	167
Consideration No. 8 – When a party does not want plain-language.	168
Consideration No. 9 – Understand grammar and punctuation	168
Summary	168
 Chapter Eleven Collective Agreement Language - the Essential Framework	169
Names of the Parties	170
Purpose	170
Recognition & Scope Clause	171
Management Rights	172
Union Representation	176
Grievance Procedure and Arbitration	179
(i) Defining a grievance.	180
(ii) Timelines	180

(iii) Form of Grievance	181
(iv) Steps in the Grievance Process	181
(v) Arbitration	182
(vi) Employer Grievance	183
(vii) Expedited Policy Grievances	183

Chapter Twelve Collective Agreement Language Defining the Parties' Relationship 185

No Strike, No Lock-outs	185
Union Security	188
(i) Closed Shop	189
(ii) Union Shop	190
(iii) Agency Shop	190
(iv) Maintenance of Membership	191
(v) Voluntary check-off	192
Union membership "in good standing"	192
Seniority	194
Four Parts of Seniority	195
(i) Defining Seniority	195
(ii) Accruing Seniority	196
(iii) Applying Seniority	197
(iv) Losing Seniority	197
Lay Off, Bumping and Recall	198
Contracting Out	202
Union Representation	203
Duration and Renewal of Collective Agreement	205

Chapter Thirteen Collective Agreement Language Defining Employee Rights & Entitlements 209

Hours of Work	209
Overtime	212
Rest Periods	215
Reporting Time	216
Call-in Pay	216
Standby Pay	217
Vacation with Pay	217
Paid Holidays	224
Leaves of Absence	227
1. Personal leave	227
2. Maternity, Parental and Adoption leave	228
4. Bereavement leave	231
5. Jury Duty	233

6. Military or reservist leave	233
7. Education leave	234
8. Family leave	235
Job Posting & Filling Vacancies	235
Absence due to illness or disability	238
Human Rights Considerations	241
Chapter Fourteen Costing the Collective Agreement	243
Getting Started	244
What is Included in Total Compensation.	244
What is Rollup?	244
Factors of Total Compensation Found in the Collective Agreement	245
Bringing Information Together	256
Table 1: Total Weekly Wage per Classification	256
Table 2: Average Annual Salary per Full Time Equivalent	257
Table 3: Average Hourly Wage per Full-Time Equivalent	258
Table 4: Average Hourly Cost of Overtime per Full-Time Equivalent	259
Table 5: Total Pension Contributions	261
Table 6: Average Pension Costs per Full-Time Equivalent.	262
Bringing it all together	262
Table 7: Summary of Total and Average Full-Time Employee Costs	264
Using Costing Information in Negotiations	265
Table 8: Cost Implications of Union's 5% Proposals	266
Table 9: Cost Implications of Union's 5% Proposals on Rollup Averages.	267
Some General Comments about Costing	268
Automatic Cost-of-Living Adjustments (COLA)	268
Chapter Fifteen Employee Benefit and Pension Plans	271
Health Care Benefit Plans	271
Union Operated or Joint-Trustee Plans	273
Unions and Benefit Plans	273
Employers and Benefit Plans	274
Benefits and the Collective Agreement.	274
Pension Plans	277
Evolution of Pensions in Canada.	278

The Components of Retirement Income	278
Pension Structures	279
Defined Benefit Plans	280
Variations on the Defined Benefit Plan	282
Defined Contribution Plans	282
The Allure of DC Pension Plans	283
Group & Individual Registered Plans	283
Multi-Employer & Union Pension Plans	284
Pension Portability	287
Collective Agreement Examples of Pension Plans	284
Some Concluding Thoughts on Pensions and Benefits	285
 Chapter Sixteen What's Ahead for Collective Bargaining in Canada	 287
The Process	288
The Unions	290
The Employers	292
Conclusion	293
 <i>Index</i>	 295