



Fee, Smith, Sharp & Vitullo LLP

Article

*Seven Deadly Sins
to Avoid in
Collective Bargaining*

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SEVEN DEADLY SINS TO AVOID IN COLLECTIVE BARGAINING

While there are many details inherent in each of the seven categories below it is helpful to keep the following outline in mind as necessary to support any successful collective bargaining negotiation.

1. Failing to understand the “other side”

- Take the time to focus on the issues that are important to the other side. Set up research groups to study such issues. Obtain as much background information as possible. Attempt to understand the root of each anticipated “hot-button” issue and why it is important to the individuals you are dealing with. Also, keep an open mind and review each proposal placed on the bargaining table in good faith. Honestly assess the strengths and weaknesses of each. Determine the long-term effects of potential negotiated provisions on day-to-day operations on both sides. Listening is important, but understanding is key! Above all, remember that the “other side” typically consists of or at least represents your co-workers, employees, and friends. Never fail to treat them with the utmost respect.

2. Picking the wrong negotiator and negotiating team

- Knowing who you are bargaining with is obviously vital to a successful bargaining process, but understanding your own positions and those who will present them is even more fundamental to actually reaching the goals you hope to achieve in any given negotiation. This means understanding your clients’ respective strengths and weaknesses, as well as negotiating styles, and selecting for negotiation team members who give you the best chance at success. Your team should accurately represent the image, style, and substance you feel comfortable with and bring skills to carry the positions your side supports. Do not be afraid, by the way, of choosing diversity in those negotiating skill sets.

3. Failing to obtain factual data in support of your positions and thus failing to identify realistic goals

- Have factual and historical support for your positions. Also, set realistic and reasonable goals. Do not set your team up for certain disappointment and failure by being unreasonable in your proposals. Obtain prior input of managers and supervisors, especially as to effects and import of non-economic terms and issues which may be part of bargaining. You must know when your team can afford (financially and otherwise) to make a deal and when you cannot. When there is little basis for what you request, this leads to credibility issues at the negotiation table. Know what constitutes a realistic “win” for your side, but realize you likely will not

get everything you want. Remember you are bargaining, not dictating. Know those issues where you are flexible. Be a strong advocate of your client's realistic positions and make reasonable, good faith efforts to secure a "win".

4. *Failing to manage expectations*

- Not only must you establish and support realistic and reasonable goals, you must ensure that your clients and/or team members understand and agree with them before heading to the bargaining table. Failing to manage a client's expectations will lead to disaster in any area of representation, but none quicker than negotiation. Do not let ego get in the way. Unrealistic expectations usually arise where pre-negotiation planning, research and communication has been poor or non-existent, thus referencing the importance of establishing and keeping realistic and reasonable goals based on supportable data.

5. *Failing to develop a viable financial model for your clients and obtain expert support if needed*

- Do not fail to assess and project likely revenues and costs that are tied to financial issues presented in negotiations. If you are not familiar with the costs associated with proposals being made by each side then you will not be able to accurately assess the financial impact of your bargaining position or the positions taken by the opposition, and you will lack credibility. Therefore, it is essential that you take the time to compute specific cost components and not only learn how certain proposals cost what they do, but why. It is an error not to retain an independent expert to review economic data and identify your strengths and weaknesses as to financial positions. Plan ahead, perform cost-benefit analysis on your proposals and those which you anticipate you will receive from the other side, and always develop and maintain sustainable alternatives.

6. *Getting frustrated and getting personal*

- Negotiations can be a long and arduous process, do not get discouraged. If you are frustrated, separate from the process to caucus and refocus and do not return until you are calm. Frustration is a sign of weakness and the opposition will pick up on it and feed off of it. Again, respect of your team members and those on the other side is key to any successful negotiation. Whether a deal is made or not, at the end of the day you still want to be able to look across the table and know that you did everything you could to make a deal without resorting to personal attacks and/or other underhanded tactics. Keep it above board and your team and the results will be better off for it. Also, always keep in mind that this is business and not personal and is an exchange of positions and information rather than a contest of egos.

7. *Failing to properly establish deadlines and ground rules*

- Successful negotiations are typically those which are the best planned, on both sides. Work with the opposition to establish written ground rules, which can solve a number of future problems if well-crafted, as well as hard and soft deadlines for negotiations and proposals. Also, set appropriate time limitations on each negotiating session usually by way of written ground rules that serve as guidelines for the negotiation. It is important to not overdo it. You want your time at the bargaining table to be effective. Sitting at the table and arguing all night is not going to push the agenda of either side. Know when you need to sit down and when it is time to get up.

There are numerous specific tactics and strategies attendant to each of these seven categories and we would be happy to further explore same with you should you so desire. Please feel free to contact the undersigned at your convenience.

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