



Understanding the Role of the Mediator

VETERAN MEDIATOR, REG PEARSON SHARES HIS TAKE ON THE MEDIATION PROCESS

“Successful negotiation is not about getting to ‘yes;’ it’s about mastering ‘no’ and understanding what the path to an agreement is.” - Christopher Voss

Contract discussions can be a tricky business, so with the next round of talks between ECAO’s Electrical Trade Bargaining Agency (ETBA) and the IBEW set to kick off in 2022, it’s a perfect time to examine the art of negotiation.

Several things make these specific talks somewhat unique compared to other labour negotiations. Firstly, in the wake of several work stoppages between the late ‘70s and 1990 in which the industry lost market share to non-unionized contractors, the two sides agreed in 1990 to a no-strike/no-lockout mandate.

Secondly, while having a central provincial agreement and separate local deals is not uncommon, the fact that the Ontario electrical industry negotiates the local contracts first is unique to the province, says Reg Pearson, President of Reg Pearson Mediation Services.

He ought to know, having been involved with contract talks as a negotiator for over 40 years, serving on both the management and union sides and acting as a mediator for the last 26 years of that stretch. Now, as an independent mediator, he participates in all types of trade negotiations across the province.

The presence of a mediator, introduced at the last set of contract talks, is another distinctive characteristic of the ETBA-IBEW discussions. “What was innovative in the last round with the IBEW was that the parties agreed to a protocol which included local mediation,” says Pearson.



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PRESIDENT OF REG PEARSON MEDIATION SERVICES

Deals a Plenty

All told, the two sides will be negotiating 17 total contracts: one central deal for each of maintenance electricians, wiring/communication workers and line workers and; 11 local agreements, each negotiated separately and attached as addendums to the central deal. That’s a lot of John Hancocks!

Pearson is not yet in a position to comment on specific issues in this round, but he is curious whether the pandemic sparked any health-related issues that need to be dealt with in some contractual form that differs

from standard health and safety matters.

The Role of the Mediator

Pearson is quick to point out that he’s not a referee; rather, he’s there to provide oversight. He says the process is more about encouraging both sides to have open discussions and to build trust among all parties, including himself. “I need to make sure that there’s enough trust in the room that I can be sitting in either room [during] their caucus sessions and they know that whatever is said in there is not going to be heard by the other side unless they want me to.”

Though actual refereeing is rare, Pearson has tools to manage the process when tempers flare. He may call for a break to cool off and allow the sides to rethink things, for instance. That may mean him spending time with each side separately. As Pearson puts it, “Sometimes people just need

Top Five Tips for a Successful Negotiation

1. Be Realistic: Part of this harkens back to gathering information prior to the talks. “Make sure what you’re asking for is attainable,” Pearson advises. This means doing your homework. So, if Municipality A and B did it this way, they’ve pretty much set the standard, and you should probably not expect a different result.

When it comes to making an untenable demand, “the most important question is, ‘Why?’” he says. For the side that is rejecting the proposal, why is it untenable? For the side asking for it, why is it so important, even though you know the other side is really going to push back on this? Pearson says in this instance, the parties need to ask themselves, is there another way to get around this?

2. Trust the Process: Everyone is required to bargain in good faith, and that’s part of the process. “The process takes time, so don’t think you’re going to get a deal in one meeting,” he says. It is a time-tested process that must be trusted and must be followed. Pearson says part of trust the process means understanding that this is a negotiation, and the other side’s idea of what the deal is might differ from yours, but the bottom line is both sides want to come to terms.

3. Trust the Mediator: Know that the mediator is there for you. They are there to help you achieve a deal, so trust them and think of them as a tool to help facilitate a successful negotiation.

4. Don’t Demonize the Other Side: Try to stick to the issues and stay away from personal attacks, Pearson advises. This can be a challenge when there’s a history of a union negotiator and a management negotiator butting heads. “Yes, it’s a negotiation; yes, there are issues. But it’s still a human process and humans don’t always get along,” he says. Don’t make it personal, and certainly don’t amplify it. You may be in a situation where tempers flare, but that needs to be managed. Don’t escalate the situation by lobbing insults because that is not going to help the situation.

5. Know When It’s Closing Time: Experience helps to recognize this moment, but you can’t keep hammering away on the same issues. “At some point, you’ve got to know when to finish,” Pearson suggests. Sometimes it’s knowing that you’ve extracted enough demands in your side’s favour and other times it’s conceding that you may not be able to get this one demand in this current round of bargaining. He says this is where the mediator can play a significant role. If they sense a deal is just about ready to be made, they may go to each side and advise them that they’ve done as well as they’re going to, so it might be time to put ink on this contract.

Pearson says he’s seen it happen time and time again. The two sides are 80 percent through the process and get bagged down with a specific nagging issue. If there’s no resolution on this matter, they risk losing all that progress. Keeping the big picture in mind really helps.

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a chance to vent.” In this respect, he takes one for the team to keep a constructive process from turning destructive. “To put it plainly, I’d sooner have people yelling at me than yelling at each other,” he says.

For a mediator to be able to assist in the discussion process, Pearson says they must fully understand the information being presented. He facilitates this by meeting with both sides to outline their specific issues and why the issues are important.

He prefers to have all parties present for these information sharing sessions. “I need them to hear each other’s explanation of where they’re at,” Pearson says. He will often ask a couple of questions during the opening presentation to have them explain why something is important to them. The negotiating parties tend to explain outstanding issues in a very detailed way to ensure they’re being understood. This process benefits the negotiating parties by giving them more clarity on the other side’s arguments. Pearson says that during such sessions, it is not uncommon to hear, “That isn’t how you explained it to us!”

While the advantages of having all parties attend the opening session are clear, it isn’t always possible. Sometimes parties prefer to meet with him separately. The approach that will work best is going to change from case to case. “You really need to read the room,” Pearson suggests.

Managing Expectations

Another key role the mediator plays is managing expectations. “Usually, it’s getting the parties to talk to each other, so that if somebody’s asking for something that is totally untenable – it’s just not going to happen – then I would want to make sure that the other side is telling them that it’s untenable, and why.”

Obviously, being unbiased is the important aspect of Pearson’s role. “Quite frankly, if you don’t take that approach, you’re not going to last long in this game.”

There’s a common perception that a successful negotiation is one in which both sides leave the table unhappy. Perhaps that’s the glass half-empty perspective; Pearson, for one, does not share this view. “In my experience, both sides are

relieved somewhat in that they have actually managed to accomplish some things that they might not have otherwise,” he says. “And they feel good about the fact they’re able to move forward in some way that makes them more competitive or have more work available for people.”

In terms of things each side should bring to the negotiation table, Pearson stresses that supporting information and data are critical elements to help prove that your demands are based on facts. “Whatever you’re asking for – it doesn’t matter which side is asking – you’d better have the

supporting information that you believe will help to convince the other side that this is something you either must have or really need in order to move forward.”

The bottom line here is to come to the table with an open mind and ready to negotiate in good faith while being mindful that – even when things get heated – none of this is personal. Bearing these things in mind should steady you well as you work your way towards a fair contract and maintaining harmonious (or at least peaceful) labour relations.