Virtual Bargaining and Meet and Confer: Mechanics and Considerations

NEA Collective Bargaining and Member Advocacy

Platform and tools for virtual negotiations

- The simplest, least tech-reliant approach to virtual bargaining is to use conference calls for joint bargaining sessions and caucuses and email to exchange proposals.
- To approximate face-to-face negotiations, bargainers are increasingly relying on video conferencing software for team meetings, joint bargaining sessions, caucuses, sidebars, document sharing, and drafting contract language.
- Several commercial products, such as Zoom, Skype, and Microsoft Teams, are available for online meetings.
- Many online meeting platforms offer free versions of their software with limited capabilities, including limited privacy protections. Care should be taken in using such free products.
- Zoom is the most popular online meeting tool and is used herein as a generic descriptor for virtual meeting software. NEA, however, does not endorse the use of any one platform and advises to take care as to privacy and security protections before using any online meeting platform, including Zoom.

Bargaining team members

- All team members must be able to connect and have necessary audio and video capabilities on their cellular devices and/or personal computers, including the most up-to-date versions of any meeting software and app being used.
- Team members will need to be trained on the software’s features and tools.
- Team members should be reimbursed for any licenses or fees for the software, including necessary add-ons.
- Technical issues are unavoidable and may require imperfect solutions. For example, if a team member is having computer problems, the team member may have to call another member and join the meeting through the other member’s cell phone.
- Team members need to be thoughtful about the location at home where they can fully participate in the meeting to minimize distractions and interruptions.
- Team members should maintain bargaining documents and records on devices or drives that cannot be accessed by members of their households.

Privacy and security concerns

- The host controls all aspects of a Zoom meeting, including admitting and removing participants, sharing screens, muting and unmuting participants, and assigning breakout rooms. To help protect against a perceived or actual power imbalance, it makes sense to have a ground rule to alternate the hosting responsibility so a union team member is the host on Day 1, and on Day 2 an employer team member is the host.
- The host controls Zoom’s recording features. In a virtual setting, it is imperative to have a ground rule that addresses whether the meeting is recorded, taking into consideration
applicable state law relating to open (public)/closed (private) negotiations, including whether to record negotiations is a permissive subject of bargaining.

- Because Zoom and other platforms are quickly evolving in terms of privacy issues, consider a ground rule stating that all members of the bargaining teams will update software before each call.
- Zoom recommends parties establish a unique “Meeting ID,” rather than using someone’s Personal Meeting ID (PMI), which remains the same. For instance, if Person A on the employer’s team has a PMI and offers to allow its use for bargaining, then anyone who has previously used that PMI can access the call.
- Generally, users can join a virtual meeting by simply clicking a link, but you can require that participants set up an account to join a meeting. That will help ensure that only invited participants can access the call.
- Rather than using breakout rooms, some parties set up a separate Zoom meeting for caucuses and conduct sidebars telephonically.
- The Waiting Room feature can be used to restrict meeting access to only the members of the bargaining teams and invited guests.
- Use of a password that is not distributed along with the meeting invitation can help protect the meeting from unwanted guests or disruption.
- Be wary of a host’s ability to remove participants. State and federal labor law generally provides that a team can select its own members unless the presence of a particular individual “will create ill will and render good-faith negotiations impossible.” Kicking out a participant, even one who is somewhat disruptive, could therefore be an unfair labor practice. Consider whether a ground rule is necessary to address this possible scenario.
- Opening bargaining to the general membership and the public poses the risk of individuals trolling or disrupting the meeting (Zoombombing).

**Electronic Communications Standards**

- Ensure that you know everyone’s phone numbers, email addresses, and screen names, keeping in mind that computer screen names sometimes are not clearly identifiable by the name of the team member and that the same person can have different screen names for different devices.
- Initiate new phone calls or Zoom meetings for team discussions following those with people on the “other side of the table.”
- At the beginning of any new electronic communication session, verbally confirm which team members are participating.
- Do not proceed with electronic communications if there are participants who cannot be identified.

**Communications during joint meetings**

- Meeting norms should be established to recognize speakers, minimize interrupting, and reduce talking over one another.
- Ensure that every participant is clearly identified through their screen name, phone number, or other indicator. If a participant is using a screen name that is not clearly associated with them, take time to clarify who it is.
- A facilitator can be designated to recognize speakers and keep participants in process. Unless a neutral facilitator is used, consider rotating this function between the parties along with the
host function, so that one party designates the facilitator and the other designates a host for the call.

- Many people will find the absence of nonverbal cues and body language disconcerting. These can be somewhat allayed by utilizing video conferencing features such as a speaker view or gallery view to gauge participants’ reactions. Consider a ground rule requiring that all participants generally remain on-video during negotiations.
- Active listening is more important than ever. For example, listen to the tone and phrasing of questions and attempt to ascertain the intent behind the question. Clarifying questions and questions that seek information suggest an individual is processing an issue and has not yet rendered a judgment. If a question expresses an interest or attempts to solve a problem, the individual is signaling parameters for a possible agreement. If the question is accusatory or dismissive, then the questioner remains a blocker to a potential settlement.
- Since chats are seen by all participants, team members should use their personal device to text notes to the chief spokesperson.
- Team members still need to take meeting notes for a historical record and contract enforcement.

**Drafting and exchanging proposals**

- Bargaining proposals may be exchanged by email or shared through the online platform.
- The bargaining teams can draft, review, and edit proposals in their respective breakout rooms.
- If the parties are using a more collaborative process, they can share and jointly develop and edit language in the main meeting room.
- Teams should be mindful of preserving and maintaining a record of previous proposals when they edit as a group or track changes.

**Sidebars**

- The best practice for sidebars continues to be having a team member in addition to the chief negotiator in attendance.
- Sidebars can be conducted in a separate and distinct breakout room or by conference call.

**Tentative agreements**

- If both signatories do not have access to a scanner, they can affix their electronic signatures to tentative agreements or use some other agreed upon means to memorialize agreement.

**Bargaining updates**

- In addition to keeping members informed and engaged, bargaining updates, during this time of social distancing and isolation, have the added dimension of providing a sense of security, comfort, and normalcy.
Facilitation, mediation, and interest arbitration

- The Federal Mediation and Conciliation Service (FMCS) offers and hosts, free of charge, an online platform for contract mediation, facilitated bargaining and meet and confer, and other labor-management meetings.
- FMCS uses Zoom-like software for virtual bargaining sessions with breakout rooms for caucuses and sidebars.
- Bargaining teams can use the platform to draft and share bargaining proposals and collaboratively develop contract language.
- This a viable option for dealing with privacy concerns, limited software licenses, and a lack of familiarity and comfort with the technology.
- It may prove beneficial to bring in an experienced mediator at the beginning of the process to facilitate negotiations, manage meeting norms, and enforce ground rules.
- The American Arbitration Association (AAA) and FMCS offer virtual arbitration.
- The National Academy of Arbitrators (NAA) has established a video conferencing task force and has issued an opinion and advice on proceeding with video hearings during COVID-19.
- FMCS now allows parties to request a list of only those arbitrators who are “self-certified as ready and able to conduct video arbitration.”

Ratification

- Ratifying an agreement during the pandemic poses logistical challenges and may demand an imperfect solution. In-person voting is not an option. Mail voting requires home addresses, stamps, envelopes, and ballots. Electronic voting requires a platform for conducting the vote and member connectivity and access.
- If you have valid email addresses for the membership, and a secure remote electronic voting system, consider using an electronic voting system on the members’ only section of your affiliate’s website.
- Some larger locals are using commercial vendors, such as BallotPoint Election Services, the American Arbitration Association, and Election Buddy, to conduct ratification votes. While this option comes at a cost, it is presumably more secure and less vulnerable to legal challenge or the perception that a vote was not fairly conducted.
- Other options, such as voting by text or using an online survey tool are discouraged.
- If absolutely necessary, the employer’s email system can be used to share voting information and administer the vote.
- If the union’s constitution and bylaws require in-person voting on contract ratification, then it is likely not possible to amend this requirement as it would require an in-person vote to do so. Instead, the local should announce that given the pandemic and medical advisories and government orders against any meetings of more than ten people, the union will not hold a ratification meeting but will instead meet virtually and hold an electronic ratification vote.
- Given the important role that pre-ratification membership meetings play, and the possible requirement that one be held prior to voting on the tentative agreement, locals should attempt to hold such meetings virtually, ensuring the terms of the new agreement are explained and members have the opportunity to ask questions.

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