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Why Contracts Can Be Hard To Interpret

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Why Contracts Can Be Hard To Interpret

Abstract

[Excerpt] In steward heaven all contracts are written in clear language that everyone understands. Here on Earth, though, it seems contracts are written to make them as difficult to interpret as possible.

Keywords

steward, contract, language, bargaining, negotiation, clause

Disciplines

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Comments

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Why Contracts Can Be Hard to Interpret

In steward heaven all contracts are written in clear language that everyone understands. Here on Earth, though, it seems contracts are written to make them as difficult to interpret as possible.

There actually are *reasons* for that — not necessarily *good* reasons — but at least explanations for why contracts are so difficult to decipher.

For starters, it can be a challenge to write language that is clear and applies to many different situations, functions and locations. To see how difficult it is, try writing rules for your family or club or church. You may be able to talk about what you think should happen, but once you have to write it down it gets more difficult.

Once you write down the rules, show the words to a few people. You are likely to find that people define words differently, think of situations that you did not anticipate, and have creative ways to interpret what you wrote to suit their needs and wants. Then imagine yourself in a tense negotiating session with your employer, and you have to come up with rules that management will sign on to — late at night with the pressure of deadlines and the possibility of a strike looming over you. Because time is short, negotiators on both sides of the table may agree to unclear language because that is the only language the parties can agree upon.

Disagreements over what a contract clause means can happen because of many things: new technology, new methods, or other changes in the workplace that came about after the contract was written. It is very difficult to write contract language for every situation that might arise months or even years later.

Add to all this the fact that lawyers

play a big role in most negotiations and you can see why reading through some contracts is like trying to jog through mud. And remember that side letters, memorandums of agreement and stipulations frequently are added on to contracts. Sometimes rather than rewrite an entire contract in negotiations the union and management will write and agree to only those sections that are new. That means the steward needs the original contract *and* the additions to figure out what is being said.

So, what do you do when you encounter vague language? The first thing to do is keep in mind that management may be counting on stewards getting so intimidated by the jumble of words that they give up. Don't let yourself be manipulated into giving up the fight for fairness.

Instead, keep the following five points in mind and play offense.

Management may be counting on stewards getting so intimidated by the jumble of words that they give up. Don't let yourself be intimidated.

1 Don't simply accept management's interpretation of the contract.

What the contract means can be defined by how you enforce it.

Management will try to

stretch those vague clauses to give them more power to do what they want. If we don't fight back for an interpretation that is more favorable to the members, eventually management defines more and more of it in their favor and your rights can be eroded.

2 Don't rely only on grievances.

Filing grievances is only one way you enforce your contract. You also can do it though the members' collective strength. Involve members in showing

management you are united and willing to take a stand for a fair interpretation of your contract.

3 Be sure you have the most up-to-date contract, complete with all add-ons.

Experienced stewards know that sometimes more than one contract section applies to a particular issue. That's why, if there are any side letters, memoranda of understanding and stipulations, you need to have copies of them all and read them as if they were all part of one contract.

4 Find out from the union's bargainers what was meant when the language was negotiated.

When language is unclear the "intent" — or what the union and management meant when they wrote it — becomes very important. There may have been discussions in bargaining about why the language was needed or examples of situations that might arise under the language. These discussions, especially if they are backed up by good bargaining notes, can help determine how the language should be interpreted.

5 Report the most difficult sections of the contract to your bargaining team before the next talks.

The union can propose clearer language or add to or subtract from some clauses to make them better for the members. There is no guarantee you will win the new language, but you just might. Then you will get just a little closer to heaven with some contract clauses that you don't need a Harvard Law School degree to interpret.

— Ken Margolies. The writer is on the Labor Extension faculty of Cornell University.