

# Fact-Finding, Mediation and Arbitration

In certain cases, you may want to break a deadlock in bargaining by involving a third party through fact-finding, mediation, or arbitration.

## ***Types of third party involvement***

**Fact-finding** means that an outside individual or agency studies the positions of both sides and produces a report on the major bargaining issues.

In **mediation**, an outside person or agency tries to help the two sides to agree voluntarily to a settlement. The mediator may recommend a possible settlement, but the two sides don't have to accept it.

In **arbitration**, an outsider hears arguments from each side and then decides what the settlement will be.

**In the public sector**, some state or local laws may require the union to accept one or more of these procedures if negotiations reach impasse.

**In the private sector**, the Federal Mediation and Conciliation Service (FMCS) can insist that the two sides take part in mediation. However, it is rare that the FMCS would do so unless a potential strike would have a major impact on the public.

The two sides can voluntarily choose to involve any facilitator, mediator, or arbitrator acceptable to both the union and management.

When to use a third party

You may consider involving an outsider if you believe you are not in a strong enough position to win a good settlement through direct bargaining.

Calling for involvement by a 'neutral' third party also can win you some public relations points whether the employer agrees to the idea or not.

However, it is nearly always a mistake to believe that a professional Fact-finder, mediator, or arbitrator who comes into the process will take your side over management's. After all, that third party by definition must be as acceptable to management as to the union.

Professional 'neutrals' cannot continue to make a living if they get a reputation for favoring one side or the other — so at best their reports, recommendations, or rulings attempt to split the issues rather than determining which side is 'right.' Many come from a management background or want to keep the door open to future employment in management positions — which makes favorable rulings for the union even less likely.

If you propose intervention by a neutral, you should consider naming possible choices — prominent religious or community leaders, for example — who would be respected by the news media and the general public. To reinforce your image of reasonableness, you probably should also say that you would consider “mutually acceptable” alternatives.

### **Influencing a neutral**

In nearly all cases, ‘neutrals’ are interested only in *bringing about a settlement*. This means that...

### **Whatever you tell the neutral might be passed on to management**

If you reveal your ‘bottom line’ on certain issues, thinking you are doing so in confidence, the neutral will pass that information on to management if, in his or her judgment, doing so might lead to a settlement. Knowing this, you often can send signals to management by carefully planned statements to the neutral.

### **Power is as important with a neutral involved in bargaining as it is without one**

In dealing with a neutral, as in dealing with management’s team, explaining your proposals and backing them up with evidence is necessary but not enough by itself.

Neutrals often are influenced by the activities you use to pressure management. If a neutral sees that you are holding successful worksite actions, rallies, and community action campaigns, and that your members are educated and concerned about certain issues, he or she will think it will take more to satisfy the union. By contrast, when neutrals see management as clearly the stronger side, they will be more concerned about satisfying management’s team.

### **It normally takes a strong internal organizing effort to maintain or escalate your contract campaign during fact-finding, mediation, or arbitration**

Some members will be naturally inclined to sit back and see how well their representatives do at presenting their case. Others may feel that you shouldn’t ‘offend’ the neutral by continuing to use pressure tactics aimed at management. Through your two-way communications system — publications, meetings, phone banks, e-mails, and direct personal contact — you have to educate members about their important role in influencing the outcome.