

## **Guiding Principles of Collective Bargaining – An Investor Perspective**

Office of the New York City Comptroller, Office of the New York State Comptroller, Pensions & Investments Research Consultants, Ltd. (PIRC), SOC Investment Group, Trillium Asset Management

As investors<sup>1</sup>, with fiduciary responsibilities, we believe a company's ability to establish and maintain constructive relationships with workers is a hallmark of a sound, sustainable and profitable long-term strategy. Conversely, labor disputes can pose financial, legal and reputational risks for companies which can have a detrimental impact on the value of investments.<sup>2</sup>

Workers' rights of freedom of association and collective bargaining are fundamental human rights. The internationally recognized labor standards of the International Labour Organization (ILO) consider both freedom of association and collective bargaining enabling rights, meaning they are essential prerequisites for all other rights at work, such as the right to fair working conditions, the right not to be discriminated against and freedom from child labor.<sup>3</sup>

Additionally, the United Nations (UN) Guiding Principles on Business and Human Rights (UNGP), Organization for Economic Co-operation and Development Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines), and the principles governing the UN Global Compact (Compact) call for companies to respect the rights recognized by the ILO in its Declaration on Fundamental Principles and Rights at Work—including freedom of association and collective bargaining rights.<sup>4</sup> Companies that commit to respect the OECD Guidelines, the UNGP, or join the Compact should respect the right to collective bargaining under ILO standards.

As a result, investors expect companies to respect human rights including fundamental worker rights and engage in a collective bargaining process that promotes consistent advancement towards an agreement and reaches an agreement within a reasonable period. We hope this document will enhance engagements between investors and companies.

We believe companies should commit to bargaining with the genuine goal of reaching mutually acceptable agreements expeditiously. To achieve this goal, the collective bargaining process should adhere to the following principles:

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<sup>1</sup> .

As investors, we are not party to the collective bargaining process, and do not create contractual obligations or provide legal advice. This document reflects consensus views among the individual perspectives of our separate organizations which are being articulated voluntarily.

<sup>2</sup> Global Committee on Workers Capital, *Shared Prosperity: The Investor Case for Freedom of Association and Collective Bargaining*, November 29, 2022. <https://www.workerscapital.org/our-resources/shared-prosperity-the-investor-case-for-freedom-of-association-and-collective-bargaining/>

<sup>3</sup> International Labour Organization, *Collective Bargaining: Policy Guide*, Forward and p.5, 2015. International Labour Organization, *Declaration on Fundamental Principles and Rights at Work and its Follow-Up*, 2022.

<sup>4</sup> United Nations, *Guiding Principles on Business and Human Rights*, p. 14, 2011; Organization for Economic Co-operation and Development, *Guidelines for Multinational Enterprises on Responsible Business Conduct*, pp. 26, 30; <https://unglobalcompact.org/what-is-gc/mission/principles>

1. Collective bargaining commences and proceeds towards a mutually acceptable agreement without unjustified delay.<sup>5</sup>
2. Parties establish collective bargaining procedures and ground rules for bargaining that support consistent advancement towards an agreement.<sup>6</sup> The process should include regularly scheduled bargaining sessions and include representatives who have the authority to bind the parties present at these sessions.
3. Parties provide, as permissible, each other with information that facilitates meaningful and intelligent bargaining.<sup>7</sup>
4. Parties consider each other's proposals and strive to identify acceptable solutions and overcome barriers to reaching an agreement, this includes timely exchange of proposals and responsive counterproposals.<sup>8</sup>

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<sup>5</sup> In the United States, negotiations for a collective bargaining agreement that extend beyond one year may trigger a union decertification vote.

<sup>6</sup> International Labour Organization, *In Focus Programme on Promoting the Declaration on the Fundamental Principles and Rights at Work: Freedom of Association and Collective Bargaining Questions and Answers*, identifies the parties of the collective bargaining process as employers (or their organizations), and trade unions (or in their absence, workers' representatives).

<sup>7</sup> ILO Recommendation 163 indicates that employers should "make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations." Courts and the National Labor Relations Board have articulated a similar approach which is that employers have a duty to provide information to the union which will enable it to bargain intelligently. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

<sup>8</sup> "Collective bargaining implies both a give-and-take process and a reasonable certainty that negotiated commitments will be honoured, at the very least for the duration of the agreement, such agreement being the result of compromises made by both parties on certain issues, and of certain bargaining demands dropped in order to secure other rights which were given more priority by trade unions and their members..." (Compilation of Decisions by the Committee on Freedom of Association/ILO; ¶1337).