

# The Obligation of Bargain in Good faith under US Law And the Breach of the Obligation By the employers

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## Abstract

The obligation to bargain in good faith is a concept derived from the regulation of the National Labor Relations Act of the US. The National Labor Relations Board and the courts are the competent bodies for the interpretations of the Act. Under the Act, bargaining in good faith means the bargaining parties have to conduct the collective bargaining in good faith and produce information necessary for the bargaining in the process. The collective bargaining procedures provided by the Act is based on the voluntarism of labor and management, i.e., labor and management decide the structure of their relationship under labor law. In the US, the experience in identifying the facts related to the actual acts of the management that may constitute breach of bargaining in good faith are usually produced in the process of the labor disputes resolution and litigations. We shall adopt the experiences to develop the capabilities in identifying the act of breaching the obligation to bargain in good faith.

**Keywords: The National Labor Relations Act, Breach the obligation (to bargain in good faith), The obligation to bargain in good faith.**

## 美國法中誠信協商義務具體內涵與構成 雇主不誠信之事實認定標準

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## 摘 要

誠信協商義務之法律概念來自於美國全國勞工關係法，依照該法所設立的全國勞工關係委員會 (the National Labor Relations Board, NLRB) 與各聯邦法院是適用該法律與認定誠信協商義務案件的權責機關。該法之誠信協商義務即是指當事團體的誠信協商進行與提出資訊等，若有違反則構成不當勞動行為。然該法定義並無何謂不誠信協商，需逐案認定。美國全國勞工關係法之團體協商程序，在本質上，乃是以勞資以自治之力量以決定勞資間之勞動法律關係，而其具體認定對雇主構成不誠信之構成事實認定，往往由勞工對雇主有關誠信協商義務違反之申訴案件之處理與訴訟累積而形成，不流於空泛，我國實應儘可能累積相關經驗，以為處理因團體協商爭議而生之集體勞資爭議之基礎，借以進而保護勞工之權益。

關鍵字：全國勞工關係法、不誠信、誠信協商義務