

Fundamental Concepts in Collective Bargaining:

Key legal terms, acronyms, and concepts commonly used during negotiations

PREPARING FOR BARGAINING

Bargaining unit: a group of employee positions that has been formally recognized (aka certified) by the PELRB and who share a “community of interest.”

Bargaining unit member: an employee who works in a position that is included in a certified bargaining unit.

Bargaining unit certification: is the list of positions represented by the union as certified by the Public Employer Labor Relations Board.

Public employee: persons elected by popular vote; persons appointed to office by the chief executive or legislative body of the public employer; persons whose duties imply a confidential relationship to the public employer; or persons in a probationary or temporary status, or employed seasonally, irregularly or on call.

Public employer: All public schools districts and school administrative units in New Hampshire.

Public Employee Labor Relations Board (PELRB): state agency with jurisdiction

Unfair Labor Practice (ULP): an action by the public employers or the union that is prohibited by the Public Employer Labor Relations Act, RSA 273-A.

Union member: an employee who works in a position that is included in a certified bargaining unit and who is a dues-paying member of the union.

THE NEGOTIATIONS PROCESS

Bargaining without authority: a party who has no bargaining authority or has bargained outside their authority, or merely acts as a conduit of information from the bargaining table to his/her constituents, is guilty of bargaining in bad faith

Current contract language (CCL): a response that a party gives when rejecting an offer; the party does not agree with the proposal and seeks to maintain the language in the collective bargaining agreement.

Direct dealing: While there is no prohibition against a public employer communicating directly with employees, unlawful circumvention occurs when one party seeks to deal directly with the employee (avoiding their bargaining representative), or when an employer alters the terms of the collective bargaining agreement for one particular employee without the consent of the bargaining representative.

Good faith – bargaining: the parties’ mutual cooperation to “meet at reasonable times and places in an effort to reach agreement on terms of employment,” serve written notices of the

desire to engage in bargaining at least 120 days prior to the budget submission date, and to cooperate in mediation and fact-finding as may be required by law

Ground rules: establish a clearly understood process for how negotiations are to be conducted.

Guaranteed Maximum Rate (GMR): is the maximum percentage that health insurance premiums will increase in the next fiscal year. Typically, the health insurance provider will provide the public employer with a percentage each fall that represents the guaranteed maximum amount that health insurance premiums will increase in the next fiscal year.

Managerial prerogative/management rights clause: confirm or establishes the discretion and autonomy of the employer to run their operations.

Mandatory subjects of bargaining: subjects over which the parties are required to bargain. Examples of mandatory subjects of bargaining identified by the Court and PELRB include: wages; health insurance; and work schedules/ shifts/rotations.

Package offer: a group of proposals.

Past practice: the law permits the practice of the parties to modify or explain the terms set out in the collective bargaining agreement and are binding when binding on the parties if they are (a) clear and consistent, (b) repeated over a reasonable period of time, and (c) accepted by both parties.

Permissive subjects of bargaining: subjects over which an employer is neither mandated nor prohibited from bargaining. The Court and PELRB have identified certain subjects as permissive, including, for example, whether the “just cause” standard will apply to disciplinary decisions. As a practical matter, all subjects that are neither mandatory nor prohibited are “permissive” subjects of bargaining.

Prohibited subjects of bargaining: subjects over which the public employer has been granted exclusive authority and which cannot be subordinated to the collective bargaining process. Examples of prohibited subjects of bargaining identified by the Court and PELRB include: employee job title/rank; use of the merit system for recruitment/appointment/promotion pursuant to statute, charter, or ordinance; and the structure of the employer’s organization

Proposal: an offer to modify the collective bargaining agreement.

Offers and counter-offers: the process by which parties make proposals.

Regressive bargaining: when a party at the table reduces a proposal previously offered.

Rescind offer: the withdrawal of an offer.

Surface bargaining: when parties go through the motions of collective bargaining with no genuine intent of reaching an agreement on the matters under discussion.

Tentative agreement (TA): agreements that have not been ratified (approved) by the union members or the public employer (school board).

Terms and conditions of employment: wages, hours and other conditions of employment *other than* managerial policy within the exclusive prerogative of the public employer, or confided exclusively to the public employer by statute or regulations adopted pursuant to statute.

CONTRACT TERMINOLOGY

Cost of Living Adjustment (COLA): is a wage increase often included in collective bargaining agreements to account for increases in the cost of living.

Dues: only members of the union have to pay union dues.

Equalized pay: when wages are paid pursuant to a collective bargaining agreement to hourly employees in equal installments, with one additional installment with at least one full reconciliation each calendar year. See RSA 275:43, IV-a.

Grievance process: lays out the rules and method for documenting, presenting, and settling workplace disputes.

Just cause: the employer must have a reason to act in disciplining an employee and the reason must be just and fair.

Longevity pay: compensation given on the basis of length of service.

Merit pay: a raise in pay based on a set of criteria negotiated by the employer and union.

Non-renewal: Notification in writing to a teacher on or before April 15, or within 15 days of the adoption of the district budget by the legislative body, whichever is later, that the teacher is not to be renominated or reelected to their position.

Preparation period (preps): an assigned period during the school day set aside for classroom teachers to use for planning purposes, conferences, duties, and/or other non-teaching responsibilities.

Progressive discipline: a method of discipline that uses graduated steps for dealing with problems related to an employee's conduct or performance that do not meet clearly defined standards and policies.

Recognition clause: the provision in a collective bargaining agreement that describes the composition of the bargaining unit.

Reductions in force (RIF): occurs when the public employer eliminates a position or positions with no intention of replacing that position.

Salary schedule/scale: an outline of pay steps that an employee can achieve.

Sick bank: a collection of sick days available in a "bank" for use by members of the bargaining unit.

Status quo: occurs when the collective bargaining agreement expires without a successor agreement in place.

Status quo doctrine: while in status quo, the public employer must maintain all wages, benefits, and other conditions of employment at the levels in effect at the time of the expiration of the collective bargaining agreement. The employer is not required to grant longevity steps or other similar types of wage escalators.

Steps: pay according to the job and seniority, which represents a level of advancement.

Step assignment: the determination of where an employee is placed on the salary schedule/scale.

Termination/Discharge: occurs when a school board dismisses a teacher for (1) immorality, (2) failure to maintain the competency standards "established by the school district;" and (3) failure to conform to the regulations prescribed.

FINISHING THE PROCESS

Arbitration: a process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments.

Budget submission date: the date by which the public employer's proposed budget must be submitted to the legislative or other similar body of the government for final action. Cost items must be finalized by budget submission date in order to be voted on by the legislative body.

Cost items: any benefit acquired through collective bargaining whose implementation requires an appropriation by the legislative body of the public employer with which negotiations are being conducted.

Impasse: When the parties cannot reach an agreement on a contract and require a mediator.

Fact-finding: when mediation is unsuccessful or if the parties choose, parties who have reached impasse participate in a process where a neutral party issues a report and recommendations. If the report is rejected by either party, then it is submitted to the legislative body of the employer at the next annual meeting for a vote.

Mediation: when parties request or reach impasse during negotiations, the parties participate in non-binding meditation, where a neutral party assists the parties in reaching tentative agreement.

Ratification: process by which members of the union and the public employer (school board) separately vote to accept the terms of a tentatively agreed-upon collective bargaining agreement.

Sanbornize: when the employer, to make a multi-year collective bargaining agreement enforceable, presents the anticipated costs of each year covered by the agreement to the legislative body considering the tentative agreement.