



NHSBA

NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

NHSBA Webinar Series
Basics of Collective Bargaining

Monday, May 20, 2024
6:00 – 8:00 p.m.

Today's Discussion

Slide Index

Slide 02 Introduction

Slide 08 Negotiations – Good Faith Bargaining

Slide 14 Negotiation Subjects

Slide 25 Ground Rules

Slide 28 Process & Preparation – Early Stages

Slide 32 Getting into the Details – Administration, Board & Board Negotiating Team

Slide 37 Completion – Impasse or Agreement

Handouts

Handout #1 Copy of PowerPoint

Handout #2 Collective Bargaining 101: A Primer on the Fundamentals of Collective Bargaining



Introduction



NH's Public Employee Labor Relations Law

- In most New Hampshire school districts, one or more groups of employees have elected to form certified collective bargaining units – the formal name for **unions**
- Collective bargaining units of public employees (state, county or local) are created under RSA 273-A, New Hampshire's "Public Employee Labor Relations" law
- RSA 273-A governs the creation of public employee unions, as well as the relationship each union has with its respective public employer
- The objective of this presentation is to provide a foundation for understanding the general negotiation process under RSA 273-A, New Hampshire's public employee/er collective bargaining statute

Introduction

- Boards Historically Reactive. School boards often enter the collective bargaining process with a reactive mindset, and/or with the idea that the only major issues relate to money (salaries, insurances, or other benefits)
- Boards Often Concede(d) Management Authority. Most collective bargaining agreements also cover or include issues which reach far beyond money issues and can restrict management/board flexibility in the running of a school district
- Planning and Preparation are Essential. A board's thoughtful preparation for negotiations, can help the board provide positive outcomes for students, employees and the community at large

Bargaining Units – Community of Interest

- Bargaining units formed among positions with a “community of interest”
- Units may be narrow (paraprofessionals only), or broad (shared pay categories - hourly v. salary), and sometimes counterintuitive
 - Not uncommon for a “support staff” bargaining unit to include diverse positions, e.g., paras, food service, custodians & secretaries, whether PT, FT, PY or FY
 - Some unions have employees of different employers/districts
- For many of the bargaining units which have peculiar or disparate positions, the formation occurred simply because the employer chose not/failed to challenge

Bargaining Unit, Right to Work & Janus

- Bargaining unit consists of employees whose positions are included in the Certification
 - a bargaining unit employee need not be a member of the union
 - only union members vote on the collective bargaining agreement
 - non-members are entitled to the same CBA benefits, and are also owed right of “fair representation” in grievances
- 2018 United States Supreme Court decision in *Janus v. American Federation of State, County and Municipal Employees Council 31*
 - employees may not be required to join or pay fees to a union
 - New Hampshire previously allowed but did not require “agency” or “fair share” clauses in collective bargaining agreements)

Bargaining Unit & Collective Bargaining Agreement

- Once certified, the union negotiates the terms and conditions of employment for all of the positions within the bargaining unit.
- The negotiated terms are set forth in a collective bargaining agreement, or “CBA” (sometimes referred to as a “master contract”)
- For school districts and municipalities, the legislative body has final approval of any agreement that includes “cost items”

Negotiations

Good Faith Bargaining



Duty to Negotiate

- RSA 273-A:3, I states

*“[i]t is the obligation of the public employer (school board) and the employee organization (teachers’ union/other union) certified by the board as the exclusive representative of the bargaining unit to negotiate in **good faith**.”*

- On the administration side, RSA 194-C:4, enumerates among the services to be provided as Superintendent Services, “labor contract negotiation support”
- Primary requirement relative to “negotiating” or both the employer and the union under RSA 273-A, is to negotiate in “**good faith**”

“Good Faith” bargaining

- The statutory definition of the phrase, however, is imprecise. The language, found in 273-A:3, merely states:

... good faith negotiation means meeting at reasonable times and places in an effort to reach agreement on the terms of employment, ... but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession.” (RSA 273-A:3, I).
- 2023 amendment to the same section:

“Good faith” shall also mean to meet within 10 business days after receipt of a written request from the other party to meet to bargain. This 10-day requirement may be extended by mutual agreement but it shall not be considered negotiating in bad faith to refuse to extend the timeline.

“Bad Faith” bargaining

- “Bad faith” bargaining, the corollary to good faith negotiating, is equally hard to define. The most common examples are:
 - Surface bargaining – showing up, but not making any movement, or engaging in discussion. Good faith requires conversations, and participating with the object of reaching an agreement
 - Retro/Regressive Bargaining – “Moving the Chains ” - Proposals get worse. (Bd offers 1%, union counters with 4%, Bd counters with .5%)
 - Refusal to furnish pertinent information relative to terms and conditions
 - Refusal to sign a tentative agreement
 - Failure by bargaining team member to advocate for passage

“Good Faith” / “Bad Faith” bargaining

- Various court opinions, treatises and experts have offered insight into what is otherwise a “facts and circumstances” analysis:
 - In the 1992 decision in *Appeal of Franklin Educ. Ass’n, NEA-NH*, the NH Supreme Court stated that the “duty to bargain in good faith ... [imposes] a duty to give negotiations a fair chance to succeed.”
 - The **PELRB** has oft stated that “good faith negotiating means bargaining with the intent, but not the obligation to reach agreement.”
 - Good faith requires a serious intent to adjust differences and to reach an acceptable common ground. It means more than mere talk with the purpose of avoiding agreement, and more than sterile or formal discussions. 48A *Am. Jur.* 2nd Sec. 2974

Failure to Bargain in Good Faith

- General...
 - Decrease in likelihood that negotiations result in a collective bargaining agreement;
 - Potential for a negative impact on school climate;
 - Employees looking for greener pastures
 - “Work to rule”
- Legal...
 - Constitutes an “unfair labor practice” under RSA 273-A:5, I(e) (for the employer), and 273-A:5, II(d) for the union.

Negotiation Subjects



Negotiation Subjects

- School boards should enter the negotiation process with the understanding that negotiation proposals fall within one or more of four general categories:
 - Money
 - Leave
 - Job Security
 - Safety
 - Power

Negotiation Categories

- Money is implicated not only by salary, retirement or attendance “bonuses”, but also by the wide range of provisions found in collective bargaining agreements which shift costs from employee to employer (health insurance, professional development, tuition reimbursement, etc.).
- Leave benefits (most of which include indirect costs to the employer), provide employees with attendance exceptions otherwise required by the basic hourly or salary employer/employee relationship.
- Job security protections might be found in the obvious CBA sections: discipline, “RIF” (reduction-in-force), RIF recall, evaluations; as well as the not-so obvious, e.g., grievance process, co/extracurricular, etc..
- Safety more commonly arising now, specifically relative to student on teacher violence.

Negotiation Categories

- Of the five general negotiation categories, power shifting proposals are the trickiest – and may be most consequential
- Almost all New Hampshire school district CBA's include provisions which shift power - that is authority to take unilateral action - from management and/or the school board, to the employees. Common power shifting provisions include:
 - Contract language setting exact beginning/ending times or days for the student school day or year;
 - Language specifying exact insurance plans;
 - Individual contract date with “specific assignment”;
 - Assignment, re-assignment or vacancy provisions.

Mandatory, Permitted and Prohibited Subjects of Bargaining

- The previous classifications - money, leave, security, safety & power - describe what you might bargain about
- Another set of “*subjects*” are founded in general labor law and NH Supreme Court decisions
 - impact whether board/union positions good or bad faith negotiating:
 - ***Mandatory***
 - ***Permitted, and***
 - ***Prohibited.***

Mandatory, Permitted and Prohibited Subjects of Bargaining

- Mandatory subjects of bargaining are those which are:
 - (1) not reserved to exclusive management authority (e.g., hiring of teachers)
 - (2) primarily effect terms and conditions of employment, and
 - (3) if included in an agreement, neither the language nor a grievance will interfere with public control of government functions.

Typically, wages, hours, insurances will fall into this category, but also things such as evaluation procedures (not substance), training/professional development.

Mandatory, Permitted and Prohibited Subjects of Bargaining

- Permitted subjects are those which are not so reserved but fail *either* (2) or (3). That is, they either:
 - do not primarily affect terms and conditions of employment, and
 - would not interfere with public functions if in the CBA or if a grievance was filed.
 - **More simply, neither prohibited nor mandatory.**
 - E.g., ground rules, bargaining teams, arbitration, internal mgt. or association matters.
- Prohibited subjects are those which are reserved to exclusive management authority (or illegal) – e.g., agency fees, use of technology, programs, employee appointments, etc.

Mandatory, Permitted and Prohibited Subjects of Bargaining

- Good faith negotiating requires parties to at least discuss a permitted subject, but it may allow one or the other parties to reject sooner, rather than later
- Generally can't condition acceptance of a final agreement on acceptance of a permitted subject
- The requirement of good faith negotiating is strongest when the subject is a mandatory subject of bargaining
- Refusal to bargain on a mandatory subject = bad faith
- Insistence on negotiating a prohibited subject + bad faith

Mandatory, Permitted and Prohibited Subjects *Impact Bargaining*

- If a mandatory subject of bargaining, may not change unilaterally either pre-contract, during contract or during **status quo**
- If permitted subject, and not contrary to current CBA, may change but will need to negotiate “impact” on mandatory subjects (e.g., privatization)
- Changes in law may also trigger need to impact bargain
- Need to impact bargain was more prevalent than ever during pandemic

Developing / Hot-Button Topics

- New Federal overtime rules
 - Raises minimum salary threshold **for non-teaching** workers
 - Currently non-teachers qualify for overtime if they earn less than \$35,308 a year
 - Effective July 1, maximum salary exemption increases to \$43,888
 - Increases again to \$58,656 on Jan. 1, 2025
 - Increases every three years starting 1/1/2027 based upon federal wage data
 - administrators retain their exempt status (a) meet salary thresholds or salary equivalent to the teacher entry pay
- Need to take care relative to extra/co-curricular positions

Developing / Hot-Button Topics

- End of year waiver of student days
- Paid duty periods and/or “planning” time for non-teachers
- Scheduling of negotiation sessions during work-days only
- Release from contracts without penalties – boards seeking the reverse
- Reassignment following student violence issue

Ground Rules



Ground Rules

- One of the first steps in the two-party negotiation process is the establishment of “ground rules”
- Helps establish how “good faith” bargaining works for specific negotiations
- Review and discuss with counsel the proposed ground rules, long before the “ground rules meeting”
- Typical considerations or provisions for ground rules include:
 - Scheduling of sessions – work day?
 - Agenda setting
 - Minutes, notes or records
 - Length of sessions

Ground Rules Considerations

Ground Rule Considerations – *continued...*

- Length of caucuses;
- # of sessions before last “new” proposal (language should allow for “creative responses to open items”);
- Method of memorializing tentative agreements;
- Roll of “lead negotiator” / “spokesperson”;
- Communications outside of formal negotiations;
- Confidentiality and publicity;
- Ratification process; and
- Impasse process.

Process and Preparation

Early Stages



Establish General Objectives & Goals

- Depending on the priorities of the Board, some ideas and objectives require more research and development than the limited negotiating window allows
- In order to maximize the opportunity of negotiations, the board, in consultation with the administration, should establish objectives, priorities, and overall expectations
 - Review strategic plan relative to personnel. If the district does not have one, the Board should at least identify some informal, medium range objectives.
 - What is the district trend for retention?
 - Hiring?

Establish General Objectives & Goals

- What education and preparation levels does the Board want to strive to achieve?
- Expectation for length of agreement (compete with other anticipated items, other CBAs, or other considerations – expected attrition in subsequent years)
- What priority does the Board give to reaching an agreement?
 - More important when already in a “status quo” period
- Look for efficiency offsets (e.g., electronic copies of CBA’s and notices, payroll issues)

Review the Current CBA

CBA language can advance, or obstruct Board goals and objectives, therefore, thorough review of the existing agreement is essential.

- Have SAU and building level administrators identify existing obstacles to achieving objectives? (e.g. posting/interviewing requirements for vacancies, especially those which occur after August 1).
- Review recent grievance/ULP history.
- Review open or current side agreements / side-bars. Determine if Board wishes to consider incorporating, modifying, or eliminating.

Getting into the Details – Administration, Board & Board Negotiating Team



Compile Pertinent Data

a) Internal Data Gathering.

- Insurance costs - single, two-person, and family insurance premiums, the District/Employee contributions and the number of individuals in your bargaining unit on each plan;
- Staff development fund use for the past X# of years (how many people accessed the fund and how much was spent);
- Tuition reimbursement fund use for the past three years (how many people accessed the fund and how much was spent);
- Other benefits or costs of unit; ***Continued...***

Compile Pertinent Data

*a) Internal Data Gathering – **continued...***

- Predictable district budget increases/decreases (NHRS, insurance premiums, retirement costs);
 - Anticipated taxpayer costs; and
 - Special warrant articles – bonds, major equipment purchases, etc.
-
- Create a “cheat” sheet – an easy reference to use during negotiations showing key data points: e.g., current budget, cost of step only, cost of 1% salary increase (break down for on-table, and off-table), insurance category aggregate cost based on current usage, etc.; prepare a scattergram

Compile Pertinent Data

Scattergram -

SAMPLE SCATTERGRAM PAGE. REFLECTS COST OF STEP INCREASES ONLY. SCHEDULE ALLOWS FOR INDEPENDENT INCREASES FOR EMPLOYEES "OFF-STEP"

XXXXX TEACHERS' ASSOCIATION

Multiplier (COLA Increase): 1.00

1st Year Scattergram - FY19 Salaries - Step Only

Steps	B	B15	B30	M	M15	M30	M45	Steps	B	B15	B30	M	M15	M30	M45	Steps	B	B15	B30	M	M15	M30	M45																									
1	38,069	39,402	40,781	44,319	45,870	47,475	49,137	1								1																																
2	39,211	40,584	42,005	45,648	47,246	48,900	50,611	2	0.5		1.0	2.0	1.0			4.5	19,606	-	42,005	91,296	47,246	-	-	200,153																								
3	40,388	41,802	43,264	47,018	48,664	50,367	52,129	3			1.0		1.0			2.0	-	-	43,264	-	48,664	-	-	91,928																								
4	41,600	43,055	44,563	48,428	50,123	51,877	53,693	4		1.0		1.0				2.0	-	43,055	-	48,428	-	-	-	91,483																								
5	42,847	44,348	45,900	49,881	51,626	53,434	55,304	5	1.0			2.0				3.0	42,847	-	-	99,762	-	-	-	142,609																								
6	44,133	45,677	47,276	51,378	53,175	55,037	56,964	6								0.0	-	-	-	-	-	-	-	-																								
7	45,457	47,048	48,695	52,919	54,771	56,687	58,672	7				1.0				1.0	-	-	-	52,919	-	-	-	52,919																								
8	46,820	48,460	50,156	54,506	56,414	58,389	60,432	8		2.0		1.75				3.75	-	96,920	-	95,386	-	-	-	192,306																								
9	48,225	49,913	51,660	56,141	58,107	60,141	62,245	9	1.2			2.0				3.2	57,870	-	-	112,282	-	-	-	170,152																								
10	51,410	53,210	55,025	59,849	61,744	63,725	65,694	10			1.0	0.6		1.0	1.0	3.6	-	-	53,210	34,695	-	61,944	64,113	213,962																								
11	54,807	56,725	58,673	63,638	65,625	67,646	69,700	11				2.0				2.0	-	-	-	119,122	-	-	-	119,122																								
12	58,204	60,248	62,325	67,348	69,494	71,675	73,891	12				2.0			1.0	3.0	-	-	-	122,696	-	-	68,017	190,713																								
13	61,601	63,750	65,925	71,075	73,375	75,706	78,071	13				1.0		1.0		2.0	-	-	-	63,188	-	67,689	-	130,877																								
14	65,000	67,263	69,550	74,731	77,137	79,567	82,022	14						1.0		1.0	-	-	-	-	-	-	72,159	72,159																								
Total on-step:									2.7	3.0	3.0	15.4	2.0	2.0	3.0	31.05	120,323	139,975	138,479	839,774	95,910	129,633	204,289	1,668,382																								
Off-1								Off-1				1.6	1.0			2.60				104,133	67,362			171,495																								
Off+								Off+	5.6	5.0	1.0	2.0	2.0	1.0	4.0	20.60	321,085	288,309	63,236	137,442	142,254	69,719	97,815	1,119,860																								
																	23.20																															
																	Total FTEs	54.25																														
																						Roll up multiplier (FICA, NHRS, etc.)				1.25734																						
																						Total Salary Cost FY19:				3,721,395																						
																						Total Salary Cost FY18:				3,660,299																						
																						Year 1 Cost:				61,096																						
																						<i>Note: Need to check for roll-up constants!!</i>																										

Compile Pertinent Data

b) External Data Gathering.

- Predicted increases for employees in town or other districts within SAU;
- Anticipated town/coop budget items, bonds, etc.;
- Surrounding district information - “Earning Stream Comparison”
- General insurance options from current insurer, as well as competitors

Completion – Impasse or Agreement



Impasse or Agreement

- It is beyond the scope of this presentation to delve deep into what happens either upon successful completion of negotiations, or negotiation failure (impasse).
- In short, if the parties reach an agreement at the table on all issues, they submit the agreement to their respective bodies for ratification.
- If the agreement is ratified by both the board and the union, the cost items are submitted to the voters.
- If the vote passes, there is a CBA, if not, or if either the board or union reject the agreement, it is back to the table/or onto the impasse track.

Impasse or Agreement

- If the parties fail to reach agreement at the table, or if the full body of either party rejects the tentative agreement, either party may declare an impasse, which generally leads to mediation, or the less frequently used “fact-finding”
- Irrespective of whether mediation or fact-finding, the voters (or other legislative body), still have to approve **cost items**
- If factfinding, the voters might approve the cost items, then goes back to the two parties, either of which may reject
- If the negotiated agreement does not include “cost items”, then an agreement is final upon approval of the parties’ respective members (full board, or union membership, respectively).

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