

COLLECTIVE BARGAINING 101: A Primer on the Fundamentals of Collective Bargaining



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Overview - What is Collective Bargaining?

N.H. RSA § 273-A:3

I. It is the obligation of the public employer and the employee organization certified by the board as the exclusive representative of the bargaining unit to negotiate in good faith. "Good faith" negotiation involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment, and to cooperate in mediation and the fact finding required by this chapter, but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession.

Key Terms

- Arbitration – a method of settling grievances under the CBA by having an impartial third party hold a formal hearing, take testimony, and render a final decision (that may or may not be binding depending on the language in the CBA).
- Bargaining Unit – a group of employees certified by the NHPELRB to be represented by a union for the purposes of collective bargaining.
- Collective Bargaining Agreement (CBA) – the contract that embodies the results of the negotiations between the employer and the union.
- 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.

Key Terms

- Current Contract Language (CCL) – language existing in the current contract. Often used when one side rejects a proposal and chooses to “keep the CCL”.
- Duty to Bargain – the legally enforceable obligation of each party in a collective bargaining relationship to meet at reasonable times and places and negotiate in good faith with respect to wages, hours and terms and conditions of employment.
- Evergreen Clause – provision which provides for automatic renewal of the agreement until the parties negotiate, and the legislative body ratifies a successor contract.

Key Terms

- Good Faith Bargaining – the legal requirement that two parties in a collective bargaining relationship meet and negotiate at reasonable times and places, with a willingness to reach an agreement on the terms of a CBA.
- Impasse – the point in collective bargaining negotiations at which either party determines that no further progress can be made toward reaching an agreement.
- Just- cause - referenced in many collective bargaining agreements, a widely used term that requires the employer to use justifiable and sufficient reasons to discipline or discharge employees. Most CBAs have just cause requirements which place the burden of proof for just cause on the employer.

Key Terms

- Management rights - the inherent rights of an employer to make decisions regarding its business. These may be expressly reserved to management in the collective bargaining agreement, or they may be removed from the scope of collective bargaining by law.
- Mediation – once the parties have reached impasse, the parties must mediate. The mediator, a neutral third party, has no power to force a settlement but works with the parties to help them arrive at a mutually acceptable agreement.
- Memorandum of understanding or agreement (MOU or MOA) - A formal signed agreement that serves as an addendum to the collective bargaining agreement. An MOU/MOA usually addresses a significant issue that emerged during the term of the agreement, and it represents the mutual understanding between the parties on that issue.

Key Terms

- Past practice - the history of the way parties have behaved toward one another in the past that bears upon the expectations the parties have regarding the terms and conditions of employment. Such practices, sanctioned by use and acceptance, are not specifically included in the collective bargaining agreement. To constitute a past practice the issue must be 1) clear to the parties; 2) consistent in its application over a period of time; and 3) accepted by the parties. Arbitrators use past practice to interpret ambiguous language in the CBA.
- Ratification - formal approval of a newly negotiated agreement by a vote of the members from each party.
- Sanbornize – Local term used to describe the process when the employer presents to the legislative body the anticipated costs of a multi-year agreement by itemizing the projected costs of each year covered by the CBA.

Key Terms

- Status Quo Period – the interim period between the contract's expiration and the negotiation of a new CBA. Status quo requires the employer to maintain the same wages, hours and terms and conditions of employment for the bargaining unit employees that existed at the time the contract expired.
 - This means employees are not granted step increases
 - The one **exception** is a wage change due to the attainment of an advance degree.
- Tentative agreement (TA) - the agreement reached through bargaining prior to its ratification or final approval.
- Unfair labor practice (ULP) - a violation of RSA 273-A by either party, which could include refusal to engage in collective bargaining, refusing to bargain in good faith, or interfering with, restraining, or coercing employees in the exercise of their collective bargaining rights granted by state statute.

Overview - What is Collective Bargaining?

- The process by which management and union representatives negotiate the employment conditions for a bargaining unit for a designated period of time.
- Commonly referred to as “negotiations” or “contract bargaining.”
- The parties have a mutual obligation to bargain in good faith in an effort to reach agreement with respect to wages, hours, and working conditions.
- This obligation does not compel either party to agree to a proposal or to make a concession.

Overview – When does Bargaining occur?

- Initially bargaining takes place after a new bargaining unit is formed and certified by the PELRB.
- More typically bargaining occurs when an existing contract is going to expire.
- Rarely, parties can agree to re-open bargaining to address a particular issue that arises during the term of an existing contract.
- Impact bargaining.

Overview – How does bargaining work?

- Bargaining involves the union and the employer coming together to discuss each side's desired changes to the CBA. Compromises are made until a new contract is agreed upon by both sides.
- Once an agreement is reached, the full School Board and the full union membership must ratify the changes.
- After both the union and the Board ratify the CBA, it is presented to the voters to approve the cost items.

Ways to Avoid ULPs

- Understand collective bargaining obligations.
- Demonstrate honesty.
- Show respect.
- Follow the Ground Rules.
- Respond promptly to requests for information or data.
- Abide by the confidentiality terms set forth in the ground rules.
- Don't retaliate or discriminate against employees who act as union representatives or exercise their rights under RSA 273-A or the CBA.

Subjects of Bargaining

MANDATORY

bargaining
issues that
neither party
may refuse to
negotiate.

- Wages
- Hours
- PTO
- Schedules
- Health Insurance
- Rest and lunch periods
- Stipends
- Discipline
- Discharge
- Promotions
- Layoff or Reductions in Force Procedures

Subjects of Bargaining

PERMISSIVE

issues that are neither mandatory nor prohibited. Parties may agree to negotiate them, but neither party may insist upon its positions on a permissive topic to the point of impasse

- Just cause standard for discipline
- Seniority system for promotions
- Right to return to former position
- Evaluation of supervisors and managers

Subjects of Bargaining

Illegal

Topics that the parties are forbidden to bargain over. These include proposals for bargaining that would violate state or federal laws.

- Appointment of employees
- Discrimination against a group of employees based on race, sex, disability, age, veteran's status, religion, sexual orientation, marital status, etc...
- Agency fees
- Seniority based layoff procedures for teachers

Timing of Negotiations

- Request to bargain must be served at least 120 days prior to budget submission date.
 - Bargaining may start earlier
- The TAs must be ratified prior to the submission of the budget by the governing body or budget committee, as required by law.
- All cost items must be submitted to the municipality's legislative body for approval before the agreement becomes binding

LAST DAY FOR NEGOTIATED
COST ITEMS TO BE FINALIZED:

SB2 – second Tuesday in
January.

RSA 40:13, ii-a(b)

Traditional Schools - "not later
than 30 days before the date
prescribed for the school district
meeting or the second Tuesday
in March, whichever is earlier."

RSA 197:6

Ground Rules

- Meeting times
- Length of meeting
- Order of proposals
- Deadlines for new proposals
- Process for memorializing TAs
- Members of the negotiating teams
- Identification of spokesperson
- Communications outside of formal negotiations
- Exchanging of proposals
- Confidentiality during bargaining
- Target date to reach agreement
- Impasse process

Preparing for Negotiations

SELECTION OF NEGOTIATING TEAM

- School Board members
 - Not a quorum
- Representative from Administration
 - Superintendent; or
 - Assistant Superintendent; or
 - Human Resources Director
- Representative from Business Office
 - Business Administrator should be available to calculate costs and gather financial data.
- Legal consultant
 - Not necessary but often helpful if the union has assistance at the table.

Preparing for Negotiations

SCHOOL BOARD & ADMINISTRATION PLANNING SESSION

- Review existing CBA.
- Determine and prioritize goals for negotiating team.
- Input from the Board on both financial and substantive issues.
- Solicit input from building administrators and discuss any operational changes that may need to be addressed during life of CBA.
- Gather necessary data regarding insurance options.
- Prepare salary/benefit analysis of comparable Districts.
- 91-A

Preparing for Negotiations

PREPARATION OF PROPOSALS

- All proposals and counter proposals should be in writing with a way to distinguish existing language and proposed changes.
 - Helpful to have data to support any changes.
- Proposals should always be dated.
- Helpful to keep a spreadsheet or chart of both sides proposals and counterproposals.
- Best practice would be to include cost estimates with all economic proposals.

Union Requests for Data



- Employee
 - Names
 - Positions
 - Pay rates
 - Date of hire
 - Stipends
- Insurance data
- Miscellaneous other items
 - Professional Development funds
 - Sick Bank
 - Voluntary benefits (i.e. 403(b))

Negotiation Process

- Responses to union proposals and counter proposals should clearly state whether the Board :
 - Accepts
 - Rejects; or
 - Counters
- Inform the other side if you believe a proposal is unlawful or permissive.
- Either side may withdraw a proposal at any time.
- Proposals that are agreed to become TAs.
- TAs are taken off the table pending agreement of ALL items.



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Negotiating Tactics

Packaging

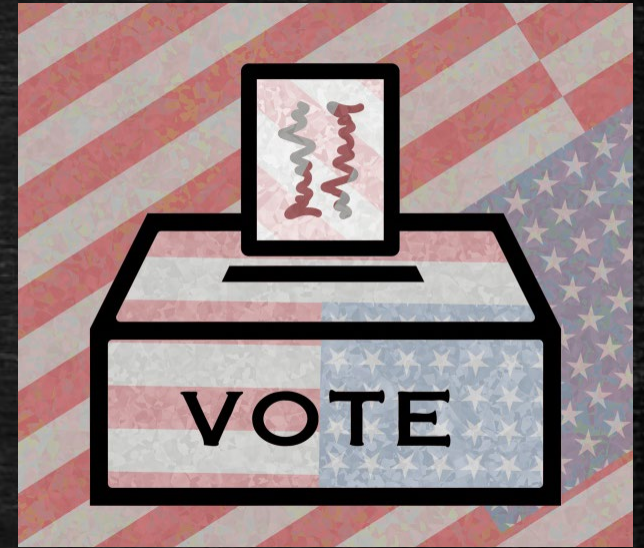
- Packaging involves handling all issues together as an indivisible group or package.
- Packaging can also be used for language items that are related.
- Keeping economic issues together assures the Board will not lose track of the total amount of the cost items.

Trade-offs

- When one party conditions acceptance of one issue to the other party's acceptance of another issue.
- Trade-offs typically work best for language proposals.

Agreement

- If the parties reach an agreement at the table on all issues, they submit the tentative agreement to their respective body for ratification.
- If the agreement is ratified by the union and the Board then the cost items are submitted to the voters.
- If the voters approve the cost items, then the parties will execute the agreement and the CBA becomes binding.
- The executed CBA must be filed with the PELRB within 14 days.



Impasse



- Either party may declare **impasse** if the parties fail to reach an agreement on a contract.
- The parties enter into non-binding **mediation**, where a neutral third party assists the parties in reaching tentative agreement.
- If the mediator is unable to persuade the parties to compromise then the parties go to **fact-finding**.
- A hearing is held or briefs are submitted to a neutral fact finder who will issue a report and advisory recommendations regarding the disputed issues.
- After impasse, either party can request to meet with the full membership of the other side .
- Once impasse is declared, the confidentiality rules no longer apply.

Outcome of Fact Finding



- If neither side accepts the report, there is no agreement to present to the voters . The parties now enter into status quo.
- Negotiations will then restart.

Post Impasse – Voters Do Not Approve



- If either side rejects the report it is submitted to the legislative body at the next annual meeting for a vote.
- If the voters do not approve the fact-finders recommendation, then you do not have a deal, the parties are in status quo.
- Parties must return to negotiations.

Post Impasse – Voters Approve



- If the voters approve a fact-finding report, it is still not binding on the parties because the parties have to agree.
- If the parties do not agree on the terms approved by the voters then the parties enter into status quo and negotiations restart.
- If the parties agree, then the CBA is binding.

Timing of Restarting Negotiations



- The parties can resume negotiations at any time, however, cost items cannot be approved until they are submitted to the voters.
- A special meeting can be called, only if the Board included a contingent article on the Warrant pursuant to RSA 197:3, III.

Impact Bargaining

- The obligation to bargain over the impact on the terms and conditions of employment of a decision made by management within its authority.
- Can occur during status quo or during term of CBA

Past Practice

- Management has to notify union that it is going to discontinue past practice at the end of the current agreement.
- If Union does not present a proposal that memorializes the past practice during the following negotiating period, then the past practice is discontinued.