



Employment Issues

Collective Bargaining

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2. Fire
3. Transfer
4. Suspend
5. Lay off
6. Recall
7. Promote
8. Assign
9. Reward
10. Discipline
11. Adjust grievances
12. Effectively recommend any one of the above actions
13. Responsibly direct the working forces

The school corporation should educate its supervisors about what they can and cannot do.

Once a school district becomes aware of an organization effort by a union, the same federal and state labor laws prohibit the school district, as an employer, from engaging in certain activities. This includes, but is not limited to:

Discrimination - Supervisors cannot discriminate in any manner against employees who engage in union activities. This simply means that supervisors should continue running their operation exactly as they have done in the past and deal with employees without regard to their pro-union or anti-union sentiment.

Threats - Supervisors may not threaten employees who are engaging, or who may engage, in union activity (e.g. hours of work will be reduced, benefits will be taken away, work will be privatized, etc.).

Interrogation - Supervisors cannot ask employees questions about their union sentiments, or another employee's union sentiments. Supervisors may not ask about union meetings or about those who have signed union authorization cards. Supervisors can,

Union Organization

The Public Employment Relations Act (PERA) protects employees' activities during a union organization campaign. These laws generally hold an employer responsible for any action taken or anything said by a supervisor, including the lowest level of supervisor. Actions taken by any supervisor can result in a prohibited practice charge being filed against the school district. Therefore, it is important that the district identify those persons that the PERA defines as supervisors.

The PERA defines a supervisor as an individual who can, on behalf of the school district, perform any one of the following actions:

1. Hire

however, listen to an employee who wants to volunteer this information.

Promises - Supervisors may not attempt to influence employees into not supporting the union by making some promise of benefits to the employees for doing so (e.g. a better assignment, more overtime hours, etc.)

Surveillance - Supervisors may not spy on the employees' union activity or give the employees the impression that their activities are being spied upon.

Once PERB directs an election, PERB will provide the school corporation with a notice of the election. That notice will contain a sample ballot, the date, time, place and purpose of the election, and any other information PERB may deem appropriate. The notices must be posted by the school corporation in "conspicuous places customarily used for the posting of information to employees."

Once PERB issues an order that defines the appropriate bargaining unit and an election petition is pending, PERB will order the school district to submit an alphabetical list of the names, addresses and job classifications of the employees in the appropriate bargaining unit. The school district must submit this list to PERB within seven (7) days of the date of the order.

PERB may invalidate the results of an election if it determines that one of the following activities was conducted between the filing of an election petition and the conclusion of the election and the activity may have affected the results of the election:

1. Electioneering within three hundred (300) feet or within sound of the polling place established by the board during the conduct of the election.
2. Misstatements of material fact by any party to the election or its representative without sufficient time for the adversely affected party to adequately respond.
3. Any misuse of PERB documents, including an indication that the board endorses any particular choice appearing on the ballot.
4. Campaign speeches to assembled groups of employees during working hours within the

twenty-four (24) hour period before the election.

5. Any polling of employees by a public employer which relates to the employees' preference for or against a bargaining representative.
6. Commission of a prohibited practice.
7. Any other misconduct or other circumstance which prevents employees from freely expressing their preferences in the election.

Certification of Bargaining Units

School corporations, as Iowa public employers, must recognize and bargain with an employee organization as the exclusive collective bargaining representative of an employee unit if that organization is certified by the Iowa Public Employment Relations Board (PERB) after a PERB-conducted election. An organization with union authorization or membership cards, or a petition, in either case signed by a unit majority, has no standing to compel negotiations. Once a valid election has been conducted and the PERB certifies the results for or against union representation, no election can be conducted among that unit of employees for one [year](#).¹ A collective bargaining agreement bars an election for its duration or a two-year period, whichever is [shorter](#).²

After an employee organization has been certified, the school corporation cannot unilaterally change existing practices respecting the mandatory bargaining subjects listed in Section 20.9 of the Public Employment Relations Act (PERA) of 1974, Chapter 20 of the IOWA CODE, without bargaining with the [organization](#).³ Unit employees' wages, benefits and working conditions listed in Section 20.9 cannot be unilaterally altered during the course of negotiations and, if necessary, impasse procedures, unless required by law (for example, an increase in the minimum [wage](#)).⁴

General Principles

The basic legal principles for public sector bargaining in Iowa are set forth in the PERA and the PERB administrative regulations.

A public employer is required to bargain with an employee organization receiving a majority of votes cast in a secret ballot election and certified by the

PERB as the exclusive collective bargaining representative.

Once a bargaining unit is certified, the public employer must negotiate with the certified representative about proposals concerning the statutory list of mandatory bargaining subjects. The following topics are mandatory bargaining subjects:

1. evaluation procedures
2. grievance procedures (including binding arbitration of grievances)
3. health and safety matters
4. holidays
5. hours
6. in-service training
7. insurance
8. job classifications
9. leaves
10. overtime pay
11. seniority
12. shift differentials
13. staff reduction procedures
14. supplemental pay
15. transfer procedures
16. vacations
17. wages

The parties can agree to bargain about a non-mandatory or "permissive" subject of bargaining even though the statute does not require them to do so, but the parties may not bargain about subjects specifically excluded from negotiations by law. The PERA specifically excludes retirement systems from the scope of negotiations. Early retirement proposals may be considered a "retirement system," which may make such proposals an illegal subject of bargaining. Although the Iowa Supreme Court has not directly ruled on this subject, the court did find that early retirement proposals were not mandatory subjects of bargaining as either "wages" or "supplemental pay." And the court has determined any proposal that "directly augments or supplements the benefits a public employee would receive under a retirement system under other provisions of the IOWA CODE constitutes a proposal regarding a 'retirement system' and are excluded from negotiations."

The PERA describes the parties' duty to bargain and imposes the unspecified obligation to "meet at reasonable times," including setting meetings reasonably in advance of the public employer's budget-making process, and to negotiate in good

[faith](#).⁵ The obligation to bargain in good faith does not compel either party to agree to a proposal or make a concession and does not compel the parties to meet at any certain time or at set [intervals](#).⁶ It is for the parties to decide where and how often to meet, who will serve on their bargaining teams and what the provisions of their agreement will be.

The PERA contains several specific mandates on the bargaining process. The initial mandate is the first two bargaining sessions, at which initial proposals are exchanged, must be open to the [public](#).⁷ The Iowa Supreme Court has ruled subsequent bargaining sessions are closed to the public and the media, unless the parties mutually agree to open [sessions](#).⁸ This rule applies even if a majority of the school corporation's board of directors serve on the bargaining team and the bargaining sessions technically constitute a "meeting" under Iowa's Open Meetings Law. The PERA also provides that the parties' strategy sessions, mediation sessions and arbitrators' deliberations are [closed](#).⁹

The second mandate regards how the public employer is required to respond to the union's initial proposal during the second bargaining session. The PERB has held at the second public session, the public employer must specifically respond to each proposal of the employee [organization](#).¹⁰ This means the employer must accept or reject each union proposal or offer another proposal on the same subject. It does not mean the public employer must agree to each proposal or offer a compromise between the proposal and existing contract language or the employer's established practice.

Public employees and employee organizations are prohibited from instigating, participating in or ratifying a strike. An injunction, with fines, decertification and loss of employment as penalties for contempt, are available as [remedies](#).¹¹ The PERA also forbids a public employer from granting increased compensation to [strikers](#).¹² The PERA contains a dispute resolution method which permits, at least in theory, employee organizations and public employers to resolve their bargaining differences without engaging in the "economic warfare" that characterizes the private sector negotiations. The statute offers three methods of dispute resolution: [mediation](#),¹³ fact-[finding](#)¹⁴ (only available for non-teacher units) and final and binding [arbitration](#).¹⁵

Choosing the Bargaining Team

Negotiations are commonly conducted by subcommittees of the public employer and union. These subcommittees are referred to as bargaining teams and are typically led by one person who serves as the team's chief negotiator. The public employer and the union delegate the authority to bargain to their bargaining teams. Those teams then meet at regular intervals and negotiate a collective bargaining agreement or revisions to an existing agreement. Although the bargaining teams negotiate, only the public employer and the employee's bargaining representative are authorized to agree to any proposal. Any agreement reached at the bargaining table is "tentative" in nature pending final ratification by the public employer and the employee's bargaining representative. The union must vote to accept or reject the tentative agreement within seven days of the date the tentative agreement was reached. The board must approve or reject it within 10 days of the date it was reached. These timelines may be modified with the mutual agreement of both [parties](#).¹⁶ If a party refuses to ratify a tentative agreement and this dispute is submitted to a third-party neutral for resolution, ordinarily neutrals will not set aside a tentative agreement. Tentative agreements have been set aside for mistakes of error and redistribution of existing costs.

Who should be on the school corporation's bargaining team? In the final analysis, a school corporation should do whatever works best for it. In most negotiations, the bargaining team will include administrators who are knowledgeable and experienced in operating the school corporation and overseeing its financial affairs. Sometimes one administrator can wear both hats and serve as the team's financial and operations expert. Other times, two or even three administrators are needed. The team must have both operations and financial expertise if it is to function properly.

Generally, it is not wise to have the entire board or a majority of the board at the table. Negotiations flexibility can be compromised when several board members sit at the table since they are commonly regarded as speaking for the entire board, thus eliminating the need to bring any proposal to the board for further review and study.

In the event board members actually negotiate, the entire board must ultimately approve any tentative agreement and be kept informed of developments throughout negotiations. The chief negotiator or the entire bargaining team should periodically meet with and update the board on how negotiations are progressing. During these meetings, the chief negotiator should also discuss the range of comparable settlements throughout the state, and obtain from the board a sense (if not specific authority) of what settlement level the board will accept. The most efficient and productive role for the board to play is to establish the parameters within which negotiations will occur.

Although each party has virtual *carte blanche* authority regarding who serves on its bargaining team, school corporations should avoid including persons with abrasive or impetuous personalities. School corporations should also avoid the misperception the chief negotiator makes all the decisions and other bargaining team members must assume passive roles. All team members should fulfill a specific role or function and should, consistent with that role or function, actively participate in caucuses, strategy sessions and at the bargaining table. This is true even if the school corporation hires an attorney or outside consultant to serve as its chief negotiator. The attorney or consultant, while presumably skilled in the art of negotiation, often is not familiar with the school corporation's financial position and day-to-day operations and must rely on the knowledge and experience of other team members if he or she is to be effective. Ordinarily, the attorney or consultant has neither the knowledge nor the information to negotiate alone.

However comprised, a bargaining team must work together if negotiations are to succeed. It is also important for someone on the school corporation's team to take accurate, contemporaneous notes during negotiations. This will avoid disputes on which items are settled or unresolved. Accurate and complete notes can also serve as evidence of "negotiations history" in a future prohibited practice, grievance or interest arbitration case. It is recommended a minimum of two people serve on a bargaining team so at least one person can dedicate his or her time to taking accurate notes. The team's notes should be kept in a separate negotiations file and retained from year to year. Bargaining notes

can prove essential to establishing relevant history in a grievance arbitration case.

After selecting the bargaining team, several steps should be taken before negotiations begin. Grievances and arbitration awards from the last contract term should be reviewed to determine if the school corporation should propose clarifying or corrective contract language. Administrators should be surveyed to determine if existing contract language has created interpretation problems and what new language is needed. Administrators should keep ongoing notes on any complaints they receive on specific procedures and any discussions about a provision's intended meaning.

Financial information, including the most current information on the regular program "new money" for the next year, estimated income and expenditures (including cost increases in health and other insurance programs as well as FICA, IPERS and workers' compensation), the anticipated scattergram for the bargaining unit and the cost of salary schedule movement for the next year should be compiled and made available to team members. It is also a good idea to compile financial and salary information from other comparable school corporations such as those in the same athletic conference, in the geographical area or with similar student enrollments. How other comparable school corporations compare regarding salary or wage levels, anticipated new money, insurance and other comparables will influence what proposals your team makes.

A school corporation should also estimate the cost of the association's economic proposals before it responds to the association's initial proposal and should continue to "cost" the association's proposals throughout negotiations. Costing an association's proposal involves a number of variables and can be difficult to do at the bargaining table when proposals are being rapidly traded.

Before negotiations begin, many bargaining teams will prepare an index that calculates how much a \$100 increase in the base increases the school corporation's total salary and benefits costs. This is a strategy to avoid costing errors. Computer programs can also be developed which allow bargaining team members to quickly calculate, to the penny, the total cost of any proposal and also the percentage increase in salary and benefits the

proposal represents. Negotiating teams are encouraged to use costing aids of this nature so they do not tentatively agree to salary and benefit proposals based on inaccurate cost calculations.

Other less tangible cost calculations should also be considered when evaluating any of the association's proposals. Annual overtime expense, the cost of paid vacations and holidays and the so-called "roll-up cost" in such benefits resulting from the association's proposed wage increase are examples of hidden costs that school corporations often overlook during negotiations. Bear in mind proposals concerning increases in personal days, sick leave, and other forms of leave will, if accepted, cost the school corporation additional money and should be included as costs.

It is essential the board establish clear, outside parameters for negotiations (for example, a 5 percent overall financial package or a \$500 base increase) and communicate those limits to its negotiating team. The bargaining team should know from the beginning the range of proposals the board will accept because the board's tolerance level will effect the team's negotiation strategy. For example, if the board will only accept a settlement that increases the bargaining unit's total salaries and benefits by 2 percent, then the negotiation team should initially propose a small increase in salaries and benefits and not significantly increase that proposal in response to association counterproposals. The bargaining team may be more willing to consider association language proposals with the understanding any concessions made on such proposals constitute a trade-off for lower salary and benefits. If the bargaining team does not have this information from the outset, it may concede too much and be forced to later retract proposals or radically change its bargaining position as negotiations conclude.

When obtaining parameters from the board, the bargaining team and the chief negotiator should attempt to obtain the board's bottom line and, in so doing, inform the board that it will rely on this information during negotiations. Too often a board will say it will not accept a total package settlement of greater than the school corporation's allowable growth and then later accept a more costly settlement. While board members certainly retain the prerogative to change their minds, they should be aware that any radical change in position may

undermine the bargaining team's credibility at the table. The team will lose credibility if it adheres to the board's initial position throughout negotiations and then, at the last minute, is forced to accept a settlement the team repeatedly said its board members would not accept.

Changes in position are always possible and certainly wise if new information comes to the forefront, which requires the board to reassess its initial stance. The bargaining team and the board should, however, establish from the outset an acceptable settlement, yet retain flexibility from that position when new information dictates a change.

Establishing Ground Rules

Before negotiations begin, some parties agree to a fixed calendar of meeting dates; agree all language issues will be resolved before detailed discussion of monetary issues; agree neither party will disclose the status of negotiations to the media or only joint press releases will be issued; or all tentative agreements are void if total agreement is not reached.

The parties should decide what negotiations model they will follow. The traditional model is the most common and entails the exchange of specific proposals and counterproposals. A minority of school districts have abandoned the traditional approach in favor of less-structured approaches commonly called "collaborative bargaining." Under this model, the parties discuss ideas, concepts and mutual interests not tied to specific contract proposals. Later if consensus is reached, the teams assign a person to put the consensus in writing. The aim of collective bargaining is to find, through discussion, mutually acceptable solutions to labor relations issues.

What negotiations model a school corporation adopts will depend upon the personalities of its bargaining team and the relationship it has with the employee groups. Neither model is perfect for all school corporations. Be suspicious of any bargaining model purporting to solve all bargaining woes. Recall the old adage, "If it sounds too good to be true, then it probably isn't."

When selecting a bargaining model and establishing ground rules, remember that the genius of collective bargaining is flexibility, imagination and

spontaneity. As a general rule, inflexible and overly restrictive ground rules are unproductive. Negotiations cannot be "programmed." A fixed calendar (for example, an agreement to meet every Saturday from 8 a.m. to 5 p.m.) can promote an excessive expenditure of time, whether needed or not. A "blackout" commitment forfeits the employer's ability to, if necessary, go public with its position and rationale. Tentative agreements on certain proposals should not be made if related or dependent items remain unresolved and will later cause the school corporation to rethink the agreement. Once items are agreed to, it is counterproductive to later start over "from scratch."

Subjects of Bargaining

A proposal may be a mandatory, permissive or an illegal subject of bargaining. Mandatory subjects are contained in the statutory list set forth in Section 20.9 of the PERA. Mandatory subjects may be proposed at any time during negotiations and must be bargained to impasse and submitted to arbitration if demanded by either party. Permissive subjects include any matter that falls outside the statutory list, but is not contrary to law.

Permissive subjects may be proposed in negotiations but need not be bargained to impasse. This means either party can discuss a permissive subject during negotiations and mediation, but cannot compel a fact-finder or arbitrator to consider the subject without the other party's consent. Illegal subjects are contrary to law (for example, retirement systems that replace IPERS is prohibited by state law) and cannot be proposed at any stage of negotiations.

The bargaining team should carefully review the association's initial proposals to determine if each proposal is mandatory or permissive. If a proposal is permissive, the bargaining team must decide whether it is willing to discuss it during negotiations and at what point the discussions will end. It is important for the bargaining team to advise the other party that it considers a topic to be permissive and while it is willing to discuss the proposal, it will not bargain the matter to impasse. If the bargaining team does not make its intent clear, its initial willingness to discuss the topic could be later construed as a waiver of its right to refuse to submit the matter to impasse.

Bargaining teams should understand a given proposal can be both mandatory and permissive. If a proposal has both permissive and mandatory clauses or provisions, the school corporation is required to bargain to impasse regarding the mandatory aspects of the proposal and can only refuse to discuss the permissive aspects of the proposal. For example, an association proposal on employee grievances that proposes a three-step procedure and then states that employee discipline and discharge issues will be subject to the grievance procedure is both mandatory and permissive. The component of the procedure requiring a three-part mechanism for resolving employee grievances constitutes a "grievance procedure" pursuant to IOWA CODE Section 20.9 and is therefore mandatory. The component of the provision that subjects employee discipline and discharge to the procedure is, in contrast, permissive.

When faced with that or a similar proposal, the negotiating team should:

1. Identify at the table the parts of the plan that are mandatory or permissive
2. State that it will negotiate to impasse the mandatory parts of the proposal
3. State that with regard to any permissive language, it will discuss the proposal but not negotiate it to impasse

In the alternative, the team may simply refuse to negotiate permissive language.

The wisdom of the topic is another matter. For example, a proposal that "15 days of paid leave may be used annually for association (or union) business" is a mandatory bargaining subject. The proposal is not, however, favorable to a school district's vital interests and could be rejected for many reasons. Initially, the proposal is costly and expands the nature and type of paid leave available to the school corporation's employees. The phrase "association (or union) business" is a very broad term and could be construed to permit time off for almost any activity provided the activity promotes the interest of the association or its members. For example, leave to campaign for an association-supported political candidate is arguably covered by the proposal and subject to paid leave. The proposal, while mandatory, is not necessarily acceptable.

In contrast, a proposal may be permissive in nature yet acceptable to a school corporation. A proposal, for example, states: "With the permission of the school corporation, the association's chief negotiator may use approved preparation time to examine the school corporation's financial records" is permissive, but permitting an employee to use his or her preparation time for that purpose may be sensible in a particular case. The proposal requires the school corporation to grant permission before preparation time is used and also limits the use of preparation time to one specific purpose (to examine the school corporation's financial records).

The right to assign and reassign work to employees within the work day is a permissive subject of bargaining. Public employers have the right to assign work to their employees and to do so without being required to bargain concerning additional compensation for work performed within the employee's negotiated work day. The employer, however, must bargain the length of the employee's work day and compensation for that work day. Having done so, the employer is then free to assign to the employee any duties within the agreed upon hours of the workday that are regular duties of that classification of employee. Further, the employer is not required to bargain regarding any additional compensation for those assigned duties. Among the proposals or contract provisions affected by this ruling are the following:

1. Overload pay for teaching more than a specified number of students
2. Extra compensation for teaching more than a specified number of periods during the regular school day
3. Extra compensation for substituting for a teacher who is absent
4. Extra time or compensation for ICN work
5. Assignment of duties prior to or after the regular student day but within the regular teacher day (i.e., supervision, lunchroom supervision, recess supervision, etc.), except to the extent that the assignment is made on the basis of seniority
6. Planning or preparation time or periods (Break time is mandatory)
7. Compensation for teaching at-risk, ESL or special education students

Lastly, the school corporation may agree to negotiate regarding the permissive topic and then

later refuse to negotiate further and refuse to submit the topic to mediation, fact-finding or arbitration if the contract is not voluntarily settled. PERB rules provide that if a dispute arises during negotiations as to whether a proposal is mandatory, permissive or illegal, it can be submitted to PERB for [resolution](#).¹⁷ This is typically done by setting forth the specific proposal in a petition to PERB, along

with the parties' positions on its negotiability. Expedited handling of such petitions takes place when the parties are at fact-finding or arbitration and the petition is submitted within seven days after final offers are [exchanged](#).¹⁸ The fact-finder or arbitrator's report and award regarding the disputed proposal is issued contingent on the PERB's determination regarding [negotiability](#).¹⁹

Nature of Common Contract Clauses

Article	Clause	Status
Grievance Procedure	Grievance defined to include disputes not covered by the collective bargaining agreement	Permissive
	Listing steps of procedure and time limits	Mandatory
	Provisions for arbitrator selection	Mandatory
	Separate grievance file	Permissive
	School corporation's duty to provide information relating to negotiations or grievance administration	Mandatory
	Grieving discipline or "just cause" for discharge	Permissive
	Election of remedies clause foreclosing a grievance if another forum is used	Permissive
Employee/Association Rights	Grievability on "fairness" of evaluation	Permissive
	Association right to negotiate prior to subcontracting bargaining unit work	Permissive
	Complaints first discussed with teacher	Permissive
	No discrimination clause	Permissive
Wages and Salaries	Salary components	Mandatory
	Amount of credit for new hires	Mandatory
	Paycheck procedures	Mandatory
	Extra pay for periods worked beyond the normal day	Mandatory
	Pay for required work on non-work days ²⁰	Mandatory
	Merit or performance-based pay	Mandatory
	Cost-of-living allowance	Mandatory
	Tax-sheltered annuity (TSA)	Mandatory
	Payroll Deductions (other than dues)	Permissive
	Pay for break time	Mandatory
	Clothing allowance	Permissive
	Tool allowance ²¹	Permissive
	Comparable work committee	Permissive
Hours of Work	Length of employees' work day	Mandatory
	Amount of preparation time	Permissive
	Restrictions on work assignments	Permissive
	School corporation-association formulation of school calendar	Permissive
	Length of work year	Permissive
	Number of in-service days	Mandatory

	Early dismissal	Mandatory
Insurance	Plan benefits, eligibility and employee contributions toward premium payments	Mandatory
	Selection of carrier	Permissive
	TSA or cash payments in lieu of employer contributions toward family coverage	Mandatory
	Flexible Spending Accounts ²²	Permissive
	Continued coverage while on leave or layoff (including leave due to work-related injury) ²³	Mandatory
	Self-funded insurance	Mandatory
Leaves	Amount, eligibility and accumulation of various paid and unpaid leaves	Mandatory
	Separation payment of unused sick leave	Mandatory
	Trading time for leave usage	Mandatory
	Use of association leave for negotiations or impasse hearings	Mandatory
	Use of sick leave for medical appointments	Mandatory
	Use of legal/jury leave for any administrative hearing	Mandatory
	Payment for unused sick leave	Permissive
Seniority	Definition and use (for assignments, transfers, RIFs, etc.)	Mandatory
	Non-unit administrators' use of seniority in RIF	Illegal
	Association right to seniority list	Mandatory
Staff Reduction	Limits on school corporation's right to determine when RIF necessary	Permissive
	Criteria for staff reductions	Mandatory
	Order of layoffs	Mandatory
	Requirement for all laid off employees to be recalled prior to any hiring	Mandatory
	Notification date for staff termination	Mandatory
Transfers	Definition, order and criteria for voluntary and involuntary transfers	Mandatory
	Affirmative Action provisions for which positions would not be part of transfer	Mandatory
	Provisions for out-of-unit transfers	Permissive
	Posting and bidding procedures	Mandatory
Evaluation Procedures	Notice of evaluation criteria	Mandatory
	Determining the number of evaluations	Mandatory
	Setting performance standards	Permissive
	Joint establishment of evaluation criteria/instrument	Permissive
	Specifying who will evaluate	Permissive
Other	Management rights clause	Permissive
	Working conditions of substitutes	Permissive
	Work rules	Permissive
	Employee reimbursement issue (physical exam, mileage, etc.)	Permissive
	Replacement of IPERS	Illegal

This list of contract clauses is intended to provide illustrations of mandatory, permissive and illegal subjects of bargaining.

It is not intended to be an exhaustive list of mandatory, permissive and illegal subjects of bargaining.

Elements of Good Faith Bargaining

A public employer's duty to negotiate in good faith requires it to designate bargaining representatives with the authority to reach tentative understandings on behalf of the employer (subject to ratification by the governing board), to explain the reasons for the employer's objections to employee organization proposals and to conduct negotiations in a sincere effort to reach [agreement](#).²⁰ However, the employer and the employee organization have a right to reject proposals and the PERB cannot order either party to accept a particular [proposal](#).²¹ The PERA also prohibits the employer from bypassing the employee's certified bargaining representative and attempting to negotiate directly with employees or otherwise attempting to disparage and undercut the bargaining representative. However, all communications with the bargaining unit are not prohibited. A school corporation can, for example, send a letter to each bargaining unit member accurately summarizing the terms of its final offer provided the communication does not include or suggest a threat of reprisal or promise of [benefit](#).²² The school corporation can also meet with groups of employees if it informs the groups of what has transpired at the bargaining table and does not try to negotiate with them.

A school corporation must provide, on request, available information which is relevant to negotiations or impasse proceedings. This obligation extends to information enabling the employee organization to formulate initial or revised proposals, to support its final offers in fact-finding or arbitration hearings, and to any other information that is relevant to "informed or realistic [bargaining](#)."²³ A wide variety of budgetary and unit cost information is potentially relevant: historical budget documents or worksheets maintained by the school corporation or submitted to state agencies; current and estimated future costs of unit employees' benefit programs; payroll information; current and past scattergrams showing where the school corporation's teachers fall on the negotiated salary schedule. A school corporation need not generate information not already available to comply with an organization's request and is not required to recompile its existing information in any particular form. The employer may also charge the

organization for the actual cost of compiling and [copying](#).²⁴

A school corporation's bargaining obligations also apply to the resolution of impasse items. The PERA makes it a prohibited practice for either party to refuse to participate in statutory or negotiated impasse procedures. The PERB has, however, ruled that a public employer can ignore a union's request for the appointment of a mediator where an organization's late certification did not allow for timely completion of statutory [procedures](#).²⁵

The duty to bargain also arises during the term of a collective bargaining agreement and prohibits school corporations from making unilateral changes in mandatory bargaining subjects without providing the certified bargaining representatives notice of the proposed changes and an opportunity to bargain about the proposed [change](#).²⁶ The duty to bargain during the term of the contract, often referred to as "mid-term bargaining," pertains to all mandatory subjects whether or not the contract contains a provision pertaining to the subject. A school corporation is not, in contrast, obligated to provide the employee's bargaining representative with notice and an opportunity to bargain about a permissive bargaining subject before implementing a change.

In the absence of a contract provision barring negotiations during the contract term, the PERB has held that the test whether an employee organization has a right to insist on mid-term bargaining on a matter discussed during prior negotiations is whether it "consciously yielded" or "clearly and unmistakably waived" its right to [bargain](#).²⁷

Some collective bargaining agreements contain a "zipper" clause, banning negotiations during the term of a contract. A typical zipper clause reads as follows:

The parties agree that during the negotiations that led to this agreement they had an unlimited opportunity to offer and discuss proposals on any lawful subject of bargaining. Therefore, they agree that during the term of their agreement neither

party shall have the obligation to negotiate on any matter which was, or could have been, negotiated or contained in this agreement.

The PERA requires each party to bargain in good faith concerning the mandatory subjects listed in Section 20.9 of the PERA. Effective bargaining requires more than just a good faith effort by the parties. It involves mutual give and take between the parties with the objective of solving the legitimate problems that arise in the work place. For effective and productive bargaining to take place, each party should come to the table with a positive attitude and a willingness to listen and appreciate, if not to accept, the point of view expressed by the individuals sitting across the table.

Practical Tips For Negotiations

The following are some practical tips for productive negotiations:

1. Honesty and integrity (including keeping confidences) are keys for successful negotiations
2. Don't be afraid to say "I don't know"; it enhances credibility and respect.
3. The image of the effective negotiator as a tough-talking, table-pounder is a myth; listening is a powerful key.
4. Negotiation is an open and candid discussion of bargaining proposals.
5. An inevitable event in all negotiations is the catharsis that comes from the association's recounting of the employer's real or imagined unfairness during the last contract term.
6. If a proposal is unacceptable, say "no" firmly once, and move on.
7. An initial economic offer should not be so "far out" as to insult the association and polarize negotiations.
8. Seek to determine—as early as possible—the association's priorities and realize that association priorities may be different from those of its members.
9. Understand the reasons or politics behind association proposals.
10. Don't hurriedly finalize complex language at the table; get agreement in principle, then draft, redraft and jointly finalize.

11. Any agreement which promotes trust and creates a mutually beneficial long-term relationship requires compromise on both sides.
12. Saying "final offer" more than once fails to create effective negotiations.
13. Timing is everything; your judgment as to when a proposal should be dropped, an offer improved, or the employer should stand pat, is critical.
14. Study other contracts, but don't hesitate to improve on them in your negotiations.
15. When final agreement is reached, get the commitment of each of the association's team members to recommend ratification to the membership and do likewise.
16. Remember that imprecise contract language usually works to the employer's detriment.
17. Listen carefully; if negotiators cannot explain their proposals or the reasons for them, the proposals are not essential.
18. Negotiations are like a trial: thorough preparation is as important as the main event.
19. "Programming" an entire negotiations in advance usually fails.
20. After ratification, explain contract provisions at a supervisors' in-service.

Impasse Resolution

The PERA defines a negotiations "impasse" as "the failure of a public employer and the employee organization to reach agreement in the course of [negotiations](#)."²⁸ Thus, a deadlock after extensive negotiations is not required.

An impasse triggers a two-step statutory impasse resolution process consisting of mediation and arbitration for licensed employee units. A three-step statutory impasse resolution process consisting of mediation, fact-finding and arbitration is prescribed for classified employee bargaining units. However, the PERA permits the parties to negotiate their own impasse procedures. A school corporation and an employee organization, for example, could agree to not use mediation in the resolution of their dispute by directly proceeding to conventional or advisory arbitration. Other examples include using different decisional criteria than those in the PERA, or selecting an arbitrator of their choosing.

Mediation

Although a school corporation and employee organization can mutually agree to impasse procedures other than those required by the PERA, there are statutory implementation deadlines. Generally beginning with mediation, impasse procedures for classified employee units must be implemented no later than 120 days prior to the school corporation's certified budget submission date (April 15). For licensed employee units, the impasse procedures must begin no later than 120 days prior to May 31 (January 31). Like the classified employee impasse process, the impasse procedures for licensed employee units are generally implemented by the appointment of a mediator by the PERB.

The mediator may be a Federal Mediation and Conciliation Service commissioner, a PERB staff member or an ad hoc mediator. A mediator has the authority to offer non-binding suggestions to resolve the dispute. If no agreement is reached, either party may file a request with PERB for binding arbitration.

A mediator's memoranda, work products and case files are confidential communications and may only be released under specific, narrow circumstances. This means that if the dispute goes to arbitration, the mediator will probably not be able to testify at the arbitration.

Arbitration and Fact-Finding

There are many similarities between fact-finding and arbitration proceedings:

1. The parties exchange final offers
2. An informal evidentiary hearing before the neutral is held during which the parties present their evidence and arguments.
3. The decisional criteria set forth in Section 20.22(9) of the PERA are used by the neutral.
4. The parties share the costs of the proceeding.

The major difference between the processes is that fact-finding produces non-binding recommendations while an arbitration award is final and binding, albeit subject to judicial review.

The PERA authorizes the parties to use a panel of three arbitrators, commonly referred to as a "tripartite arbitration board," or to use a single arbitrator. PERB sends the parties a list of five arbitrators and by an alternative striking process the parties select a single arbitrator or chairperson of their arbitration board. Before the arbitration hearing, the parties' "final offers" on each unresolved item are exchanged.

Such offers cannot be altered or amended during the arbitration process and must have been offered by party during [negotiations](#).²⁹ The parties may continue to bargain to try to reach agreement. The arbitrator or majority of the arbitration board determines, within 15 days of the hearing, the "most reasonable offer" on "each impasse [item](#)."³⁰ The final offers of the parties must be selected, without modification. The arbitration process must be completed by [May 31](#).³¹ The PERA requires that arbitrators must consider the following in fashioning their awards:

1. Past collective bargaining contracts between the parties and their bargaining history.
2. Wages, hours and employment conditions of unit employees versus those of other public employees doing comparable work, "giving consideration to the area and the classifications involved."
3. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
4. The power of the public employer to levy taxes and appropriate funds for the conduct of its [operations](#).³²

The statutory impasse resolution process for units of school classified employees is identical to that described above, except non-binding fact-finding follows mediation and precedes arbitration. If the impasse is not resolved 10 days after mediation begins, PERA sends the parties a list of five neutrals and by alternatively striking names they a fact-finder is [selected](#).³³ At least five days before the hearing, the parties exchange proposals which have offered to each other during [negotiations](#).³⁴ These proposals will be presented to the fact-finder. Within 15 days after the hearing, the fact-finder issues a report and recommendations to resolve the

dispute. The parties have 10 days to accept or reject the recommendations or the report is made public. If either party rejects the fact-finder's recommendations, the case proceeds to final and binding arbitration using the procedures discussed above for selecting an arbitrator, exchanging final offers, and conducting a hearing. The arbitrator must select the "most reasonable" of the final offers submitted by the parties or the fact-finder's recommendation with respect to each impasse [item](#).³⁵ Arbitration must be completed by April 15.

Judicial Review of Arbitration Awards

The Iowa Supreme Court has ruled that interest arbitrators are agents of the PERB and judicial review of their awards is available under the Iowa Administrative Procedures Act ([IAPA](#)).³⁶ The IAPA requires that any agency decision be supported by substantial evidence and not be contrary to law. The Iowa Supreme Court has set aside a compromise award on a teacher's salary schedule which adopted elements of both parties' final [offer](#).³⁷

Preparing a Final Offer

Several facts should be considered in preparing the public employer's final offer. First and foremost, of course, is that the "most reasonable" final offer will be recommended or awarded by a fact-finder or arbitrator. The selection will depend on how clearly and precisely the offer is worded and whether it is supported by comparability evidence. In an arbitration case, a single unacceptable component of an "impasse item" can cause rejection of the entire final offer on that item (for example, a percent annual longevity on top of all salary lanes could doom the entire salary schedule). While under the PERA each impasse item is evaluated separately, neutrals can quickly determine, based on the number and language of a party's final offers, if over reaching or throwaways are involved. Experience has not proven that advancing numerous items to fact-finding or arbitration produces favorable results.

Selecting a Neutral

Selecting a neutral is one of the more critical aspects of fact-finding or arbitration. The parties are free to select their neutral informally or secure lists from the American Arbitration Association or Federal Mediation and Conciliation Service. The

PERB maintains an extensive list of fact-finders and arbitrators. The agency maintains biographical data sheets that list each neutral's education, work experience and the other agencies on whose panels they are listed. The biographical data sheets also provide how many fact-finding and arbitration cases the neutral has heard in this state. The biographical data sheets are available to the parties and are typically sent with the list of neutrals.

IASB also maintains extensive files on most neutrals who have experience within the state, including comments from Iowa administrators or negotiators who have selected them to serve as a neutral in the past. IASB also has copies of fact-finders' reports and arbitrators' awards in school cases since the PERA took effect. You or your representative should carefully research the neutrals on your list—including reading their decisions on issues similar to yours—before participating in the striking process.

Should a three-person arbitration board be used? The advantage of a panel is that the school corporation can select an arbitrator to serve on the panel who will argue in favor of the school corporation's final offer when the issues presented during the hearing are actually decided. Using a three-person arbitration panel is also advisable in cases involving difficult issues or complex evidence, since the arbitrator selected by the school corporation can explain the school corporation's position on an issue in greater detail and further distill the evidence offered in support of the school corporation's position. Neither side is represented during deliberations when the parties use a single arbitrator.

Gathering Evidence to Support a Final Offer

What types of evidence are effective in fact-finding or arbitration cases? There is no single correct answer. Reading other decisions decided by the neutral selected to hear the case may disclose what type of evidence the neutral found persuasive and what type of evidence he or she ignored or rejected. The volume of the presentation is not as important as its quality and accuracy. Incorrect data casts doubt over the school corporation's entire case and should be avoided. A school corporation should check and double check the accuracy of its exhibits.

Too often parties ignore the value of testimonial evidence and erroneously assume the neutral will only consider written exhibits. Oral testimony for informal witnesses is not only acceptable, it is, in many cases, preferable to dry, dull, written exhibits.

For example, a superintendent's comments on the school district's ability to finance the association's proposals, or their effect on the programs offered, or a principal's explanations of how the association's proposals would adversely impact the delivery of educational services, can be extremely effective and should be preferred to written exhibits containing essentially the same information. Human resources professionals can speak to established past practices or introduce comparability studies they have compiled. Neutrals have shown no more deference to outside expert witnesses than to inside financial witnesses (for example, your auditor). In dealing with language issues, it is wise to introduce the language of contracts or policies from other comparable schools. It is also wise to present evidence on the specific offers and counter-offers that have been made to arrive at the proposed language and any other relevant negotiations history.

Pre-hearing Stipulations

A number of facts can generally be stipulated, or agreed to, at the beginning of the hearing. The neutral will want to have the school corporation's student enrollment, the numerical size of the unit and the current collective bargaining agreement. If the salary schedule is an issue in arbitration, it is helpful to stipulate the school corporation's current budget. The parties should also attempt to stipulate current and proposed base salaries, insurance, supplemental pay, FICA and IPERS costs. If possible, the parties should agree on this information in dollar and percentage terms. If a fact-finder's report is involved, the same data should be compiled and stipulated to the fact-finder's recommendations, which is the arbitrator's third option.

Compiling Evidence - Wage and Salaries

Nearly all fact-finding and arbitration cases under the PERA have involved wages and salaries. A brief review of comparability examples and cost evidence necessary to effectively present a wage or salary proposal may be helpful.

Historical Evidence

1. The unit's total package percent increase for each of the past three, five or 10 years versus the state average, the school corporation's new money percent increases or the annual consumer price increases.
2. The school corporation's decline in enrollment, new money, unspent balances or staff size in recent years.
3. The school corporation's annual increases in relevant salary items (base, average salary, etc.) and improvements in the schedule.
4. The portion of the budget devoted to unit salaries and benefits and other budget items versus comparable schools. The percentage of the total budget devoted to unit salaries and benefits for each of the past three, five or ten years can also be presented to show the neutral that the school corporation is spending a greater portion of its total budget on wages and salaries to the detriment of other services and programs.

Current Financial Data

1. Analysis of all available, or unavailable funds (including levies, grants and Budget Review Committee funds) for next year, noting those funds unavailable for employees' salaries and benefits.
2. Per item listing and explanation of budget or program cutbacks for next year.
3. Costings of the parties' proposals versus available money for next year.
4. The estimated amount of carryover funds available and the projects to be financed there from.

Summary of Arbitration and Fact-Finding Decisions

The following general principles have emerged from fact-finding reports and arbitration awards issued by neutrals:

1. The party seeking to change existing contract language has the burden of showing the necessity for a change.
2. Neutrals are reluctant to change the structure of a negotiated salary schedule (for example, changing a dollar value to an indexed schedule).

3. An employer claiming the inability to pay a proposed salary or benefit increase has a heavy burden of persuasion.
4. In arbitration cases following fact-finding, arbitrators often select the fact-finder's recommendations on compensation issues.
5. Most neutrals ignore private sector comparability, even with similar job classifications.
6. Most neutrals are influenced by settlement percentages in other internal units of the employer.
7. When assessing comparability, neutrals will consider data from the AEA area, conference and similar size school corporations throughout the state and also any statewide settlement trend that exists when the matter is submitted for consideration. Community college and AEA salaries are not usually compared with school districts.
8. Public sector neutrals are extremely hesitant to recommend or award salary freezes or cuts. Neutrals rarely recommend or award health insurance cost containment measures proposed by the employer unless the cost containment measures are supported by compelling comparability evidence or extreme need. (Uncontrolled healthcare costs may change this general principle)
11. [IOWA CODE](#) § 20.12(3).
12. [IOWA CODE](#) § 20.12(2).
13. [IOWA CODE](#) § 20.20.
14. [IOWA CODE](#) § 20.21.
15. [IOWA CODE](#) § 20.22.
16. [IOWA ADMIN.](#) CODE 621-6.4(20).
17. [621 IOWA ADMIN.](#) CODE § 6.3(2).
18. [Id.](#)
19. [Id.](#)
20. [Howard County Public Safety Center](#), 1989 PERB 3776 (Hearing Officer); [City of Ankeny](#), 76 PERB 675.
21. [IOWA CODE](#) § 20.17(9).
22. [IOWA CODE](#) § 20.10(4); see also [Dallas County Bd. of Supervisors](#), 1984 PERB 2547 (recognizing employer's right to communicate with employees during a union organizational campaign).
23. [See e.g. Southeast Polk Comm. School Dist.](#), 78 PERB 1068, aff'd [Polk County Dist. Court](#), No. CE9-4816; [State of Iowa Board of Regents](#), 1982 PERB 1988.
24. [Id.](#)
25. [In re Hodges](#), 1982 PERB 2358.
26. [Charles City Comm. School Dist.](#), 1990 PERB 3764; [Des Moines Ind. Comm. School Dist.](#), 1978 PERB 1122.
27. [Ankeny Community School District](#), 1977 PERB 817 (citing [Press Company Inc.](#), 121 NLRB No. 116, 42 LRRM 1493 (1958)).
28. [IOWA CODE](#) § 20.3(7); see also [Dubuque Comm. School Dist. and Bettendorf Comm. School Dist.](#), 1976 PERB Case No. 598 and 602 (defining "impasse" as "the point at which, after good faith bargaining, there are irreconcilable differences in the position of the parties).
29. [621 IOWA ADMIN.](#) CODE § 7.5(4).
30. [IOWA CODE](#) § 20.22(11).
31. [IOWA CODE](#) § 20.17(11)(a).
32. [IOWA CODE](#) § 20.22(9)(a)-(d).
33. [IOWA CODE](#) § 20.21.
34. [621 IOWA ADMIN.](#) CODE § 7.4(3).
35. [IOWA CODE](#) § 20.22(11).
36. [Maquoketa Valley Comm. School Dist. v. Maquoketa Valley Educ. Ass'n](#), 279 N.W.2d (Iowa 1979); see also [Moravia Comm. School Dist. v. Moravia Educ. Ass'n](#), 460 N.W.2d 172 (Iowa App.1990).
37. [Id.](#)

Endnotes

1. [IOWA CODE](#) § 20.15(6).
2. [621 IOWA ADMIN. CODE](#) § 5.5(3).
3. [Charles City Comm. School Dist.](#), 1990 PERB 3764, [Des Moines Ind. Comm. School Dist.](#), 78 PERB 1122.
4. [Id.](#)
5. [IOWA CODE](#) § 20.9 and 10(e).
6. [Sioux City Comm. School Dist.](#), 80 PERB 1560; [Burlington Comm. School Dist.](#), 1980 PERB 1729 (Hearing Officer).
7. [IOWA CODE](#) § 20.17(3).
8. [Burlington Comm. School Dist. v. Public Employment Relations Bd.](#), 268 N.W.2d 517 (Iowa 1978).
9. [IOWA CODE](#) § 20.17(3).
10. [Davenport Comm. School Dist.](#), 1983 PERB 2458 ; [Ft. Dodge Comm. School Dist.](#), 1983 PERB 2373.

