



A board member's role in collective bargaining

Ohio School Boards
Association
8050 N. High St.
Suite 100
Columbus, Ohio
43235-6481
(614) 540-4000
legal hotline
(855) OSBA-LAW
fax (614) 540-4100
www.ohioschoolboards.org

This fact sheet is designed to address the most frequently asked questions about a board member's role in collective bargaining. The information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

Collective bargaining is the process used when school boards and their employees' unions negotiate in good faith to reach an agreement on the employees' wages, hours, terms and other conditions of employment. The result of collective bargaining is a written contract, the collective bargaining agreement (CBA), incorporating the terms of any agreement reached. This fact sheet is an introduction and broad overview of the collective bargaining process for board members who are not involved in negotiations. Board members who are on the negotiation team should read the OSBA publication "Labor Relations in Ohio Public Schools" (<http://links.ohioschoolboards.org/63936>).

Why do we bargain?

Although it is necessary to bargain by law, unions and school boards were negotiating long before the Ohio Public Employees Collective Bargaining Act (Ohio Revised Code (RC) Chapter 4117) was enacted. The single most powerful tool of employees in collective bargaining is the ability to strike. However, because federal law prohibited public employee strikes, unions did not have the leverage of legally striking prior to the passage of RC Chapter 4117. It was difficult for Ohio's public sector unions to accomplish effective bargaining with public employers without a legal right to strike. RC Chapter 4117 passed in 1983 and, along with establishing the employees' right to strike, set forth what must and what may be negotiated, as well as the process both sides need to follow when impasse occurs.

How do we form a negotiation team?

Forming a great negotiating team starts with finding specific characteristics in each team member such as patience, even-temper, availability and experience. A member on the negotiating team needs patience and even temperedness because negotiations can run long and frequently involve tedious work, such as spending hours working out new language or developing new salary guidelines. Availability is key because negotiations can go on for six months or more, including dozens of meetings and absences can be with cynicism. Experience is preferred. Some board members profess to be experts in negotiations because of business experience, but it's important to remember that there's a difference between business negotiation and labor management negotiations. If a business negotiation goes sour, the parties can walk away from the table and start over with someone else. By contrast, a school board must reach a settlement with its employees' union and that agreement is permanent. Many collective bargaining agreements contain specific language that dictates the composition and size of the negotiating teams.

What is being negotiated and what is SERB?

RC Chapter 4117 guides what must be bargained: wages, hours, and terms and conditions. However, pursuant to RC 4117, the board is not required to bargain on subjects reserved to the management and direction of the board except as those subjects may affect wages, hours, terms and conditions of

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employment, and the continuation, modification or deletion of an existing provision of a CBA.

For the most part, schools negotiate over their current CBA's language, their past practices and any changes in Ohio law which affect the employees' terms and conditions of employment. Because most school district CBAs are mature at this point, changes in contract language are often subtle but important. Of course, wages and insurance tend to dominate all other issues at the bargaining table but are usually negotiated last.

The State Employment Relations Board (SERB) administers the Ohio Collective Bargaining Act. SERB has many roles, including resolving disputes as to the legality of strikes. SERB also investigates and adjudicates unfair labor practice complaints after investigation. SERB retains final agreements for public employers on its website and analyzes and reports wage and benefit data from CBAs as well as providing impasse resolution services through mediation, fact-finding and conciliation.

Should the district set parameters for its negotiating team?

Yes. Setting guidelines for the negotiating team is one of the most important steps the board can take to promote an agreement between the parties. Setting parameters begins with information gathering so the board understands in what direction the negotiations may proceed. For instance, understanding the school's financial situation, reviewing grievances and arbitrations, addressing past union issues to identify potential union proposals or considering changes or clarifications to ambiguous language and provisions that resulted in grievances or litigation are all part of preparing and formulating parameters.

Once the board has an understanding of the potential issues to be remedied in the negotiation, the board can set parameters for the negotiating team to work within. By being upfront and transparent with the negotiating team about expectations, both the board and negotiating team are aware of the guidelines to work within. If a result from the negotiation is within the established parameters, the negotiating team will know it will be accepted by the board. For example, if parameters were not given at the outset of negotiations, the team happily may bring back an agreed-upon proposal for a 1% raise only to have the board respond that it would accept no raise over 0.5%. The result is that both the team and the board feel frustrated, and the union lacks any trust in the negotiating team.

Board members also need to keep in mind the totality of the circumstance. Demanding the negotiation team get an increase in the instructional

hours in a day without giving anything up in return is not setting parameters. A negotiation is an ebb and flow, and when the negotiation team understands the particular goals the board would like to achieve and the concessions the board is willing to make, this is what leads to a successful outcome.

What are best practices during negotiations?

- Avoid any individual conversations about issues in negotiations because these could be misrepresented and even rise to the level of violating the laws governing public school employer-employee relations.
- Encourage individuals with concerns about the negotiations to make their comments to the board as a whole during the public comment portion of an upcoming board meeting.
- Remember that the board and its bargaining representatives are a team. The board and individual board members should not mediate between employees and the district team.

Are collective bargaining negotiations subject to the Sunshine Laws?

Under Ohio law, negotiation sessions between the board's representatives and the union are not required to be held in an environment open to the public. However, if a majority of board members are on the board's team, a board meeting will have to be properly noticed and called. The board may then move into an executive session for the purposes of conducting negotiations with the employees' union. The board would specifically invite the union's bargaining team into the executive session along with the rest of the board's team. When negotiations conclude, the board would have to exit the executive session and end the board meeting in public. Additionally, some CBAs may have specific language controlling how bargaining sessions are to be held.

If no board members or a minority of the board's full membership are on the negotiating team, the board can be updated in executive session by one of negotiating team representatives on the progress of the negotiations.

What if there is a strike?

Pursuant to RC 4117.01(H), a strike is defined as a "continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage of work in whole from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment."

How to respond to a strike is a very complicated issue. The first decision any board must make when receiving a strike notice is whether to keep the

school district open and operating during the strike or close the school district until the strike is settled. If the district is kept open, striking employees lose their salary and benefits during the term of the strike. If closed, hours need made up to reach the minimum number of hours for a school year and employees will be compensated for the made-up time. Because most districts view this as rewarding bad behavior, they choose to remain open. Keep in mind that strikes are very costly for both the board and the union, not only in economic terms, but because they are damaging to relationships between school boards, employees and parents. Any strike threat must be treated very seriously, and specialized assistance is advised as soon as it is made.

What happens after we have an agreement?

Once the parties have reached agreement on a contract, the implementation work begins. For a CBA to be successful, labor and management must translate the contract from language to practice. Contract administration means interpreting the negotiated agreement during its operational stage. The importance of proper contract administration cannot be overlooked because it often sets the stage for the next round of bargaining.

Contract administration is a broad concept that includes activities such as setting and breaking precedents, disciplining employees and handling grievances and arbitrations. While clear, unambiguous language takes precedence, there are often gray areas in which the parties must operate. Actions taken in these areas establish practices that can, under some circumstances, become binding for future situations. Contract administration is vital because it sets the stage for the next round of negotiations.

A practice is a pattern of conduct that occurs with such frequency that the parties understand that it is an accepted way of doing something, typically called a past practice. It exists when a certain result has been achieved in repetitive and identical circumstances. Practices generally serve both the employer and union, as they fill in the gaps which may not be addressed in the collective bargaining agreement and provide guidance and/or predictability for situations which occur with some frequency, or are called a contract-clarifying past practice. Some past practices may even run against the clear language of the contract but when the practice occurs repeatedly, existed for a reasonably long time, is clear and consistent and is known and accepted by both management and union, it becomes a past practice.

The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.