

Collective Bargaining: Legislation, Issues, and Process

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ABSTRACT

Today, all but nine states have enacted statutes specifically establishing some rights of employees in public schools to bargain collectively with school boards. Although the specific provisions of collective bargaining agreements vary from state to state and from one school district to another, the collective bargaining process and negotiated agreement generally address the following issues: management rights, narrow grievance definition, no-strike provision, zipper clause, maintenance of standards, just cause, reduction in force, and wages and benefits. To bargain these issues, negotiations take place between management and union representatives in face-to-face meetings. When the two parties agree on the issues, a new negotiated contract is presented to the union membership and the school board for a ratification vote. If both parties approve the agreement, it goes into effect. An impasse is said to exist when both parties are unable to reach agreement on a contract. Most states have developed a procedure for resolving impasses. They include: mediation, fact finding, and arbitration.

The labor union movement in the United States began in response to undesirable management practices in industry. It has spread to include employees in the public sector, such as educators and government employees. Teachers represent the largest group of employees in an educational institution (Moe, 2011). Today, all but nine states have enacted statutes specifically establishing some rights of employees in public schools to bargain collectively with boards of education. These statutes range from very comprehensive laws controlling most aspects of collective bargaining to laws granting simply the right to meet and confer. Still other states, in the absence of legislation, rely on court decisions to define the basic rights of public employees in the labor relations area.

Legislation

Prior to the 1960s, public school employees had been deprived of the right to organize and bargain collectively. In 1962, President Kennedy issued Executive Order 10988, which gave federal employees the right to form and join employee organizations. This Executive Order was a milestone for all public employees. The granting of organizational rights to federal employees provided the impetus for similar practices in public schools and universities. Nevertheless, statutes and regulations in some states prohibited union membership. These restrictions against union membership were challenged in the courts as violating association memberships protected by the First Amendment. In 1967, the United States Supreme Court in *Keyishian v. Board of Regents* (1967) held that public employment could not be conditioned on the elimination of free association rights.

The United States Constitution has been interpreted as protecting public employees' free association rights, but the right to establish and join a union does not guarantee the right to bargain collectively with a public employer. *Collective bargaining* is the process of negotiating between management and employees on the terms and conditions of employment (Carrell & Heavrin, 2012). It is collective in the sense that the employees, as a unit, select representatives from their membership to meet with management to discuss issues that need to be resolved. The union bargains on items that represent the concerns of its membership. Management tries to advance the interests of the organization.

It is difficult to generalize about bargaining rights and practices, because of the diversity of labor laws among the states (Harper, Estreicher, & Flynn, 2011; Stecker, 2011). A few states, such as New York, have a comprehensive collective bargaining statute that details specific bargaining rights of public employees. In contrast, negotiated contracts between teachers' organizations and school boards are prohibited in Texas. Under Texas law, any negotiated contract between a teachers' organization and a school board is void without express enabling legislation.

Bargaining Issues

Collective bargaining agreements are complex and often lengthy, written contracts that are legally binding on both management and the union(s) representing its employees. A recent agreement between the Chicago Board of Education and the Chicago Teachers' Association is over 250 pages long (Chicago Board of Education, 2000). It is more streamlined than most. Although the specific provisions of collective bargaining agreements vary from one school district to another, the collective bargaining process and negotiated agreement generally address the following issues (DeMitchell, 2011; Lunenburg, 2000; Grodin, Weisberger, & Malin, 2011; Moe, 2011; Osborne & Russo, 2011).

Management Rights

During collective bargaining, unions strive to increase wages, protect job security, and improve the work conditions of employees. On the other hand, management tries to protect and clarify its rights as employer. Any rights not given to the union in the collective bargaining agreement are assumed to belong to management. These are called *management rights*. A strong management rights clause in the contract reinforces statutory rights of the board of education and aids in limiting the authority of an arbitrator in the grievance process. A common management rights clause is a lengthy list of specific management prerogatives, such as the right to supervise all operations; control all property and equipment; determine the size of the workforce; assign work to be done; introduce new methods, programs, or procedures; hire and fire employees; promote, demote, and transfer employees; and in general maintain an orderly, effective, and efficient operation.

Narrow Grievance Definition

A grievance procedure is a formal system by which contract disputes are expressed, processed, and judged. The definition of a grievance in a written collective bargaining agreement determines which employee complaints are subject to binding grievance arbitration. A *narrow grievance definition* that limits employee complaints to the specific written agreement is recommended. Such an approach does not preclude other complaint procedures. It does limit what a grievance arbitrator can decide during the written terms of the negotiated agreement in force.

No-Strike Provision

Federal law prohibits strikes by teachers. Most states have passed similar laws. Because teacher strikes occur despite the laws against them, additional protection is ensured through a *no-strike provision* in the collective bargaining agreement. Such a provision puts the union on record against strikes and involves the union in the enforcement of the laws prohibiting them. In addition, a no-strike provision usually permits management to impose monetary damages on teachers who engage in an illegal strike.

Zipper Clause

A *zipper clause*, or waiver provision, stipulates that the written agreement is the complete and full contract between the parties and that neither party is required to bargain on other items during the term of the agreement. The purpose of such a provision is to avoid continuing negotiations after the contract has been ratified; when coupled with a strong management rights clause, it limits the role of past practice used by grievance arbitrators.

Such a provision, however, does not preclude the parties from negotiating further if both agree. New bargaining strategies, including collaborative or win-win bargaining

would be an exception to the use of a zipper clause. The idea of collaborative bargaining is that union and management negotiate continually during the year as problems arise.

Maintenance of Standards

Management should avoid a “maintenance of standards” provision. Such a provision is routinely included in most union proposals and incorporates the school district’s current practices on a wide range of items, many of which are not mandatory subjects of bargaining. Furthermore, maintenance *of standards* provision leaves the district vulnerable to the role of past practice used by grievance arbitrators in settling contract disputes. It is the antithesis of a management rights provision and a zipper clause.

The following is an example of a maintenance of standards provision:

All conditions of employment, including teaching hours, extra compensation for work outside regular teaching hours, relief periods, leaves and general working conditions shall be maintained at not less than the highest minimum standards, provided that such conditions shall be improved for the benefit of teachers, as required by the express provisions of this agreement. The agreement shall not be interpreted or applied to deprive teachers of professional advantages heretofore enjoyed, unless expressly states herein. (Gander, 1981, p. 22)

School boards and their designees should avoid such a provision.

Just Cause

The term *just cause* is found in numerous collective bargaining agreements in public education and is routinely included in most union proposals. There is a danger in using such a term, from management’s standpoint, because *just cause* has no clear definition. If a collective bargaining agreement has binding arbitration as the last step in the grievance procedure, then an arbitrator will decide what the term means. The arbitrator’s interpretation of the term may be different from what management had intended. For example, suppose a collective bargaining agreement contained the following provision: “No teacher will be disciplined without *just cause*.” What does *just cause* mean in this case? It will likely mean something different to management than it does to employees. The point is that the meaning of *just cause* must be spelled out clearly somewhere in the contract or be eliminated entirely.

Reduction in Force

Nearly all collective bargaining agreements have some form of *reduction in force* (*RIF*) provision. Seniority, or length of continuous service within a certificated field, is the key factor used in employee layoff and recall. Some agreements allow for *bumping*, which means that teachers laid off in one certificated field may replace another teacher in

another certificated field who has less seniority in the field than the bumping teacher. A few RIF provisions stress other factors such as affirmative action and teacher merit. Such provisions are more favorable to management but are opposed by most teachers' unions.

Wages and Benefits

Much time at the bargaining table is devoted to wage increases and fringe-benefit improvements. Wage and salary increases are often stated as across-the-board salary increases for steps on a lockstep salary schedule and *cost-of-living adjustments (COLA)* based on the Consumer Price Index in a designated geographic area. Besides salary increases, unions often demand improvements in various fringe benefits such as insurance programs (life, health, and dental); pension plans; merit pay; and sick leave, personal days, and paid religious holidays. Compensation costs in today's school districts often range from 75 to 85 percent of the total budget.

Other Issues

Among other important bargaining issues are grievance arbitration, teacher evaluation, class size, school calendar, and the like. Binding grievance arbitration is not a problem providing the rest of the agreement protects management prerogatives. Likewise, teacher evaluation, class size, and school calendar should not be overly restrictive on the school district.

The Bargaining Process

To bargain these issues, management and the union each select a negotiating team. Opinions vary widely on who should conduct management negotiations. In small school districts, the superintendent or a board member often conducts negotiations with the teachers' union. Experts advise against this practice, however (DeMitchell, 2011). In large districts, a full-time administrator (director of employee relations, assistant superintendent, or director of personnel) usually serves as chief negotiator. Still other districts employ an outside negotiator—an attorney or labor relations specialist.

One of a superintendent's basic personnel decisions concerning collective bargaining is whether to have a labor relations specialist at the bargaining table to advise the school district during negotiations. When hiring a labor relations specialist, the superintendent must decide how much authority to give him or her.

One or more school principals (representing different school levels) often are included on management's negotiating team. These people live with the contract day to day; they know its weak and strong points; they will administer the new agreement; and they will likely give the contract greater support if they can participate in the changes made in it. The union team generally consists of the local union president and other members of the local membership. Its team may also include an attorney or a labor relations specialist from a regional unit who negotiates for other teachers' unions in the region.

Once each side has selected its negotiating teams, the bargaining process begins. The bargaining takes place in face-to-face meetings between management and union representatives during which numerous proposals and counter proposals are exchanged. Several rounds of negotiations may be needed to reach agreement on all issues. When the two parties agree on the issues, a new negotiated contract is presented to the union membership and the board for a *ratification vote*. If both parties approve the agreement, it goes into effect. If they reject the agreement, each goes back to the bargaining table for another round of negotiations.

An *impasse* is said to exist when both parties are unable to reach agreement on a contract. State procedures vary when the union and the school board are deadlocked in negotiations. Most states have some provision for resolving impasses. The procedure involves the following steps (Carrell & Heavrin, 2012):

1. *Mediation*. The two contending parties meet with a neutral third person who attempts to persuade them to settle the remaining issues through discussion and by proposing compromise provisions to the contract. The mediator acts as a facilitator, however, and has no legal authority to force the parties to accept the suggestions offered.

2. *Fact Finding*. The state appoints a group or committee to investigate and report the facts that are presented by each party. The fact-finding committee's recommendations are generally made public, which places additional pressure on the parties to come to agreement.

3. *Arbitration*. If the parties are still at an impasse, state law may require the union and the school board to submit to arbitration or binding arbitration. Guidelines for teachers' contracts in some states, for example, stipulate that arbitrators must choose the proposal of either the school board or the teachers' union, but not a compromise solution. This forces the two contending parties to bring their contract proposals closer together. The result has been a decreased in teacher strikes (American Arbitration Association, 2010).

Conclusion

Today, all but nine states have enacted statutes specifically establishing some rights of employees in public schools to bargain collectively with school boards. Although the specific provisions of collective bargaining agreements vary from state to state and from one school district to another, the collective bargaining process and negotiated agreement generally address the following issues: management rights, narrow grievance definition, no-strike provision, zipper clause, maintenance of standards, just cause, reduction in force, and wages and benefits. To bargain these issues, negotiations take place between management and union representatives in face-to-face meetings. When the two parties agree on the issues, a new negotiated contract is presented to the union membership and the school board for a ratification vote. If both parties approve the agreement, it goes into effect. An *impasse* is said to exist when both parties are unable to

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