

IASB TRENDS IN
COLLECTIVE BARGAINING

**IMPACT BARGAINING AND
MEMORANDUMS OF
UNDERSTANDING:
PREPARE FOR CHANGES IN
CHANGING WORLD**

Presented by David G. Penn



Collective Bargaining: Is it??

PROBLEMS



Collective Bargaining: or Is it???

OPPORTUNITY



Don't wait for the right
opportunity: create it.

George Bernard Shaw

quoteancy

Collective Bargaining

Start with End in Mind



Collective Bargaining

TRUST

COLLABORATION

POWER

Collective Bargaining

Board Role

❖ Duty to bargain in good faith

- ❖ Meet at reasonable times and places
- ❖ Confer in good faith on wages, hours and terms and conditions of employment
- ❖ Execute written agreement

❖ No regressive bargaining

- ❖ Subsequent offer cannot be “worse” than prior/previous offers
- ❖ Not make best offer first, then keep taking away

❖ Approach

- ❖ Who on team
- ❖ Start with end in mind – where want to end up – worst case scenario
- ❖ What are the financial facts – know at outset
- ❖ Disagree in private, UNITY in public
- ❖ PRIORITIZE

Collective Bargaining

Subjects of Bargaining

❖ Mandatory v. Permissive

- ❖ Reserve/preserve all permissive subjects if possible

❖ Mandatory

- ❖ Wages
- ❖ hours
- ❖ Terms and conditions of employment

❖ Permissive

- ❖ RIF or layoff
- ❖ Outsourcing
- ❖ Class sizes, calendar, length of school/work day

Collective Bargaining

Board Role

❖ Financials

- ❖ Before ever begin negotiation
- ❖ Both sides agree on the financial numbers – get key finance people for each team
 - ❖ Revenue available
 - ❖ Expenses
- ❖ Resources –
 - ❖ Annual financial audit
 - ❖ budget

❖ Language

- ❖ What are key issues
- ❖ What propose
- ❖ What anticipate will be Union language issues

❖ Wages

- ❖ What can afford – MOST you can afford

❖ Insurance

- ❖ This likely to be seen as “nothing” to Union, but is real money and should be tied to cost of wages

Collective Bargaining

Unfair Labor Practices

❖ Unfair Labor Practice

- ❖ Violation of IELRB

❖ Examples of ULP

- ❖ Interfering with EE exercise of union rights
- ❖ Discrimination in hire or tenure of employment to discourage union involvement
- ❖ Discharge or discipline an employee for being involved in union activities under the IELRB
- ❖ Refuse to bargain in good faith
- ❖ Refuse to sign CBA
- ❖ Refuse to comply with provisions of binding arbitration award
- ❖ Deal directly with employee

Collective Bargaining

TOOLS TO TURN PROBLEM INTO OPPORTUNITY

IMPACT BARGAINING

MEMORANDUMS OF UNDERSTANDING

Collective Bargaining

Impact Bargaining

- Decisional v. Effects [Impact]
- Certain topics arise mid-contract that need to “bargain the impact”
- Examples:
 - RIF
 - COVID-related changes in procedures and work conditions
- Not remove right to implement, but have to negotiate

The WHY

- Management right exist
- Not mandatory subject to bargain
- But do have to bargain the impact on bargaining unit
- Not limit or curtail the authority of the Board to act

The WHY

- IELRA Sec. 4:
- “Sec. 4. Employer rights. Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives, except as provided in Section 10.5.”

The WHY

- Public employer has right to unilaterally exercise management prerogative
- BUT...
- Still have to bargain over the impact

The WHY

“Effects bargaining is an important Union right, but it is not a tool to derail government actions that are within the discretion of management or to delay a layoff indefinitely. On this record, the Board’s finding that the Employers did not improperly fail to negotiate in good faith was not clearly erroneous” - *Policemen’s Benevolent Labor Committee v. Illinois Labor Relations Board, Local Panel*, 2021 IL App (1st) 192209

The WHAT

Bargain over the impact

- Obligation to provide notice and opportunity to bargain to resolution or impasse over the impact of the decision on mandatory subjects of bargaining.
- Decision to reduce workforce is a core managerial decision, and employer need not bargain over the decision itself
- However, the implementation of the decision will impact employees' wages, hours, and other terms and conditions of employment, and must be bargained

The WHAT

- Conditions of employment
- Examples
 - Reductions in force or layoffs
 - Sick leave procedures or requirements
 - School calendar changes
 - Required submission of lesson plans or grades electronically
 - Severance benefits post-privatization of certain work

The WHEN

- Balancing of interests
- Would negotiating the impact issue significantly or substantially encroach on management rights?
- Bargaining required UNLESS impermissibly encroach upon management rights
- If not, then Union has the right to demand impact bargaining once connection between wages, terms and/or conditions of employment and management decision

The WHEN

- Union has burden
- Burden: to show that decision has direct and substantial impact on wages, hours, terms, and/or conditions of employment
- NOTE: terms of CBA can preclude
 - Where Board retains “sole discretion” to take certain actions
 - But this is matter of contract interpretation

The PROCESS

The Law

- Burden on the Union to preserve right to bargain
- Timely act
- Protestation not enough
- Affirmatively advise management of desire to bargain
- If not, could be waiver

The PROCESS

The Reality

- When in doubt, Board give notice about bargaining
- Not uncommon
- Written
- Before final decision made
 - Can have plan of action
- To any bargaining unit impacted

The PROCESS

- Same or different than “regular” bargaining?
- Fluid
 - No set number of sessions
 - Not as formal
 - Likely involves less players
 - Limited in scope – specific issues
- LISTEN, LISTEN, LISTEN
 - Not have to change decision
 - But have to engage in good faith

The RESOLUTION

- Document
- Meeting dates and times
- Parties
- Topics discussed
- Any agreements on how to address

The BENEFITS

- Trust
 - Chance to communicate openly
 - Openness
- Collaboration
 - Engage as partner in running District
 - Opportunity for ideas and other ways to skin cat
 - May not be likely, but maybe
- Power
 - More trust in the relationship can lead to more power and effectiveness in negotiations

Memorandums of Understanding

- Step back and look at development of CBA
- Negotiation
- Exchange offers
- No agreement
- Contract term expires
- Status quo

MOU and THE STATUS QUO

- Status quo period
- Follow terms of expired contract
- Follow past practices
- No unilateral changes in wages, hours, terms and conditions
- Unilateral change is one implemented without prior negotiation
- If language is IN the CBA about term and condition, stays in effect

MOU – The WHY

- What is the reason for MOU
- OUTSIDE THE CBA
- Agreement made outside construct of the CBA on discrete issues
- Memorialized and agreed to by both parties
- Result of conversation/negotiation
- Not part of the Status Quo

MOU – The WHEN

- Made at time of formation of CBA or during term
- Not reopen the contract
 - Zipper Clause
- When discrete issues arise that are specific
- Change in circumstance during contract
 - COVID
 - New laws – see evaluation cycle
- Provision not want part of CBA, but can reach agreement with Union

MOU – The HOW

- Separate agreement
- Written
- Appended to CBA
- Term of agreement tied to the then existing dates of the CBA
- Limiting language:
 - “This agreement by the Board shall not be precedential nor establish a practice of the Board. This Memorandum of Understanding is not part of the contract between the Board and the Union. For the purpose of bargaining any successor agreement, the status quo shall be regarded as if this Memorandum did not exist. This Memorandum of Understanding is effective as of the date set forth below and ends on the final date of the term of the CBA [insert date].”
- Approved by Union and the Board
- Signed and dated by both parties

MOU – The BENEFIT

- Not part of status quo
- Individualized issues
- Latitude without re-opening
- Opportunity to work with Union
- Build trust
- Collaboration
- Share and partner
- More control - power

RELEVANCE

- COVID
 - Will you need to continue altered work practices for safety and health
- Mask and Quarantine Lawsuit
 - What will a ruling mean?
 - Changed protocols?
 - Teacher/staff push back – masks or no masks
- New Legislation

RELEVANCE

- Opportunities for use of impact bargaining and/or MOUs
- Opportunities for...

TRUST
COLLABORATION
POWER

Questions Are Welcomed

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