



New Jersey School Boards Association

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Backgrounder:

FAQ about Collective Bargaining in New Jersey's Public Schools

The following FAQ, prepared by the New Jersey School Boards Association, describes the collective bargaining process in New Jersey's public schools.

What is collective bargaining?

Collective bargaining is a joint decision-making process by which the employer (the school board) and the employees' representative (the union) reach agreement on issues affecting terms and conditions of employment. The terms and conditions include salaries; time off; insurance; benefits; workload; length of workday; length of work year; certain facilities issues, such as use of the teachers' lounge; and procedural protections (for example, how job vacancies are posted). State law says these topics are "mandatorily negotiable." Therefore, they can only be determined through bargaining.

Which employees are covered by a contract?

The groups of employees covered by a collective bargaining agreement vary from district to district. Each contract lists all the positions covered by the contract, and refers to the union as the "bargaining unit." The bargaining unit may consist of teachers only, but it might also include secretaries, aides, custodians and bus drivers, if these groups have elected the same union to represent them in bargaining.

What issues are *not* negotiated?

Any topic *not* defined as "mandatorily negotiable" is not subject to collective bargaining. Examples include the hiring of employees and determining the qualifications for a position; the size of the work force; teaching assignments; and class size. These are matters of public policy, and school boards determine them at public meetings, where the community can observe the decision-making process. In contrast, collective bargaining is an exception to the rules of the Open Public Meetings Act and, therefore, can take place in closed session. Other topics not open to negotiations involve any issue that does not affect the work and welfare of employees, or which may be in breach of state laws or regulations.

The contract does not guarantee individual employees of a job. (Staff size is decided by the school board.) Rather, the contract ensures the level of benefits and protection for the staff members who work in the district and are covered by the agreement.

Is the school board required to negotiate with its unionized employees?

Yes. New Jersey's Employer-Employee Relations Act (also known as the PERC law, for the Public Employment Relations Commission), was enacted in 1968. It not only requires school boards to negotiate with the labor unions, but they must negotiate in "good faith." Bargaining in "good faith" is a legal requirement in which both parties consider all mandatorily negotiable topics raised through the bargaining process.

August 25, 2015

How does the bargaining process work?

Typical teacher contracts last for three years. When a contract's end is near, the school board and union will return to the bargaining table, each represented by a negotiating committee. Both committees have a chief spokesperson, who can be a member of the school board or the union. In many cases, the board or the union will be represented by a professional negotiator, who serves as chief spokesperson.

Each side prepares proposals, which contain its positions and demands on mandatorily negotiable issues. In an attempt to negotiate an acceptable compromise, the other side will offer counter positions. During the process, many proposals are modified; some are withdrawn. Each move is an attempt to shape an agreement that both sides can live with. Neither party is required to concede on any issue, although each must bargain in good faith in an attempt to reach a mutually satisfactory settlement.

What resources does the school board have available?

School boards rely upon their superintendents, business administrators and attorneys for help, but many also hire professional negotiators during the bargaining process. As a service organization, NJSBA also assists school boards by providing extensive data on contracts throughout the state, settlement rates and benefits. NJSBA keeps school officials aware of the latest news and labor rulings – and it helps individual districts with in-district consultations. In addition, NJSBA hosts a number of training programs throughout the course of the year, such as Preparing for Bargaining, Intermediate Bargaining, and Analyzing Salary Guides. Additionally, NJSBA will review district contracts upon request.

What happens when the two sides reach an agreement?

The committee representing the school board presents the tentative agreement to the full school board for a vote, and the committee representing the union presents the same agreement to its members for ratification.

Be aware that when one hears of a contract giving raises of a certain percentage, rarely does it mean that all teachers will get the same percentage. Rather, that figure represents the *total dollar increase*, because the way in which raises are distributed will vary according to the salary guide. For instance, a school board seeking to attract and retain new teachers might negotiate more substantial raises at the junior levels of the salary guide, while the staff on the higher levels of the guide might receive raises less than the average percentage increase.

This ratified contract becomes legally binding on both parties for its duration and may not be modified unilaterally by either side. Any contract changes must be negotiated since they would affect terms and conditions of employment. Therefore, the only way that the terms can change is if the parties voluntarily agree to reopen negotiations.

Are there other issues to look for in a contract other than salary increases?

Absolutely. One cannot properly evaluate contracts by looking only at the average salary increase; that's just one element of the agreement. Unions will often agree to concessions, or "give backs," that can yield substantial savings to taxpayers. This has become an increasingly common approach to controlling health insurance costs, which have skyrocketed in recent years. For instance, boards and local unions may agree to higher deductibles or prescription co-pays; a less-costly health insurance program for new employees; or offering incentives to waive the district's health insurance if the employee is covered by another health insurance plan, such as their spouse's. In other cases, school boards may negotiate increased student-pupil contact time or longer school years or school days.

What happens if the two sides cannot reach a settlement?

When the parties declare an "impasse," the Public Employment Relations Commission is contacted and a mediator is sent. The mediator is a third-party neutral whose purpose is to ensure both sides reach an agreement – but the mediator's role is not to safeguard the interests of either the board or teachers.

Mediation typically involves both sides being separated while the mediator works between the two to broker a deal. If mediation fails, the process goes to "factfinding," in which a new state-appointed intermediary hears arguments from both sides and presents a report with a recommended settlement. The factfinder's report is a public document 10 days after both parties receive it. Sometimes, the release of the document can generate public pressure to make concessions that result in a settlement. However, neither side is obligated to accept the factfinder's recommendation.

If factfinding does not result in a settlement, the process moves to "super conciliation." This is a more intensive impasse procedure, and state law authorizes the super conciliator to "utilize means and mechanisms, including but not limited to requiring 24-hour per day negotiations, until a voluntary settlement is reached." However, the super conciliator cannot obligate either party to accept any settlement terms.

Can't the school board and the union simply go to arbitration?

No. New Jersey law does not provide for binding arbitration for teacher contracts. Nor would New Jersey taxpayers want arbitration. Arbitrators do not live in the district, they do not pay for the consequences of their decisions, and they are not accountable to the taxpayers of the community.

Why does it take so much time and effort to reach an agreement?

Each side brings the interests of its constituency to the bargaining table. School boards with limited resources seek to allocate funds in a way that best serve students, taxpayers and employees. Meanwhile, the unions' purpose is to gain as much as it can for its members in terms of salaries and benefits.

These are issues that will impact taxpayers, staff and students – typically for three years. It's easy to see why the negotiations process demands serious consideration and time.

What happens if the contract expires before a new one is reached?

School employees never work without a contract. Until a new agreement is reached, all of the provisions of the expired agreement remain in effect. Employees continue to receive salaries, health insurance, sick leave, and all other benefits provided in the expired agreement. *That is why it is inaccurate to say that teachers are "working without a contract."*

The New Jersey School Boards Association is a federation of the state's local boards of education and includes the majority of the state's charter schools as associate members. NJSBA provides training, advocacy and support to advance public education and promote the achievement of all students through effective governance.