

THE PERC LAW AND THE BARGAINING PROCESS

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THE PERC LAW AND THE BARGAINING PROCESS

Preparing for Bargaining

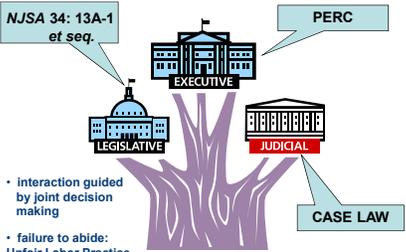


- N.J.S.A. 34:13A-1 et seq.
- New Jersey Employer-Employee Relations Act
- P.L. 1968, c. 303, Adopts private sector model



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THE PERC LAW



- interaction guided by joint decision making
- failure to abide: Unfair Labor Practice



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N.J.S.A. 34:13A-5.1, 5.2 – PERC

Public Employment Relations Commission

- Seven members, appointed by Governor, advice and consent of Senate
- Three year terms
- Representatives
 - Public Employers (2)
 - Public Employee Organizations (2)
 - Public (3, including chairperson)

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N.J.S.A. 34:13A-5.1, 5.2 – PERC

Public Employment Relations Commission

- Makes policy, rules, regulations
 - N.J.S.A. 19:10 -1 et. seq.
- Negotiating units, elections, certifications
- Settlement of disputes and grievances

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N.J.S.A. 34:13A-5.1, 5.2 – PERC

Public Employment Relations Commission

- Unfair Labor Practices – employer, employee
- Scope of Negotiations
- Unit Clarification Petitions
- Mediation, Fact Finding, Super Conciliation

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THE PERC LAW REQUIRES

JOINT DECISION - MAKING

TERMS AND CONDITIONS OF EMPLOYMENT

- PERC Law establishes the process
- Obligations established in statute, administrative code, decisional case law



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AGENCY SHOP FEES

Janus v. AFSCME Council 31, 138 S.Ct. 2448 (June 27, 2018).

– No More Agency Shop Fees

- Involuntary Payment of “agency shop fee” by nonmembers of a union is unconstitutional as a violation of free speech.

However....

- *Workplace Democracy Enhancement Act* must be read together with *Janus*.
- N.J.S.A. 34:13A:5.11, et seq.



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N.J.S.A. 34:13A-5.3 - WHO

who

“...the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes and terms and conditions of employment...”



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N.J.S.A. 34:13A- 5.3 - WHO

Board or its Agents

- May choose whomever you want to negotiate
- Contract to be ratified by the full board
- *Bergenfield Letter* – statement made prior to or during negotiations indicating that:
 - a. A board of education's bargaining agent is only cloaked with the authority to reach a tentative agreement, and
 - b. The authority to ratify or reject the tentative agreement rests with the full board

Majority Representative of Bargaining Unit (Union)

- May choose whomever they want to negotiate
- Do not bypass union or negotiate for other positions



N.J.S.A. 34:13A- 5.3 - WHO

Article 1: RECOGNITION

- including* all full-time
- teachers
 - nurses
 - librarians
 - child study team members
- but excluding*
- secretaries
 - custodians
 - supervisors

"Managerial Executives" "Confidential Employees"



N.J.S.A. 34:13A- 5.3 - WHAT

what

"...the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes and terms and conditions of employment..."



TEST OF NEGOTIABILITY

1. Issue must intimately and directly affect work and welfare of employees;
and
2. Issue must not be preempted by statute or regulation;
and
3. Issue must not significantly interfere with exercise of inherent managerial prerogative pertaining to determination of policy.

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N.J.S.A. 34:13A- 5.3 - NEGOTIATIONS

Mandatory Topics

- Salary, benefits, assignment and retention in extracurricular activities, grievance procedures

Preempted Illegal Topics

- Minimum # of sick days, FMLA, FLA, Extended Sick Leave, Minimum Teacher Salary, Health Insurance Contribution, State Disability Leave, Evaluation Rubrics

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N.J.S.A. 34:13A- 5.3 - NEGOTIATIONS

“Split” Topics

- School Calendar – Making up Snow Days
- Staff Evaluation – Criteria /Standards v. Procedures
- Reduction in Force – Impact of decision

Managerial prerogative to make the decision;
need to negotiate over the impact

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N.J.S.A. 34:13A- 5.3 – GOOD FAITH

How

↓

“...the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate **in good faith** with respect to grievances, disciplinary disputes and terms and conditions of employment....”

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N.J.S.A. 34:13A- 5.3 – GOOD FAITH

TOTALITY OF CONDUCT

- willingness to meet at reasonable times
- abiding by rules of conduct
- desire to reach joint agreement

NO OBLIGATION TO CONCEDE

Hard bargaining is not necessarily inconsistent with a sincere desire to reach an agreement.”

PERC – State of NJ, 1 NJPER 39

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RESPONSIBILITIES

- **BARGAINING TEAM**
- &
- **FULL BOARD**

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THE BOARD'S TEAM

- Who will be on the team?
 - How many?
 - What characteristics?
- Who else might be on the team?
 - Non-voting Team Members – i.e., Administrators, Professional Negotiator
 - Voting Members - Board Members assigned to Team
 - Neither side can challenge a member of the team or refuse to negotiate with a member of the team



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PROFESSIONAL NEGOTIATOR

- Why use a “pro”?
 - Experience & expertise
 - Approaches to protect board’s operational & economic needs
 - Continuity of representation
 - Relief of board members’ time commitment
 - A buffer zone



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ROLE OF THE TEAM

to REPRESENT the BOARD
in NEGOTIATING with the UNION
to REACH a TENTATIVE AGREEMENT
that MEETS the BOARD’S NEEDS



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BOARD'S NEGOTIATIONS OBLIGATION

- The SEC decisions can have influence:
 - Reduce number of participants
 - Increase the importance of board-team coordination

**TO ASSURE COORDINATION –
DEFINE ROLES:**

- | | |
|--|---|
| <p><u>BOARD HAS</u></p> <ul style="list-style-type: none">– the exclusive right to<ul style="list-style-type: none">• ratify the agreement reached by the team– therefore - the responsibility to<ul style="list-style-type: none">• define what will be acceptable parameters• vote in favor of a tentative agreement that falls within those parameters | <p><u>TEAM HAS</u></p> <ul style="list-style-type: none">– the exclusive right to<ul style="list-style-type: none">• negotiate with the union– the responsibility to<ul style="list-style-type: none">• stay within board parameters• to reach a team agreement that falls within the board's parameters |
|--|---|

**TO ASSURE COORDINATION –
DEFINE ROLES:**

- | | |
|--|--|
| <ul style="list-style-type: none">• <u>BOARD DOES NOT HAVE</u><ul style="list-style-type: none">– the right to<ul style="list-style-type: none">• Negotiate directly with the union | <ul style="list-style-type: none">• <u>TEAM DOES NOT HAVE</u><ul style="list-style-type: none">– the right to<ul style="list-style-type: none">• Set or modify the parameters |
|--|--|

BOTH THE BOARD AND THE TEAM MUST UNDERSTAND AND RESPECT THE ROLES

BOARD PARAMETERS

- Guidelines that establish:
 - What the board wants
 - How much the board needs in the new agreement
 - What the board can settle for
 - realistically achievable at this time
- Parameters will establish:
 - Board's targeted framework for settlement
 - Coordination between board and team authority



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PARAMETERS: ONGOING PROCESS

Subject to reassessment to provide productive framework for settlement

- Initial parameters: can be broad & general
- Refined parameters: more specific as negotiations progress
- Reassessed parameters: must be realistically achievable



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THE 3 OTHER "C's"

- Commitment
 - Consistency
 - Confidentiality
- } Requires on-going communication between board and team



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EFFECTIVE COMMUNICATIONS

Requires effective meetings

- Include on executive agenda
- Schedule for appropriate & productive time
- Conduct efficiently
- Review decisions at conclusion and keep written notes
- Supplement with special meetings, as necessary

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“MUSTS” FOR TEAM

- **REMEMBER:** the team represents the board
- **REMEMBER:** the authority to bargain rests with the entire team
- **STAY** within parameters
- **MAINTAIN CONFIDENTIALITY**
- **REMAIN UNITED & DISCIPLINED**
- **RELY ON RESOURCES (B.A.)**

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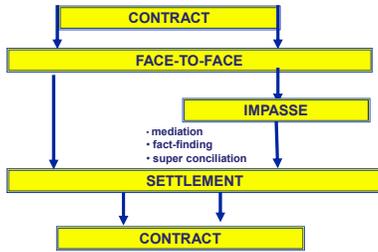
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Bargaining at the Table



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N.J.S.A. 34:13A- 5.3 - NEGOTIATIONS



PHASES OF BARGAINING

Note: No phase is more important

1. Preparation
2. Conduct of Negotiations
3. Implementation

PHASES OF BARGAINING

Preparation

- Select a Team and Roles (e.g. Chief Spokesperson, Communications, Legal)
- Work Rules Meetings
- Costing the Contract
- Create Priority List with appropriate ranking system (e.g. A, B, C or 1, 2, 3)
- Draft Proposals with Proposal Tracking Sheet
- Conduct Team Meetings (always use agendas)
- Adopt Team Goals

INITIATION OF BARGAINING

Conduct

- WHEN
 - PERC timeline
 - Parties' agreement
- HOW
 - Union request
- WHERE
 - Selecting a place



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PHASES OF BARGAINING

Conduct

- Key Operating Principles
 - Be Prepared
 - Study proposals and know them
 - One Spokesperson
 - Limit external communications
 - Appoint Manager of team
 - Be committed to team and purpose
 - Keep good bargaining history
 - Remain professional
 - Control the pace of negotiations (e.g. TAs)



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THE FIRST MEETING



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THE FIRST MEETING

- Introduction of teams
- Establish ground rules
- Schedule meetings
- Introduction of proposals

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COMMON GROUND RULES

- Meeting Schedule
 - Frequency
 - Dates and Times
- Limits on new proposals
- Procedures for Tentative Agreements
- Agreement for Entire Agreement
- Advance Notice of Changes
- Blackout for Communications

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PHASES OF BARGAINING

Conduct

- Rules for conduct of negotiations
 - Respect the process
 - Be Prepared and engaged
 - Control the Agenda
 - Be on time for meetings
 - Be honest with union
 - Treat all participants with respect
 - Create good bargaining history

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N.J.S.A. 34:13A - 5.3

Impasse Procedures - Mediation

- Requested by either or both sides
- PERC assigns third party neutral
- Mediator cannot impose settlement
- PERC pays



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N.J.S.A. 34:13A - 5.3

Impasse Procedures - Fact Finding

- PERC appoints - list of three names
- Fact finder issues non-binding recommendations
- Cannot impose settlement
- Cost is shared by the parties

Super Conciliation



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EMPLOYEE STRIKES

STRIKES IN NEW JERSEY SCHOOLS



ARE ILLEGAL



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PHASES OF BARGAINING

Implementation

- Conduct Implementation meetings with supervisors
- Issue necessary interpretive guidance
- Immediately start preparing for new contract
 - Create issue tracking sheet
 - Track grievances

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QUESTIONS?



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