



# NEGOTIATIONS 101

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OSBA leads the way to educational excellence by serving Ohio's public school board members and the diverse districts they represent through superior service, unwavering advocacy and creative solutions.



## Acronyms

- CBA = Collective bargaining agreement
- MOU = Memorandum of understanding
- ORC = Ohio Revised Code
- SERB = State Employment Relations Board
- TA = Tentative Agreement
- ULP = Unfair Labor Practice

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# Why bargain at all?

ORC § 4117 (Public Employees' Collective Bargaining) requires it!

Enacted in 1983 with most substantive provisions becoming effective April 1, 1984

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# ORC § 4117.05

“An employee organization becomes the ***exclusive representative*** of all public employees in an appropriate unit . . . .”

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## ORC § 4117.08 – Subjects of bargaining

“All matters pertaining to wages, hours or terms and other conditions of employment and the continuation, modification or deletion of an existing provision of a collective bargaining agreement ...”

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## ORC § 4117.08 – Subjects of bargaining

(C) “***Unless a public employer agrees otherwise in a collective bargaining agreement***, nothing in Chapter 4117 impairs the right and responsibility of each employer to:

Determine matters of inherent managerial policy; direct, supervise, evaluate or hire employees . . .

Suspend, discipline, demote or discharge for cause or lay off, transfer, assign schedule, promote or retain employees ...

AKA – Management Rights

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## Permissive Subjects of Bargaining

Each party is free to bargain or not to bargain these topics.

Once the subject is bargained and is in the contract, it's no longer permissive.

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## “Good Faith” Bargaining

- Commonly threatened ULP
- “Mutual obligation to meet at reasonable times and places ... with the intention of reaching agreement ... this obligation does not compel either party to agree to a proposal or make a concession.”

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## “Good Faith” Bargaining

Who decides if bargaining meets the “good faith” standard?

SERB – in hindsight - after each party puts its own spin on the facts.

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## How do you bargain?

- Bargaining method
- Bargaining team members
- Preparation
  - Identifying issues
  - Drafting proposals/issues
- Filing notice with SERB
- Initial exchange of proposals

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## Styles of Bargaining

- Traditional
- Interest-Based Bargaining (IBB)
- Modified IBB
- District's own unique style

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## Considerations when choosing bargaining style:

- Relationship between the parties (Are there "trust" issues?)
- Past bargaining history
- Economics
- Number of issues to be raised
- Change in union or management leadership

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## Who's on the bargaining team?

- Superintendent/Treasurer
- Other administrators
- Supervisors
- Board member(s)
- Subject Matter Expert (SME)

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## Bargaining Prep

- What new/amended/repealed laws require language changes (OTES, Third Grade Reading Guarantee, Days-to-Hours)?
- What issues have arisen under your current CBA?
- What contract language (or lack thereof) has made management of the district a challenge?

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## Bargaining Prep

- Is there an arbitration decision that needs to be addressed in the CBA?
- Is there language that can help to prevent future grievances?
- Do you have MOUs (memorandums of understanding) that need to be incorporated?
- General housekeeping issues

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## Drafting proposals/issues

- Proposal = *What* we want
- Issue = *Why* we need the change
- Typical proposal format is **bold-faced new language** and ~~strike-through deleted language~~. (This is NOT always what you'll see from the union!)

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## Notice to Negotiate

- Must be filed with SERB and served on the Union within the timeframes set forth in your CBA (a typical timeframe is no more than 180 days and no less than 60 days before the expiration of the current contract)
- Most CBAs state that either party can open negotiations

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## Notice to Negotiate

Traditionally, unions have filed them; however, in recent years, management has filed more often

SERB form:

<http://www.serb.state.oh.us/pdf/forms/med/NTON.pdf>

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## Bargaining sessions

- Initial exchange of proposals
- Scheduling sessions
- Length of sessions
- To caucus or not
- Observers
- Communication with interested parties

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## What is impasse?

- a step in the bargaining process - never the initial step and not always the final step
- tied closely to the concept of mediation
- created & defined by law, SERB decisions and practice
- involves third parties
- is specified in your CBA

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## Impasse is created when:

- the parties are no longer able to negotiate between themselves
- one party or the other is frustrated with progress (or lack thereof)
- a specific time period has elapsed
- one party needs additional assistance in controlling its team
- “best” or “final” offers have been made
- advice or counsel of a neutral is warranted

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## Impasse is NOT:

- failure
- the end of negotiations
- easier than face-to-face bargaining
- quick
- a point at which the parties give up “control” over negotiations.

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## Resolving impasse in Ohio

1. Statutory Process (based on fact-finding)
2. Mediation
3. Binding interest arbitration

Most collective bargaining agreements specify the process the parties must utilize, although the parties can agree to try something different. (“MAD”)

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## Mediation vs. Arbitration

- Mediation is non-binding, arbitration is usually binding.
- Mediators cannot be appealed to courts, arbitrators can (with difficulty).
- Mediation is free, arbitration fees are paid by the parties.
- Mediation is an informal process, arbitration is formal.

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## Mediation vs. Arbitration

- Mediation has a time frame, arbitration has timelines.
- Mediation does not usurp the parties' authorities, arbitration does.
- Mediation has no written decisions, arbitration always does.
- Neither mediators or arbitrators can be called to testify on the parties' behalf.

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## Who provides mediators in Ohio?

- Federal Mediation and Conciliation Services (FMCS)
- SERB
- American Arbitration Association (AAA)\*
- Private mediators\*
- Courts\*

\* Fees involved

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## How mediation works:

- The mediator is there to help and to encourage the parties to reach a settlement when face-to-face negotiations are at impasse.
- The mediator tries to understand the parties' underlying goals and uses various conflict resolution techniques to get the parties to reach their own settlement.

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## How mediation works:

- The mediator's sole power is the ability to compel the parties to meet.
- Mediators typically use a stepped approach and patience to bring pressure on the parties.
- The mediator's **ONLY** concern is that a settlement is reached, not with the fairness, equity, reasonableness or implications (if any) of the settlement.

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## ORC § 4117.14 C (4) – Fact Finding

A process in which a neutral third party examines the facts and circumstances in light of each party's position and relevant criteria and then issues recommendations regarding the resolution of the dispute. The process is designed to be advisory, but the recommendations will be binding unless one party rejects the recommendations by a three-fifths vote. The fact-finding report is also made public, which also increases pressure on the parties to reach a settlement.

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## Ending negotiations ...

- Settlement
- Unilateral implantation
- Strikes
- None of the above (SERB ruling - until you have a new contract, the old contract carries through)

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## Emerging union tactics:

- Starting the “Strike” talk early and often.
- Repeatedly voting down the TA package.
- Status quo as a default resolution (“Status quo as Option B”)
- Developing economic proposals to save the district money (often to be put right back into salary).
- Prolonged negotiations without settlements.

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Questions, comments, concerns?

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