

NASB TRAINING

November 18, 2017

2:15 – 3:15 PM

Course:

Contract Negotiations 101: School Districts – What to Expect During Negotiations

Presenter: S. Jordan Walsh, Esq.¹

- **Goals:**
 - Explain the negotiation process; and
 - Provide a basic introduction to the legal framework that guides public sector labor contract negotiations; especially as these laws relate to school districts.

- **Statutory Framework:**
 - ✓ Historical Background
 - National Labor Relations Act (NLRA)
 - Mini-NLRAs in 1950's and 1960's replicated federal labor law in the states – Nevada Dodge Act in 1969 (NRS Chapter 288)
 - ✓ NRS Chapter 288 - Public Bargaining Law – Dodge Act – 1969
 - Definition of Collective Bargaining [NRS 288.033]
 - No requirement to agree or make concession
 - Agreement reduced to writing if either party requests, but enforceable if oral.
 - Patterned After National Labor Relations Act, but distinguishable in the following ways:

¹ Allison MacKenzie, Ltd. 402 N. Division Street, Carson City, Nevada 89703; Jordan's direct line: (775) 886-2209; jwalsh@allisonmackenzie.com. Nothing in this presentation is intended or should be construed as legal advice. Attendees should consult with their own independent legal counsel regarding legal advice on specific labor law questions including use of enclosed forms.

- State of Nevada Employee Management Relations Board (EMRB) administers NRS/NAC Chapter 288
- No Right to Strike
- Advisory Factfinding for Non-Public Safety
- Binding Interest Arbitration for Police, Fire & School Employees (Teachers and School Support Employees)
- Retirement governed by PERS and not Union Pension Plan
 - ❖ Last PERS increases – July 1, 2015
 - ❖ Employer paid (28%)
 - ❖ Employee Employer paid (14.5%)
 - ❖ Who pays PERS increase?
- Supervisors can Unionize – but cannot be members of the same bargaining unit of employees they supervise.
- Certain supervisors excluded by NRS Chapter 288
 - EMRB – Criteria for Exclusion
 - Appointed employee;
 - “Supervisors” per NRS Chapter 288
 - Authority to hire, transfer, suspend, layoff, recall, terminate, promote, discharge, assign, reward or discipline other employees or responsibility to direct them, to adjust their grievances or to effectively recommend such action;
 - Authority to make budgetary decisions;
 - Authority to be consulted on decisions related to collective bargaining
 - Exercise of foregoing authority must not be of a routine or clerical nature but require the use of independent judgment; and
 - Exercise of the foregoing authority must occupy a significant portion to the employee’s workday.
 - Management Rights vs. Mandatory Subjects
 - Dues Deduction – Hold Harmless and Terminate
 - Not workers compensation – except contractual excess
 - Not PERS – except “in lieu of” salary increase
 - Not FLSA Overtime – except to exceed
 - Fiscal Emergencies

- Evergreen Clauses
 - Freeze salary (e.g. including steps) and monetary benefits (e.g. including increase to longevity) at June 30 levels if no successor agreement
 - Exception:
 - First quarter of fiscal year (July 1-September 30); but if no successor agreement by September 30, revert to June 30 salary and monetary benefits
 - WARNING
 - Negotiations
 - Commence Promptly Following February 1st
 - School Districts Promptly Following January 1st
 - Traditional Bargaining
 - Interest Based Bargaining (IBB) – FMCS Training
 - Use of Federal Mediator as Facilitator in IBB
 - Approval of Contract – Post Copy of Contract on Website
 - Impasse Procedures vs. strikes and lockouts in private sector
 - Mediation
 - Fact finding (*for non-school district disputes*)
 - Binding vs. non-binding, i.e. advisory
 - Agree to binding
 - Request to EMRB to compel binding fact finding
 - Publish outcome
 - Can redact fact finding report
 - Interest Arbitration – no “*splitting of the baby*”
 - Note: School District disputes go straight to interest arbitration.
- **Requests to Negotiate Items Requiring the Budgeting of Money**
 - ✓ Must be received on or before January 1st
 - This rule only applies to school district negotiations
 - Everyone else has until February 1st
 - ✓ Effect of Untimely Request
 - The school district may prohibit the negotiation of items that have a monetary impact
 - The school district will still be required to negotiate non-monetary items

- ✓ The District may waive the bar on negotiating monetary impactful matters
 - ✓ Items not requiring budgeting of money still negotiable even if February 1st notice is late
 - ✓ Newly recognized bargaining units after February 1st – must negotiate monetary and non-monetary
- **Requests for Information**
 - ✓ Bargaining Information
 - ✓ Employer can request from Union
 - ✓ Public Records Request [NRS Chapter 239]
 - ✓ Respond timely and completely
 - ✓ Unfair labor practice if an employer fails to respond
- **Role of the Governing Body in Negotiations**
 - ✓ Set Bargaining Goals & Objectives
 - ✓ Provide Guidance During Negotiations
 - ✓ Approve Total Tentative Agreement
 - ✓ Can reject negotiated tentative agreement – reject is not an Unfair Labor Practice
- **Role of the Bargaining Team**
 - ✓ Identify contract issues
 - ✓ Provide recommendations to governing body
 - ✓ Keep governing body in the loop
 - ✓ Set strategy for negotiations
- **Preparation for Negotiations**
 - ✓ Commence Negotiations “promptly”
 - ✓ Determine how to bargain
 - Traditional (positional) vs. Interest Based Bargaining (IBB)
 - IBB – facilitate by federal mediator
 - ✓ Bargaining Team
 - Chief Negotiator
 - Finance Member
 - Operational Member
 - Governing Body on Team
 - Not Legal Conflict of Interest – But Ties Your Hands
 - Negotiate and Set Negotiations Ground Rules
 - Written proposals & Tentative Agreements
 - Clarify paid vs. unpaid time for negotiations Union reimburse all costs of paid leave or monetary concession that covers all costs of paid leave

- ✓ Closed Labor Session
 - Exclusion from Open Meeting Law
 - Used to set goals and objectives
 - No Votes
 - Use throughout process – No surprises
 - Confidentiality
- ✓ Maintain “Confidentiality of Bargaining Strategies”
 - Prior union members on Governing Body
- ✓ Avoid “End Run Bargaining”
 - If you’re not on the Negotiation Team, DO NOT discuss the negotiations or CBA with anyone who is not on the Negotiations Team
 - A failure to adhere to this rule could subject your district to an Unfair Labor Practice Complaint, and potential liability

• **What is “Current Ability to Pay”?**

- ✓ Most important item in bargaining
- ✓ Know before going to the table – “can’t close the door”
- ✓ Preliminary determination by arbitrator Based on Revenues as Established by the District
- ✓ Lawfully appropriated funds excluded
- ✓ Statutory Exclusions
 - Special Purpose Funds
 - 8.3% Unreserved fund balance (School Districts)
 - 25% all local governments except School Districts
 - Except excessive balances
- ✓ Available Money
 - Unappropriated Money
 - Contingency – up to 3% of budgeted expenditures in general fund
 - Excess 8.3% unreserved fund balance
 - Turnover of Employees
 - Belt tightening
 - Savings (budget vs. actual spending)
 - “Rat holed” money
 - “Bombshell to Inability to Pay”
 - Local Government External Audit – discloses excess to budgeted beginning fund balance which are not appropriated and available for negotiations
 - School District – Average Daily Enrollment

• **Normal Criteria for Interest Disputes**

- ✓ Salary Dispute
 - Cost of Living
 - Look to the CPI

- There are different CPI's
- External Comparability – like employer (size, budget, region) prior negotiations or interest arbitration awards
- Internal Comparability
- Turnover
- Recruitment
- Other factors
- ✓ Benefits Dispute
 - Reason to adopt or change
 - Internal Comparability
 - External Comparability
- ✓ Language Dispute
 - Reason to adopt or change
 - Internal Comparability
 - External Comparability

- **Impasse Procedures**

- ✓ Mediation
 - Ground Rule – Not admissible in Factfinding or Arbitration
 - Use FMCS Commissioner (it's free!)
 - Do not use arbitrator as mediator
 - Has a stake – may take sides
- ✓ Interest Arbitration
 - Narrow issues to “1”
 - No splitting the baby
 - Laboring Oar
 - Last Best Offer – timing – beginning vs. end of hearing
 - Ordered back into negotiations

- **Governing Body's Role in Closing the Deal**

- ✓ Use of Closed Labor Sessions
- ✓ Voluntary Settlement
- ✓ Federal Mediation
- ✓ Interest Arbitration

- **“Me Too” Clauses**

- ✓ Avoid at all costs
- ✓ At most agree to reopen
- ✓ Reopeners – be specific

- **Unfair Labor Practices – Bad Faith Bargaining**
 - ✓ Refusal/Failure to Provide Information
 - ✓ “End Run Bargaining”/Direct Dealing
 - ✓ “Take it or Leave it” Assertions
 - ✓ Failure to Delegate Authority to Bargaining Team

- **Questions & Answers**