

# BARGAINING AND IMPASSE

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# EX PARTE COMMUNICATION

*"Ex parte communication" is a direct or indirect communication between the hearing examiner, hearing officer, or fact finder and a party on the substance of a pending case without the knowledge, presence, or consent of all parties involved in the matter. Ex parte communication is prohibited in legal proceedings.*

# Bargaining: Who

Who is bargaining?

The School Employer and the Exclusive Representative.

Be careful that you are not engaging in bargaining with any one other than the School Employer or the Exclusive Representative.



# Bargaining: Who

For whom are you bargaining?

The members of your bargaining unit, regardless of whether they are members of the Exclusive Representative Organization.

Double check that you are utilizing the correct bargaining unit description by reviewing the most recent IEERB issued bargaining unit order in IEERBSearch.

# Bargaining: Who

How can I change who is in my bargaining unit?

The easiest way to do this is to complete an agreed unit change.

- School Employer and Exclusive Representative agree on new unit
- Prepare and Post Notice of the Change
- 30 days after posting, send IEERB Formal Request to Change and Notice
- RECEIVE and REVIEW IEERB Order on your new unit description

Check out <https://www.in.gov/ieerb/representation/> for more information, sample forms, an example, and a guide.

# Bargaining: Who

Can I change my bargaining unit during formal bargaining?

Yes! You can change your bargaining unit at any time. **HOWEVER**, your bargaining unit, for the purposes of your CBA, is the bargaining unit as described by IEERB's most recent bargaining unit order ON THE DATE THAT YOUR CBA IS RATIFIED.



# Bargaining: What

What are the subjects we can bargain?

- Salary;
- Wages; and
- Salary and wage related fringe benefits

See IC 20-29-6-4 for more information

# Bargaining: What

Can we bargain other subjects too?

No. IC 20-29-6-4.5 specifically prohibits bargaining any subject other than those specifically listed in IC 20-29-6-4 (see prior slide)



# Bargaining: What

## Can we bargain for future years?

Yes. A CBA cannot extend past the budget biennium, so since we just began a new budget biennium, you can bargain a 1- or 2-year CBA. Just remember, if you are doing a 2-year CBA, the budget biennium ends June 30, 2025.

# Bargaining: When

## Three Phases of Bargaining

Informal Bargaining – Ends September 14

Formal Bargaining – September 15-November 15

Impasse – November 16-\*\*February 15

\*\*with some exceptions

# Bargaining: When

## Informal Bargaining

During this time, the school employer and the exclusive representative can start meeting and having conversations about provisions and financials, but CBAs cannot be ratified.

This is also a great time to set yourselves up for success during Formal Bargaining by making sure you are ready to start bargaining on September 15<sup>th</sup>.



# Bargaining: When Compliance Check!

- Review your most recent compliance report
- Figure out how to fix any findings of noncompliance or general comments
- If you had any penalties, like a cease and desist, a compliance assessment conference, or prior approval, make absolutely certain you will not repeat the same errors
- Review IEERB's Compliance Rubric
- Familiarize yourself with IEERB's Compliance Guidance on its website:  
<https://www.in.gov/ieerb/compliance/>

# Bargaining: When

## Collective Bargaining Public Hearing

- Purpose is to take public testimony on issues related to collective bargaining
- Written notice must be provided to the public. IEERB recommends the Notice be consistent with the Open Door Law.
- Must be hosted by BOTH the School Employer and the Exclusive Representative
- You can allow electronic participation
- An attestation regarding this public hearing, including the date and whether electronic participation was permitted, must be included in your CBA
- **MUST BE HELD BEFORE FORMAL BARGAINING CAN BEGIN**
- IEERB recommends this meeting be held during informal bargaining but no earlier than July 1st

# Bargaining: When

## Formal Bargaining

60-day period starting September 15 and ending November 15

*PRO TIP: Parties should work together to schedule bargaining sessions now so that you don't find yourselves having to put off bargaining because of schedules. The later you start bargaining, the greater the chances of Impasse.*

Remember, only IEERB can declare Impasse!



# Bargaining: When

## Formal Bargaining: Pre-Impasse Services

- Includes Mediation and Financial Consultation
- Can be requested as soon as September 15
- Cannot be requested after November 1
- Parties split the cost

<https://www.in.gov/ieerb/collective-bargaining-and-impasse/collective-bargaining/>

# Bargaining: When

## Formal Bargaining: TA Public Meeting

- Provide notice consistent with the Open Door Law
- Post the TA on your school website for 72 hours leading up to the meeting
- Meeting must be held by the Governing Body of the school corporation and the TA must be discussed
- Electronic participation is permitted
- An attestation regarding the TA public meeting, including the date and whether electronic participation was permitted, must be included in your CBA
- Must be held BEFORE Ratification Public Meeting

# Bargaining: When

## Formal Bargaining: Before Ratification

Do a final check of any last issues regarding your CBA. Check for:

- Compliance issues, especially those that were discussed in your most recent compliance report
- Attestations regarding your Collective Bargaining Public Meeting and TA Public Meeting are included
- Make sure your CBA Recognition Clause matches your most recent IEERB Bargaining Unit Order
- A statement regarding any mandatory reopener on a 2-year CBA



# Bargaining: When

## Formal Bargaining: Ratification Public Meeting

- Must occur at least 72 hours after TA Public Meeting
- Provide Notice consistent with the Open Door Law
- Meeting must be held by the Governing Body of the school corporation and there must be a vote on Ratification of the TA
- After the Meeting, the CBA must be signed and Uploaded to Gateway

# Bargaining: When

## Formal Bargaining

*PRO TIP: Remember when scheduling your public meetings, the following days are State Holidays and are days that will not be counted as business days per the Open Door Law:*

*Monday, October 9, 2023*

*Tuesday, November 7, 2023*

*Friday, November 10, 2023*

# Bargaining: When

Formal Bargaining Ends November 15, 2023

Be sure you have:

- Uploaded your Signed CBA to Gateway
- Completed your Bargaining Status Form on Gateway  
(This is very important, especially if you are at Impasse, but also if you are ratifying the CBA within a few days after November 15)



# Bargaining: When Impasse

If you didn't get your CBA uploaded by the end of November 15, 2023, you are at Impasse and you will soon receive a Declaration of Impasse notice from the IEERB Executive Director and you will be assigned a case number.

Impasse has 2 parts: Mediation and Fact Finding

# Bargaining: When Impasse

- Your Bargaining Revenue and Expense Disclosure (BRED) is due on November 30
- Within 15 of the Declaration of Impasse, you will be appointed a mediator (no later than November 30)

# Bargaining: When Impasse

*PRO TIP: If at Impasse, parties should take time in November to check the board meeting schedule. Make sure you will have time to fit your TA Public Meeting into the schedule and consider whether another board meeting will need to be scheduled as the Ratification Public Meeting to be sure it is possible to ratify a mediated TA before the end of the 30-day mediation window.*

*State Holidays that need to be considered for compliance with ODL are:*

*November 23-24, 2023*

*December 25-26, 2023*



# Bargaining: When Impasse: Mediation

- Impasse mediation is MANDATORY
- At least 1 mediation session is required, but you can have as many as 3 sessions
- The parties split the cost of mediation, but if one party fails to appear for mediation, that party will bear the cost of the mediator on their own
- Mediation must be concluded within 30 days of the date the mediator is appointed

# Bargaining: When Impasse: Mediation

- Mediation Ends 30 days after the mediator is appointed. This will be no later than December 30, 2023.
- By this date, you must either:
  - Ratify and Sign your CBA and Upload the CBA into Gateway
  - OR
  - Exchange LBOs with the other party. (The mediator will set the due date for this exchange, but it will be no later than the last day of the mediation window.)
  - Submit your Last Best Offer to [impasse@ieerb.in.gov](mailto:impasse@ieerb.in.gov) AND mail a tabbed hard copy to IEERB's offices, because you are going to Fact Finding and the Fact Finder will be deciding the terms of your CBA

# Bargaining: When Impasse: Fact Finding

For the first week after LBOs are submitted IEERB staff will be working with the parties to get proposed dates for Fact Finding

If all goes as planned, the Fact Finder and Financial Consultant will be appointed no later than January 13, 2024.

Remember, the Financial Consultant's purpose is to assist the Fact Finder in deciding which LBO to select.



# Bargaining: When Impasse: Fact Finding

After the Fact Finder is appointed, the Fact Finder has \*30 days to decide the case.

- The Fact Finder is required to hold a hearing. Each party will have 2 hours to present their LBO and each party has 1 additional hour for rebuttal.
- The Fact Finder must pick 1 of the LBOs, but the LBO must be compliant with the law, and non-compliant terms of an LBO can be stricken.
- The Fact Finder must write a report on the chosen LBO and any stricken items.

# Bargaining: When

## **Impasse: Fact Finding**

### Settlements during Fact Finding

Settlements during the Fact Finding phase of Impasse are rare, but they are possible and they do happen. To settle in the Fact Finding phase of Impasse, the parties must submit a Joint LBO.

# Bargaining: When Impasse: Fact Finding

In addition to other teacher salary laws, the fact finder is required to consider the following 4 factors:

1. Previous CBAs and MOUs between the parties
2. The salary and wages of the teachers compared to the wages and hours of employees working for other public agencies, which includes other school corporations.
3. The public interest
4. The financial impact on the school corporation, including deficit financing



# Bargaining: When Impasse: After Fact Finding

Once the Fact Finder's report is issued, it can be appealed to IEERB.

If it is not appealed, the report becomes a final order and Impasse ends.

If it is appealed, IEERB will decide whether to uphold, modify, or reverse the Fact Finder's decision, and Impasse ends.

# Bargaining: When

## Impasse: Fact Finding

**\*\*** All of these timelines and deadlines can be disrupted with the filing of an Unfair Labor Practice complaint in which the subject matter of the ULP case affects Impasse procedures or the ability of a party to bargain.

In this circumstance, Impasse will be stayed and the ULP case will be expedited so that it will go to hearing within 180 days and a written decision will be issued 30 days thereafter. See 560 IAC 2-4-7 and 560 IAC 2-3.1-9

# Bargaining: Where

- Mediators at Impasse will work with the parties to schedule a convenient, but statutorily compliant time and place for your mediation
- Fact Finding will occur on site in your school corporation



# Bargaining: Why

- Collective Bargaining is required by IC 20-29-6-4
- For more information review IC 20-29 and 560 IAC 2

# QUESTIONS?

Contact IEERB at:  
[Questions@ieerb.in.gov](mailto:Questions@ieerb.in.gov)