

Duty to Bargain and Scope of Bargaining: What does it all mean?

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Agenda

- Duty to bargain
 - What constitutes bad faith bargaining?
 - Consequences of bad faith bargaining
- Case study/exercise
- Subjects of Bargaining





DUTY TO BARGAIN – THE GOOD AND THE BAD (AND THE UGLY)



Bargaining

- Impacts vs. Decisional Bargaining
 - Majority of bargaining that occurs in our setting is focused on impacts rather than decisions, as the decision may not be a mandatory subject of bargaining but the impacts of the decision on bargaining unit employees must be bargained.

Duty to Bargain in Good Faith

- What is “good faith bargaining”?
 - Meeting at reasonable times and places
 - Intention is to reach an agreement
 - Does not require making any specific concessions

Bad Faith Bargaining

- Per Se Violations
- Totality Test



Per Se Violations

- Refusal to meet
- Failure to provide information
- Failure to execute agreement
- Impasse as a result of non-mandatory subjects
- Conditioning proposals on a waiver of rights
- Unilateral changes without notice and opportunity to bargain



Totality Test

- Indicators of bad faith:
 - Lack of proposals
 - Stalling tactics
 - Lack of authority to agree
 - “End running” the negotiators
 - Regressive bargaining
 - Surface negotiations



Lack of Authority

- Public sector labor relations statutes often specifically provide that only a public agency’s governing body can make a binding agreement on an agency’s behalf.



Stalling Tactics

- Canceling scheduled meetings
- Delays in response
- Unprepared
- Excessive caucuses



“End Running” the Negotiators

- Also known as bypassing representatives
 - Direct dealing with employees on mandatory subjects
- Communications must be factual, not belittle the union, and without persuasion or threats




Regressive Bargaining

- Withdrawal of tentative agreements
- Moving away from agreement




Surface Bargaining

- Surface bargaining occurs when an employer meets with employee representatives but merely goes through the motions of bargaining.




Consequences of Bad Faith Bargaining

- Restore to status quo (with potential retro-active implications)
- Ordered to bargain
- Political




When Can Employer Unilaterally Adopt?

- Union waives right to bargain
- When employer completes bargaining process (close-out)



Exercise



Salaries Employment Health Grievance Protection Law Limits Work Year Salary
Regulate Contract Representative Process Negotiation Productive
Working Hours Terms Rules Employer Union Wages Group
Overtime Safety Establish Cost

SCOPE AND SUBJECTS OF BARGAINING

Scope of Bargaining

- Mandatory
- Permissive
- Illegal or Prohibited

Scope of Bargaining

| Mandatory | Permissive | Prohibited |
|--|---|---|
| <ul style="list-style-type: none"> Required to bargain by case law or state statute (RCW 41.80.020) | <ul style="list-style-type: none"> Not required to bargain by case law or state statute by may do so | <ul style="list-style-type: none"> By law, these topics cannot be bargained over |



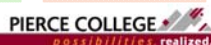
Examples

| Mandatory | Permissive | Prohibited |
|--|---|---|
| <ul style="list-style-type: none"> Wages Hours of work Terms and conditions of employment | <ul style="list-style-type: none"> Staffing Required qualifications Organizational structure | <ul style="list-style-type: none"> Retirement programs Budget Programs of employer |



What Does it Mean to Me?

| Mandatory | Permissive | Prohibited |
|---|---|---|
| <ul style="list-style-type: none"> Must provide notice to the union if I propose to change something and if requested, I have to bargain | <ul style="list-style-type: none"> I do not have to bargain over it, but I can | <ul style="list-style-type: none"> I do not have to, and should not, bargain the subject |





QUESTIONS?
