



Teacher's Unions/Collective Bargaining

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Background

In 1935 Congress passed the National Labor Relations Act (Wagner Act), which guarantees the right of private employees to form and join unions to bargain collectively. The vast majority of states have extended this right to public employees, including teachers at public school districts. Many states require school districts to bargain collectively with teachers who have formed a union. Other states require districts to meet with teachers' representatives. Some states expressly prohibit [COLLECTIVE BARGAINING](#) by public school teachers or other public employees.

A wide range of provisions may be negotiated in collective bargaining between teachers' unions and school districts. Some subjects are mandatory, while others are merely permitted or even prohibited. State law governs the appropriateness of subjects to be bargained. The following are some of the matters that are often the subject of this bargaining:

- Academic freedom
- Curriculum
- Wages and salaries
- Training
- Hours, workload, and teaching responsibilities
- Tenure and probationary period
- Promotion
- Reappointment
- Reclassification and reduction
- Evaluation procedures
- Grievance procedures
- Personnel files
- Student discipline
- Retirement benefits
- Sick leave
- Leaves and sabbaticals

Constitutional Considerations Regarding Unions

The First Amendment of the **BILL OF RIGHTS** provides: "Congress shall make no law . . . prohibiting . . . the right of people peaceably to assemble." This right, as applied to the states through the Fourteenth Amendment of the Constitution, has been interpreted to give teachers and other employees the right to free association, including the right to join a union, such as the National Education Association or the American Federation of Teachers. However, the Constitution does not grant teachers the right to bargain collectively with employers. This right is based on applicable provisions in state constitutions, federal statutes, or state statutes. Similarly, teachers do not have a constitutional right to strike, though other federal law or state law may permit teachers to strike.

Forming and Joining a Union to Bargain Collectively

Laws governing the representation process are often quite complex. This process prefaces the collective bargaining process and involves numerous considerations, including types of employees that will constitute a "bargaining unit," as well as the selection of an appropriate union to represent teachers. In the public school sector, state law affects both of these determinations. Some states exclude certain employees from a bargaining unit, including supervisors and individuals in management positions.

Bargaining Units

Teachers seeking to join for collective bargaining must define an appropriate bargaining unit. Under most labor relations statutes, only those individuals who share a "community of interests" may comprise an appropriate bargaining unit. Community of interests generally means that the teachers have substantial mutual interests, including the following:

- Wages or compensation
- Hours of work
- Employment benefits
- Supervision
- Qualifications
- Training and skills
- Job functions
- Contact with other employees
- Integration of work functions with other employees
- History of collective bargaining

Many state statutes prescribe certain requirements or considerations with respect to bargaining units in the public sector. For example, some statutes require labor boards to avoid over-proliferation of bargaining units. Moreover, some statutes also set forth specific bargaining units, such as those for faculty, staff, maintenance, and similar distinctions.

Representation Procedures

The National Labor Relations Act and most state statutes provide formal processes for designation and recognition of bargaining units. If a dispute arises with respect to union representation, many states direct parties to resolve these dispute with the public employment relations board in that state. After the bargaining units are organized, members may file a petition with the appropriate labor board. The labor board will generally determine that [JURISDICTION](#) over the bargaining unit is appropriate, that the proposed bargaining

unit is appropriate, and that a majority of employees approve the bargaining unit through an election. Several procedures are usually in place in the [STATUTE](#) and rules of the labor board to ensure that the vote is uncoerced and otherwise fair. After this election, the labor board will certify the union as the exclusive representative of the bargaining unit. Once a union is certified, usually for a one-year period, neither employees nor another union may petition for a new election.

Obligations and Resolution of Conflicts in Collective Bargaining

Exclusivity and Good Faith in Bargaining Agreement

Once a union has been elected, both public and private school boards are bound to deal exclusively with that union. The elected union must bargain for the collective interests of the members of the bargaining unit. Both the school district and the union representing teachers must bargain in [GOOD FAITH](#). The duty of parties to bargain in good faith is important in the collective bargaining process, since negotiations between school districts and unions can become intense and heated.

Interpretations of the term "good faith" under the National Labor Relations Act typically focus on openness, fairness, mutuality of conduct, and cooperation between parties. Many state statutes define "good faith" similarly, though some states provide more specific guidance regarding what constitutes good faith bargaining. Some states also provide a list of examples that are deemed instances of bargaining in [BAD FAITH](#). Refusal to negotiate in good faith constitutes an [UNFAIR LABOR PRACTICE](#) under the National Labor Relations Act and many state statutes.

Terms of the Collective Bargaining Agreement

Most state statutes do not require schools to bargain on issues involving the educational policy of the school board. Many states require school boards and unions to bargain on "wages, hours, and terms and conditions of employment." Some states limit bargaining to such mandatory issues as benefits, insurance, or sick leave. When a state statute includes mandatory subjects, these subjects must be bargained over at the request of either the school board or the teachers' union. If either party refuses to negotiate over a mandatory subject, state statutes generally deem this a refusal to negotiate in good faith and, thus, an unfair labor practice.

In the absence of [STATUTORY](#) language specifying the scope of collective bargaining, teacher unions and school boards must consult relevant [CASE LAW](#) in that state to determine if the courts have set forth parameters. Other limitations to collective bargaining may also be present. A [COLLECTIVE BARGAINING AGREEMENT](#), for example, cannot violate or contradict existing statutory law or constitutional provisions. Similarly, the collective bargaining agreement should recognize contract rights that may already exist through other agreements.

Impasse

Negotiations may fail to lead to a completed agreement between a teachers' union and a school board. When good faith efforts fail to resolve the dispute or disputes between the parties, a legal impasse occurs. At the time impasse occurs, active bargaining between the parties is usually suspended.

Parties usually go through a series of options once an impasse has occurred, though public and private school teachers' options may differ. The first step after an impasse is declared is usually [MEDIATION](#). When parties employ a mediator, the mediator acts as a neutral third party to assist the two sides in reaching a compromise. Mediators lack power to make binding decisions, and they are employed only as advisors. Many state statutes

require use of mediators in the public sector upon declaration of an impasse. Private sector unions and schools may employ a federal mediator, though federal labor laws do not prescribe further options regarding dispute resolution.

If mediation fails, many state statutes require the parties to employ a fact-finder, who analyzes the facts of the bargaining process and seeks to recognize a potential compromise. The parties are not bound by the recommendations of the fact-finder, though it may influence public opinion regarding the appropriate resolution of the dispute. The recommendations are particularly influential in the public sector, where the school board is a government body consisting of elected officials, and teachers and other staff are public employees. However, this step in the process may not bring resolution to the dispute. In some states, fact-finding is the final stage of impasse resolution, leaving the parties to bargain among themselves.

A third option is [ARBITRATION](#), though this is generally only employed in the public education sector. An arbitrator is a third party who performs functions similar to a fact-finder, yet the arbitrator's decision is binding on both parties. In several states, arbitration is permissive, meaning parties may submit their dispute to an arbitrator after fact-finding if they so desire. Some states mandate use of binding arbitration, often as an alternative to the right to strike.

Strikes

If efforts for impasse resolution fail between a teachers' union and a school district, teachers may choose to strike to persuade or coerce the board to meet the demands of the union. A lockout by an employer is the counterpart to a strike. The right to strike in the private sector is guaranteed under the National Labor Relations Act. However, only about half of the states have extended this right to teachers in the public sector. These states usually limit this right under the respective labor laws. Where teachers do not have the right to strike, state statutes often impose monetary or similar penalties on those who strike illegally.

In states where strikes are permitted in the public sector, teachers often must meet several conditions prior to the strike. For example, a state may require that a bargaining unit has been certified properly, that methods for impasse resolution have been exhausted, that any existing collective bargaining agreement has expired, and that the union has provided sufficient notice to the school board. The purpose of such conditions is to give the parties an opportunity to avoid a strike, which is usually unpopular with both employers and employees.

Collective Bargaining in Higher Education

Collective bargaining in higher education differs somewhat from bargaining by primary and secondary school teachers. The National Labor Relations Act applies to many private institutions of higher education, which usually have much higher revenues and many more employees than private schools at the primary or secondary level. In many states, the same statutes that govern bargaining at the primary or secondary level govern collective bargaining in higher education. In other states, however, the statutes prescribe different rules with respect to state universities than they do with school districts. Governance of a public university is often much more complex than governance at a primary or secondary school, and the interests of the employees is often much more diverse among university faculty members and other employees than the interests of high school, middle school, or elementary school teachers and employees. Whereas a primary or secondary school may require only a minimal number of bargaining units, a large university may require several bargaining units to represent the various interests of the employees of the university.

State and Local Provisions Governing Collective Bargaining

The National Labor Relations Act (NLRA) governs labor relations in private schools, subject to some limitations. A teachers' union of a private school should determine whether the NLRA applies to its school. State labor statutes generally govern labor relations between public school districts and teachers' unions. These provisions are summarized below. Collective bargaining statutes differ considerably from state to state, with some states providing much more guidance and specific rules than others.

ALABAMA: Teachers have a general right to join or refuse to join a labor organization.

ALASKA: Certified employees and school boards must follow specific procedures set forth in the statute. Under the state's Public Employment Relations Act, student representatives must be permitted to attend meetings and have access to documents in negotiations between a postsecondary education institution and a bargaining representative. The statute also permits a strike, with some limitations, by public school employees after mediation if a majority of employees vote by secret ballot to do so.

ARIZONA: Arizona has not enacted a collective bargaining statute governing public schools. Teachers in this state should consult relevant case law to determine when collective bargaining is permitted.

ARKANSAS: Teachers have a general right to organize and bargain collectively.

CALIFORNIA: An extensive statutory scheme is provided for governing collective bargaining between public schools and bargaining representatives, under the Public School Employee Relations Act. The statute limits the scope of representation to matters related to wages, employment hours, and other terms and conditions of employment. Employer and employee representatives are required to "meet and negotiate." If impasse is declared, mediation and, if necessary, fact-finding are required. Arbitration is permitted, but it is not required by statute.

COLORADO: Collective bargaining is permitted by statute. Teachers have a limited right to strike.

CONNECTICUT: A statute permits collective bargaining by members of the teaching profession. However, the state prohibits professional employees from striking and allows courts to enforce this prohibition.

DELAWARE: Public school employees are permitted to bargain collectively. Majority vote is required for union representation from all eligible members of the bargaining unit. The state prohibits strikes by teachers.

FLORIDA: The state constitution guarantees the right to collective bargaining but prohibits strikes by public employees. State statute defines "good faith bargaining," requiring parties to meet at reasonable times and places with the intent to reach a common accord.

HAWAII: Statute permits bargaining by all public employees. Statute defines certain bargaining units, including some supervisory employees. Mediation, fact-finding, and arbitration are provided in the statute. Strikes are permitted, but only in certain narrow circumstances.

IDAHO: Statute prescribes procedures for bargaining between a school board and certificated school employees.

ILLINOIS: Educational employees at all levels permitted to bargain under the Illinois Educational Labor Relations Act. However, several types of employees, including supervisors, managers, confidential employees, short-term employees, and students, are excluded from bargaining by statute. Impasse procedures

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include mediation and fact-finding. Arbitration is permitted. Strikes are permitted after several conditions set forth in the statute are met.

INDIANA: Certificated educational employees permitted to bargain by statute. Statute prescribes certain subjects that may be bargained and certain subjects that may be discussed. Strikes are prohibited.

IOWA: All public employees permitted to bargain collectively. Mediation and fact-finding required for impasse resolution. The state labor board at the request of the school board or union may order binding arbitration. Strikes are prohibited.

KANSAS: Statute permits bargaining by all public employees. Employer retains a number of rights, including right to direct work of employees. Strikes are prohibited.

LOUISIANA: No collective bargaining statute governs public schools. Teachers in this state should consult relevant case law to determine when collective bargaining is permitted.

MAINE: Statute permits collective bargaining by all public employees. Strikes by all state employees are prohibited.

MARYLAND: Statute permits bargaining by all certified and noncertified public school employees.

MASSACHUSETTS: Statute permits bargaining by all public employees. Strikes by public employees are prohibited.

MICHIGAN: Statute permits bargaining by public employees. Negotiations by teachers limited under some circumstances. Strikes by public employees are prohibited.

MINNESOTA: Statute permits bargaining by all public employees. State permits strikes only under certain circumstances, including completion of impasse resolution.

MISSISSIPPI: Strikes by teachers are illegal by statute.

MISSOURI: Teachers at public schools have the right to bargain collectively. Statute does not grant a right to strike.

MONTANA: Statute permits bargaining by all public employees. Courts have construed state statute to permit the right to strike.

NEBRASKA: Statute permits bargaining by all public employees. State restricts supervisors from joining a bargaining unit but permits some administrators, subject to restrictions, to join such a bargaining unit with teachers. Strikes by teachers are prohibited.

NEVADA: Statute permits bargaining by all public employees. Strikes by public employees are illegal by statute.

NEW HAMPSHIRE: Statute permits bargaining by all public employees. Impasse resolution procedures must be implemented within the time period specified by the statute. Strikes by public employees are illegal by statute.

NEW JERSEY: Statute permits bargaining by all public employees but excludes standards of criteria for employee performance from the scope of negotiation.

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NEW YORK: Statute permits bargaining by all public employees. The statute limits the scope of negotiations to matters related to wages, employment hours, and other terms and conditions of employment. Arbitration is required by statute when an impasse is declared. Strikes by public employees are prohibited.

NORTH CAROLINA: Statute prohibits collective bargaining by all public employees. Statute also prohibits strikes by public employees.

NORTH DAKOTA: Statute permits bargaining by certificated school employees. Strikes by school employees are prohibited.

OHIO: Statute permits bargaining by public employees. Strikes by public employees are prohibited.

OKLAHOMA: Statute permits bargaining by all public school employees. Strikes by teachers are prohibited.

OREGON: Statute permits bargaining by all public employees. Impasse resolution procedures include mediation and fact-finding. Strikes are permitted after impasse resolution procedures have been implemented.

PENNSYLVANIA: Statute permits bargaining by all public employees under the Public Employee Relations Act. Statute limits which employees may be included in a single bargaining unit. Public school districts are not required to bargain over the "inherent management policy" of the district. Strikes by public employees are permitted after conditions set forth in the statute are met.

RHODE ISLAND: Statute permits bargaining by all certified public school employees. Strikes by public school employees are prohibited.

SOUTH DAKOTA: Statute permits bargaining by all public employees. Strikes by public employees are prohibited.

TENNESSEE: Negotiations by professional educators governed by the Education Professional Negotiations Act. Strikes by education professionals are prohibited.

TEXAS: Statute prohibits public employees from entering into a collective bargaining agreement. Statute also prohibits strikes by public employees.

UTAH: Statute permits union membership by public employees.

VERMONT: Statute permits bargaining by public school teachers, with representation election administered by the American Arbitration Association. Strikes by state employees are prohibited by statute.

VIRGINIA: Strikes by public employees are prohibited by statute.

WASHINGTON: Statute permits bargaining by public employees, including certified educational employees. Strikes by public employees are prohibited by statute.

WEST VIRGINIA: No collective bargaining statute governs public schools. Teachers in this state should consult relevant case law to determine when collective bargaining is permitted.

WISCONSIN: Statute permits bargaining by municipal employees. Impasse resolution procedures include mediation and arbitration. Strikes are permitted after impasse resolution procedures have been exhausted.

WYOMING: Statute permits right to bargain as a matter of [PUBLIC POLICY](#).

Additional Resources

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Organizations

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