

OUR NEGOTIATIONS ARE AT AN IMPASSE: WHERE DO WE GO FROM THERE?

It is not unusual for School Districts to find themselves at an impasse in contract negotiations. In today's economic climate, School Districts strive to hold the line on the ever escalating personnel and benefit costs which comprise a significant portion of their budgets. At this time, if your District is still embroiled in protracted negotiations, the prior contract has probably expired, and the District and Union are operating under the status quo. For an in depth review of concerns while operating under the status quo, please refer to the Summer 2009 edition of Education News posted on our website at www.mbm-law.net. This article outlines the alternatives available to the District if negotiations are unlikely likely to result in a new contract in the near future.

For a District with its fiscal year ending on June 30, the deadline for one party to request fact-finding was April 10. However, other scenarios where fact-finding may occur include:

- At any time by mutual agreement of the parties, except during mandatory arbitration; or
- At any time by the Labor Board, except during the period between a notice to strike and the conclusion of the strike. When the Labor Board does not initiate fact-finding prior to a strike, it must issue a report with its rationale upon request of either party.

The fact-finding process has the following features:

1. Labor Board appoints a panel of 1 to 3 members (in most circumstances, one fact-finder is appointed);
2. The fact-finder conducts hearings and has subpoena power;
3. The fact-finder issues a report containing findings of fact and recommendations;
4. The report is sent to both parties by registered mail within 40 days;
5. Parties must reply in writing within 10 days of sending of report whether recommendations are accepted;
6. Where recommendations are not accepted by either party, the fact-finder's report is published;
7. Within 5 to 10 days of publication, parties must notify Labor Board and each other whether recommendations are accepted; and
8. Costs of panel are paid as follows – one-half by Commonwealth; one-quarter by the District; and one-quarter by union.

Another alternative available to the District is nonbinding arbitration. Voluntary arbitration may be requested by either party in writing by written notice to the Bureau of Mediation, Labor Board and the other party at any time prior to mandatory arbitration, except it cannot be required during fact-finding. The other party must indicate if it agrees within 10 days of notification. Mandatory arbitration is required where a strike or lockout will prevent the District from providing 180 days of instruction by the last day of school on the school calendar or by June 15, whichever is later.

- Act 88 Arbitration has the following features:
 - The parties must bargain for an approved impasse procedure. In the absence of an agreement, the mediator selects the procedure.
 - Arbitration panel to be composed of 3 members – each party selecting 1 member and a third member being selected by the parties from a list furnished by the American Arbitration Association.
 - For voluntary arbitration, each party pays its own arbitrator and one-half of the cost of the neutral arbitrator. For mandatory arbitration, the Commonwealth pays one-half of the entire cost and the parties split the other half.
 - The parties must submit a final best-contract offer within 10 days of submission to arbitration. The offer must be served on the other party and include documentation supporting the offer.
 - Copies of the parties' final best offers are to be posted in the District's main office for public comment for 10 days. Public comments shall be supplied to the arbitrators.
 - A Hearing must begin within 10 days of selection of the neutral arbitrator. At least 5 days' notice of hearing is to be given.
 - The Decision must be made within 20 days of the Hearing. It is not appealable unless it results from fraud, corruption or willful misconduct of the arbitrators.
 - The decision will be binding unless the District rejects it at a public meeting within 10 days of the decision.

Despite all efforts, a strike may be unavoidable. If a strike occurs, the following may be of benefit:

- If the Union strikes once and unilaterally returns to work, the Union can only strike once more during the school year.
- The Union must give the District a minimum of 48 hours written notice before a strike.
- Strikes are prohibited:
 - Prior to conclusion of 48-hour notice by the Union.
 - During fact-finding or arbitration processes.
 - If in the nature of a selective strike.
- During a legal strike, the District may use individuals who were actively employed during the prior 12 months.
- The District may utilize persons other than those employees who have been actively employed by the District at any time during the previous 12 months when the Union has rejected the arbitrator's determination or the strike will prevent the completion of 180 days of instruction by June 15 or the end of the school year.
- In the event the Union is on a strike for an extended period that would not permit the District to complete the 180-day school year by June 30, the Secretary of Education may petition for an injunction in the County Common Pleas Court to provide for the required period of instruction.
- Pursuant to its equitable powers, the Court may order the District and Union to participate in court-monitored negotiations as part of an injunction pursuant to Act 88. Accordingly, the court may require Board members to be present at court-monitored negotiation sessions.

Careful preparation and documentation of the District's position will increase the likelihood of a more favorable outcome in either fact-finding or Act 88 arbitration. MBM has provided guidance in navigating and surviving Act 88 fact-finding and arbitration and is prepared to respond to any questions your District may have.