

# **NOW IS THE TIME TO PREPARE FOR COLLECTIVE BARGAINING**

*By: Mary C. Barkman*

Spring has sprung, summer is upon us and you're telling me I have to think about collective bargaining? If your contract expires this year, the answer is "Yes!" Whether bargaining has started or not, you need to be aware of important dates and timelines related to bargaining set forth in Pennsylvania statutes. Knowledge of Act 195 and Act 111 timelines along with good preparation and utilization of some of the basic strategies set forth in this article will help you avoid a number of pitfalls along the way. Now is the time to prepare, before you find yourself at the table.

Act 195, the Public Employee Relations Act or ("PERA"), 43 P.S. § 1101.101 *et seq.* is the primary law in Pennsylvania governing labor relations between public sector non-uniformed employees and their employers. Act 195 establishes the collective bargaining rights of municipal employees except for police officers and firefighters who are given collective bargaining rights by Act 111, 43 P.S. §217.1 *et seq.*

The concept of time restrictions is the same under Act 111 and Act 195, although the specific requirements differ. The idea underlying both statutes is to give the public employer timely notice of information important to the budgeting process and the levels of taxation required to fund the contracts. As such, there are usually adverse consequences for the union in failing to comply with these time requirements. However, there can be an adverse impact on a municipality that conducts negotiations without knowledge of the applicable time periods.

## **Act 195**

Act 195 sets the parameters for bargaining with organized employees and establishes mediation procedures in the event of a bargaining impasse. Act 195 also requires the arbitration

of disputes or grievances that arise out of the interpretation of a collective bargaining agreement and provides for the prevention of unfair labor practices. Finally, Act 195 grants most, but not all, municipal employees in Pennsylvania a limited right to strike.<sup>1</sup>

While Act 195 permits employers and bargaining units to engage in voluntary mediation to assist in the negotiations of a collective bargaining agreement, strict compliance with the Act 195 timetable is mandated by statute. The Act 195 “timetable” can be summarized as follows:

- Bargaining must commence no later than 171 days prior to the budget submission date;
- If a dispute or impasse exists in the bargaining, a mediator must be called in within twenty-one (21) days of the start of negotiations and utilized less than 150 days prior to the budget submission date;
- Once mediation commences, if an agreement has not been reached within twenty (20) days or in no event later than 130 days prior to the “budget submission date,” the Bureau of Mediation will notify the Pennsylvania Labor Relations Board (“PLRB”);
- The PLRB may, in its discretion, appoint a fact-finding panel.

The budget submission date for most public employers is December 31. For most municipalities this means a mediation notice must be sent by August 3 if agreement has not been reached. It is mandatory that mediation occur timely but there is no requirement to actually mediate for twenty (20) days after the start of bargaining. A strike during or without mediation having taken place is unlawful and a refusal to submit to mediation is an unfair labor practice.

Although the statute references fact finding, the PLRB is not required to name a fact finder, and in municipal bargaining, most frequently does not authorize fact finding. If a fact finder is not named, either party can request from the PLRB the reason(s) why such a decision was made. If a fact finder is appointed, within five (5) days of receipt of notice from the fact

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<sup>1</sup> Guards at prisons or mental hospitals, and employees directly involved with and necessary to the functioning of the courts of the Commonwealth are not afforded the right to strike. Instead, they must submit to binding interest arbitration in the event of an impasse in bargaining. 43 P.S. § 1101.805.

finder, the parties must file written statements of issues in dispute, a copy of the current collective bargaining agreement, and a summary of the position of the party regarding each unresolved issue. The matters to be considered by the fact finder are limited to those set forth in the statement of issues. After a hearing, the fact finder makes findings of fact and recommendations. The fact finder's finding of facts and recommendations must be sent to the PLRB and to both parties within forty (40) days of the Bureau of Mediation having notified the PLRB. Within ten (10) days after the fact finder's findings and recommendations have been sent out, the parties must notify the PLRB and each other whether or not they accept the fact finder's recommendations. If the parties do not both accept the report, the PLRB will publicize the fact finder's report and recommendations.

Between five (5) and ten (10) days after the publication of the findings and recommendations, the parties must again inform the PLRB and each other whether they accept the fact finder's findings and recommendations. If the parties still have not resolved their differences after the fact finding process, or if the PLRB does not appoint a fact finder, the parties must continue negotiations, or the union may choose to strike.

### **Act 111**

Act 111, unlike Act 195, guarantees the right of collective bargaining and binding arbitration as a method for resolving disputes and settling contracts. Since they are forbidden to go on strike, public safety employees instead enjoy the right of binding arbitration, whereby unresolved negotiations go to a panel of arbitrators who render a judgment on the disputed issues. Strict compliance with this timetable is mandatory and must be strictly followed. Failure to abide by the timetables may result in the forfeiture of rights, including the right to binding interest arbitration. The Act 111 requirements can be summarized as follows:

- Collective bargaining must commence at least six (6) months before the beginning of the municipality's next fiscal year;
- Negotiations commence when one party delivers to its opposite a written demand or request that bargaining begin;
- Once negotiations commence, if an impasse is reached, either party may request interest arbitration, but only after written notification is delivered to the other party containing specifications of the issue or issues in dispute;
- An impasse is deemed to occur if a written agreement containing a settlement of the issues in dispute is not reached within thirty (30) days after collective bargaining has been initiated;
- The request for interest arbitration must be made at least 110 days before the beginning of the municipality's next fiscal year; (for most municipalities this 110 day mandatory date is September 12);
- The employer and union must each name one (1) arbitrator within five (5) days from the date interest arbitration is requested;
- If ten (10) days after the request for interest arbitration the arbitrators have not agreed on a third arbitrator, either arbitrator may request the American Arbitration Association to furnish a list of three (3) members who are residents of Pennsylvania from which the third arbitrator is selected;
- The employer's arbitrator strikes one name from the list of three (3) within five (5) days after receipt of the list and the union's arbitrator must strike one name from the remaining two (2) within five (5) days of the employer's strike.

Strict compliance with these timetables is mandatory and must be followed exactly.

Failure to abide by the timetables may result in the forfeiture of rights, including the right to binding interest arbitration. The failure to timely request interest arbitration means that the contract is extended one (1) year. The timetable then re-starts for the next year.

In addition to complying with the timetable, it is also essential that the municipality create and timely serve its own list of issues in dispute. While the timetable requires the party requesting interest arbitration to submit issues in dispute, which is usually the police or fire union, the municipality also should submit issues in dispute. These issues should be submitted

early in the bargaining process and resent with the letter appointing the municipality's arbitrator. The matters to be considered by the arbitrators are limited to those set forth in the statement of issues submitted. Although the arbitration panel is permitted to construe broadly the issues submitted, an Act 111 arbitration award which creates or modifies conditions of employment outside of the issues in dispute is illegal and unenforceable.

### **Strategies**

Success in bargaining requires realism as to achievable collective bargaining goals, knowledge of the applicable law, familiarity with patterns of settlement/awards, and patience. This article is not meant to be a comprehensive guide to bargaining or bargaining strategies. Those issues are a topic for another article. However, municipalities must be familiar with the timetables applicable to bargaining and the implications of the failure to comply with those timetables.

With respect to initiating the bargaining, the union often wants to start bargaining at a time during the year when it is perceived as being too early or at a time when the public employer feels that it is not ready. The failure of the public employer to respond promptly with a timely date for the first meeting makes the other side angry, suspicious, and therefore less inclined to settle. It raises the ante.

The answer is to agree to set up the first meeting promptly. Then the opportunity for a reasonable settlement is enhanced. Police unions usually request bargaining early because they default the right to go to arbitration for that year if they do not start bargaining before 12:01 a.m. on July 1. Therefore, they often send the employer a notice well in advance. You will likely receive this notice soon, if you have not already received it.

Whether dealing with the police or any other union, the first meeting does not require a lot of planning. The union has given notice the union wants more and therefore wants to

negotiate a new agreement to replace the existing agreement. All the public employer has to do is show up. The union will present its proposals. If the employer simply determines the meaning and justification of each proposal, and asks questions designed to determine the union's priorities, this process will constitute the first meeting. In fact, the dialogue on certain points could take long enough that an additional meeting is required.

If you have not already developed your own set of proposals, you should start to do so after the first meeting with the union. Talk to your department heads, the police or fire chief, and any other employee responsible for administering the collective bargaining agreement. These individuals are perhaps best suited to identify the provisions of the agreement that create problems for the municipality. Review prior grievance arbitration awards. These awards often raise issues that need to be addressed in bargaining. Also, review your notes and proposals as well as the union's proposals from prior negotiations. These notes and proposals are often useful in developing proposals and identifying those issues (and arguments advanced in support thereof) that the parties have discussed in the past. If your bargaining team is different from the prior contract negotiations, talk to former team members to develop the bargaining history. For instance, when reviewing the union's proposal for shift differential, it would be important to know that the parties agreed to roll shift differential into base salary two contracts ago or traded it for some other benefit. Without the benefit of the bargaining history, a municipality is at a significant disadvantage.

Do your homework to identify similar communities as well as to identify the characteristics that make your community distinguishable in order to address and refute, if necessary, comparable contract information offered by the union. It is important for you to have the facts in hand regarding your community's population; physical size; overall demographics; commercial development; housing ownership and value; size of operating budget; millage and

other tax rates; resident income levels; and average taxpayer income in order to determine whether a community is truly comparable. Remember to also look for trends in these statistics both in other communities and your own. Comparisons can be misleading when you find yourself comparing results of dissimilar communities. Be certain to not limit your focus solely on your neighboring communities. Most often, the municipalities contiguous to your own are nothing at all like yours when you consider the factors set forth above.

In police bargaining, it is essential that you develop your own list of proposals and not just respond to the union's proposals. Make your own list of proposals and identify enough proposals in the beginning of the bargaining process. It should be obvious that if it is okay for the other side to ask for the world then it is also okay to respond to such a laundry list with your own laundry list. It levels the playing field. As bargaining continues, the playing field should be kept level. Do not reduce your demands unless the union also makes movement. It is important to confirm in the process that if there is no settlement, then all issues will be arbitrated. It is also important, in order to foster meaningful discussions, to establish an understanding that settlement proposals will not be used if the parties ultimately proceed to interest arbitration. In order to have an honest effort in bargaining, each side must be able to indicate its bottom line. The process is frustrated if the parties are simply posturing for arbitration fearful that proposals made will be revealed to an arbitrator in order to undermine the process.

One of the most common traps in bargaining – whether with the police or public works unit – is to rely on inappropriate or inaccurate information provided by the union or to agree to a demand without adequate information as to its legality. It is not difficult to do the research which is required and it prevents big mistakes. It will help you to know generally what issues over which you must bargain. Mandatory subjects of bargaining, as defined by Act 195, include “wages, hours and other terms and conditions of employment.” Under Act 111, mandatory

subjects of bargaining include “terms and conditions of employment, including compensation, hours, working conditions, retirement, pensions and other benefits.” A matter is deemed a mandatory subject of bargaining under Act 111 if it bears a “rational relationship” to employees’ duties. Once it is established that a matter is a mandatory subject of bargaining, the employer is barred from acting unilaterally with regard to that matter without engaging in collective bargaining. Do not bargain over a matter which is not a mandatory bargaining subject.

Finally, take some bargaining advice from one of Pennsylvania’s own: Benjamin Franklin. Benjamin Franklin's method of persuading others to his point of view took patience and endurance. It assumed that people are won over slowly, often indirectly. If you don't win the bargain today, Franklin would say, go after it again tomorrow – and the next day. Here are some of Franklin's bargaining tips:

1. Be clear in your own mind, about exactly what you are after.
2. Do your homework, so that you are fully prepared to discuss every aspect and respond to every question and comment.
3. Be persistent. Don't expect to "win" the first time. Your first job is just to start the other person thinking.
4. Make friends with the person with whom you are bargaining. Put the bargaining in terms of his or her needs, advantages, and benefits.
5. Keep your sense of humor.

*Source: LEADERSHIP...with a human touch*

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