



School Administrators Association of New York State

SAANYS
LEGAL DEPARTMENT

8 Airport Park Boulevard | Latham, New York 12110

Phone: (518) 782-0600 | www.saanys.org

I've Been Given More Duties. What Do I Do?

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In these inflationary times, we may see a reduction in workforce soon. When the terms and conditions of employment change for a collective bargaining association member, the employer will have to negotiate the impact of the change, if it involves a mandatory topic of bargaining. What is a mandatory negotiable topic of bargaining? A mandatory topic of negotiation is something that the employer must, by law, negotiate with a collective bargaining association. Compensation is a mandatory topic for example. An employer must also negotiate non-mandatory or permissive topics of bargaining when, the employer makes a change that impacts a mandatory topic of bargaining, such as work hours or work week. The request to negotiate the impact is called "impact bargaining."

What is impact bargaining?

Impact bargaining is when an association demands in writing to commence negotiations regarding a change in the terms and conditions of employment, whether mandatory or non-mandatory/permissive, that impacts a mandatory topic of bargaining. The most typical example is when the superintendent directs a unit member to perform extra duties. Extra duties typically arise by positions being unfilled and the work being reassigned, new statutory/regulatory mandates – i.e., new reporting requirements, or the advent of new technology in the school district such as Gaggle or anonymous alerts that directly impacts building and/or program administrators and supervisors. Suppose additional duties are assigned to a member due to a retirement that extends their work-day from 4:00pm to 5:00pm daily. The impact of the increase of 5 additional hours of work each week is the impact that needs to be negotiated. Also understand that there is a separate improper practice charge that may be filed if the duties must be performed every day and the administrator lacks discretion to do them at other times.

Foremost, the Association must make a formal written demand for impact bargaining. Typically, such bargaining centers around three aspects of the impact. The first consideration is compensation for the additional 5 hours of work. Can the parties reach accord on how to calculate that time for a reasonable settlement such as a per/diem hourly rate? The second aspect of impact bargaining is if these additional duties are critical to the operations of the school district, may the affected member be excused from performing other assigned tasks? This aspect requires analysis of the person's current duties and what tasks may be easily transferred to someone else. The third and final consideration here is requesting additional staff to execute the new duties and assist the affected administrator in performing her/his regular assignments. These aspects and other unique considerations should be discussed to resolution at the negotiating table.

Suppose the parties meet four or five times without a resolution. Both sides appear to be getting frustrated by the process. Or perhaps management is present at the table but rejects or ignores the cogent arguments by the union for additional money, relief from previously assigned duties and/or additional support staff. Then, after consulting with SAANYS, declare impasse with the Public Employment Relations Board ("PERB"), and use the traditional mediation and fact-finding processes available under the Taylor Law. The introduction of a neutral third party may be what breaks the deadlock in bargaining. If the union feels that management has not

engaged in good faith bargaining of the impact, then also file an improper practice charge with PERB against management for engaging in bad faith negotiating practices.

How long do we have to declare impasse or file an improper practice charge?

Remember there is a firm four-month statute of limitations that runs on all improper practice charges brought in PERB. Therefore, it is important to promptly contact SAANYS Legal Department with any questions when the district or BOCES unilaterally changes a term or condition of employment so we can evaluate any potential claims the association may have. As discussed above, the act of declaring impasse has no set time limit, but PERB typically will not entertain declarations of impasse where the parties have not negotiated on three separate occasions.

Improper Practice v. Impasse

In the context of impact bargaining, an improper practice charge should be promptly filed if there was a unilateral change in a mandatory topic of bargaining, e.g., increased work hours or the assignment of new duties not intrinsic to their current job assignment. Then subsequently file a demand for impact bargaining and commence collective bargaining. If, during negotiations, the union feels that the college, school district, or BOCES has engaged in bad faith bargaining practices, then the union may file a separate improper practice charge for bad faith bargaining and declare impasse on the underlying negotiations. All improper practices involve filing formal pleadings, followed by a pre-hearing conference, and then an adjudicatory hearing on the merits at which the parties present the witnesses. At any time prior to the administrative law judge's decision, the parties may settle the case by negotiating an agreement that would obviate the need for the judge to render a decision.

The Impasse process facilitates negotiations. After declaring impasse, PERB will assign a mediator to assist both parties in negotiations. The mediator cannot force the parties to agree to any particular agreement. Rather, the mediator pushes both sides to reach common ground upon which an agreement can be reached. If mediation fails, the parties may request a fact finder be appointed, who, in the first instance, will attempt to mediate. If that attempt fails, the fact finder will conduct a hearing identifying the issues at hand, evaluate the parties' positions through oral and/or written arguments, consider documentary evidence, and then issue a Fact Finder's report making recommendations to the parties for what the neutral believes is a fair compromise. Neither the mediator nor the fact finder can dictate that the parties agree to any particular settlement of the impasse, their recommendations are purely advisory.

Which avenue(s) to pursue will depend on the facts of any given situation. Therefore, it is important to promptly contact SAANYS Legal Department at 518-782-0600 with any issues or questions.

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