



Bargaining options for Last Best Final Offer scenarios

Effective communication and productivity at the bargaining table tend to decrease the longer parties are engaged in discussions without any change in the power dynamics between our union and the district. Locals struggling with prolonged negotiations should first and foremost work with assigned field staff and organizers on a plan to shift the power from the district to our members.

Districts may attempt to change that power dynamic not through collective action but through artificial leverage by making a ‘last, best, final offer’ at the table. This tactic is often recommended by attorneys paid by the district to advise board members on negotiations. We should understand this tactic as a prerequisite for the district attempting to impose the contract terms they wish to see and an abdication of responsibility under PELRA. Bargaining teams should clearly understand their role in continuing to negotiate through a bad-faith effort by the district to stop negotiating and should take steps to both organize members and seek solutions at the bargaining table or in mediation. Failure to do so could result in litigation, which provides limited options for resolution.

Guidance

- 1. Locals should continue to schedule, or attempt to schedule, bargaining sessions with the district**
- 2. Locals should continue to draft and send or present proposals to the district.**
- 3. Locals should call in resources from the Organizing for Settlement Fund, field staff, and assigned organizers.**

Context for bargaining deadlock

If negotiators are unwilling to make further modifications of their bargaining positions, they have reached what is known as “impasse.” PELRA anticipates the challenges that parties can face in reaching agreement by providing tools for avoiding or addressing deadlocks. Either party can request to go to mediation via the Bureau of Mediation Services. The parties may mutually agree to the submission of the unresolved issue(s) to interest arbitration, the union may strike or the employer may unilaterally impose their last offer.

Under PELRA, once the parties have negotiated to an impasse over a mandatory subject of bargaining, the school district is free to unilaterally implement the desired changes in the terms and conditions of employment. These changes must be consistent with the proposals the district had made and the union has rejected.

Avoiding the unilateral imposition of a contract by an employer is extremely important. A district that successfully imposes a contract on one of our unions could set a precedent for other districts to see this as an easy way out and follow suit. This is certainly a trend envisioned by some district-side attorneys. Districts have attempted but never successfully imposed their contract offer on a local union.

Some districts, often following the advice of an outside attorney, will foreshadow their desire to impose a contract by passing across a proposal that they call their “last, best, final offer (LBFO).” It is rarely the case that a LBFO is the last proposal the district makes; however, when we hear these words, it is very important to develop a planned response.



Understanding the language around impasse

In the event that the district claims that a proposal constitutes a last, best, final offer, local negotiators must be clear about their next steps.

1. Work hard not to paint yourself in a corner that does not allow for further movement in the presentation of proposals or counter proposals.
2. Don't use language that states or implies that they have no further room for movement toward settlement. We do not use the words or phrases such as "impasse," "deadlocked" or "stalemate" in either private or public statements or written communications.
3. If the district presents what they are calling a LBFO, respond with a counter proposal that allows room for movement by both parties.
4. If we need to prove to a court that we are not actually at impasse, we need the evidence to show that we were continuing to make proposals, and there was room to move.
5. The local should be clear about whether or not it is ready to respond with a strike if the district actually intends to impose its LBFO.

Next steps

Local unions engaged in difficult negotiations should work with field staff and assigned organizers on a plan to organize members in support of a contract settlement. Given realities around funding challenges, unions may wish to introduce a proposal that asks districts for a commitment to jointly lobby for revenue that will meet student and school needs as part of their ongoing bargaining.

Continuing to offer times for the parties to meet is critical. Even if a cooling off period is warranted, scheduling future meetings indicates an intent to continue bargaining.

Mediation can be helpful in moving through difficult bargaining discussions, and in some cases, locals may want to explore interest arbitration as a means of settling. Conversations with field staff about both options can help with these decisions.