

Interest Arbitration

Analysis of interest arbitration as a means of settling your collective bargaining agreement

Locals considering interest arbitration as a means of settling their collective bargaining agreement must consult with their Education Minnesota field representative before deciding to do so. Education Minnesota field representatives will consult with the Education Minnesota negotiations department.

Making a decision on the type of interest arbitration and the local's final position without adequate and thorough research may lead to a position that is almost impossible to defend at the Interest Arbitration hearing.

The best practice during bargaining is to have an informed membership. Going to arbitration is no different. The local membership must be included in the discussion of the pros and cons of going to Interest Arbitration. Furthermore, the local membership must make the final decision to arbitrate by using the same process it would use for a ratification vote.

I. Overview of Interest Arbitration

In general, interest arbitration **will not**:

1. Make improvements to the locals salary schedule, insurance benefits, or any other economic benefits in relationship to their current ranking in their comparable districts (e.g., improving maximum salaries that rank last in the conference to the average of the conference). When the salary schedule ranks low in relationship with comparable schools, arbitration will not, in all likelihood, result in improving this comparative ranking.
2. Add new language to the collective bargaining agreement or change salary structure significantly (e.g., adding lanes/steps to the salary schedule, changing the increment structure or adding personal days when there are presently none).
3. Remove existing collective bargaining agreement language or significantly change existing language (e.g., removing collective bargaining agreement language that allows superintendents to approve personal leave days, etc.).

Arbitration may be viewed as a way to deflect responsibility for a "bad" settlement away from the local bargaining teams and towards the arbitrator. This is not always true and can in some situations make future bargaining more difficult. The local or the district may view the award as a loss and try to make up for it in future bargaining.

The only guarantee in interest arbitration is that there will be a settlement.

www.educationminnesota.org

Education Minnesota is an affiliate of the American Federation of Teachers, the National Education Association and AFL-CIO.



II. Types of Arbitration

The decision to settle the collective bargaining agreement via interest arbitration must be made by mutual consent of the district and union. It can be entered into after at least one mediation session has occurred with the mediator typically assisting both parties in clarifying the issues. The type of interest arbitration to be implemented and the issues to be arbitrated must be mutually agreed to between the school district and the local. This agreement must be decided before the petition is submitted to the Bureau of Mediation Services.

1. Final Offer / Total Package:

The arbitrator will choose either the local's final position or the school district's final position in total. The choice by the arbitrator could hinge on any number of items in the total package. Depending on the number and types of issues in the final package, this type of arbitration has some advantages over the other types of arbitrations. Total Package Arbitration, many times, results in settlement prior to the arbitration hearing because both sides are more "**reasonable**" in their positions and settle prior to arbitration.

2. Final Offer / Item by Item:

The arbitrator will choose either the local's or the school district's final position on each item in dispute. This allows some flexibility for the arbitrator, but it also allows the arbitrator to "keep score." It is very important in Final Offer Item by Item Arbitration that the items in dispute are thoroughly detailed in the agreement to arbitrate. If the salary schedule for both years is listed as two different items in dispute, the arbitrator could choose the school district's position for one year and the local's position for the other year. This could lead to severe difficulties in the future. If each year of the salary schedule are in dispute, both years should be listed as one item to arbitrate.

3. Conventional Arbitration:

The arbitrator is free to choose ANY POSITION in conventional arbitration. The choice could be the position of either of the parties, or a position arrived at by the arbitrator that is different from either party's proposal. Arbitrators will often award a position somewhere in the middle, but this is not always the case. Sometimes the award will be unfavorable for both sides, and sometimes the award will be such that clarifications will be needed because the award of the arbitrator was unclear. Conventional Arbitration does not often result in settlement prior to the arbitration hearing because both sides have a tendency to "posture" with positions that are extreme, in order for the arbitrator to award a position somewhere in the middle.

III. Timing of Arbitration Requests

When a local has explored all other options for reaching settlement, the local has consulted with its Field Representative and there is adequate information to do quality comparisons with similar locals and/or regional locals it is appropriate to request arbitration. **It is very important to establish comparative data in order to determine the local's final position and to develop exhibits used in the arbitration hearing. This must be done BEFORE requesting arbitration. Without a comprehensive set of settlement data, it is impossible to prepare for an interest arbitration hearing.**

Almost all of the Interest Arbitrations in our union history have occurred after 90-95 percent of the locals in the state have settled their collective bargaining agreements. This makes it possible to determine comparable groups. If there are not a large number of districts settled in comparable groups, arbitrators tend to compare settlement data from other employee groups within the district or settlements of other public employees in the area.

IV. Advantages and Disadvantages of Interest Arbitration

Advantages:

1. Arbitration will result in a settlement.
2. The outcome may be blamed on the arbitrator.
3. There is little or no conflict in reaching settlement.
4. It will generally, but not always, retain status quo.
5. Sometimes, when both parties move toward the middle in preparing final positions, there is an improved chance of reaching settlement prior to the hearing.
6. Data collected while preparing for arbitration is very useful in future collective bargaining.

Disadvantages:

1. There is almost no control of the settlement.
2. The settlement will generally be an average or a below average settlement.
3. There is very little chance of inserting new items in a settlement.
4. The bargaining team may be blamed for a “bad award.”
5. It generally retains status quo.

V. Education Minnesota Assistance in Arbitration Process

It is very important that your Education Minnesota field representative be involved early in any decision to use Interest Arbitration as an alternative for settlement of the collective bargaining agreement. Local negotiators in consultation with the Education Minnesota field representative and the Education Minnesota negotiations department will jointly develop the final positions for arbitration.

Education Minnesota field offices will be responsible for preparing the exhibits for the arbitration. The Education Minnesota field representative in consultation with the Education Minnesota negotiations department will be responsible for the research for the preparation of the exhibits. Local negotiators are expected to assist in the collection of the data.

The presentation of the local’s exhibits at the arbitration hearing will be by Education Minnesota field representative, Education Minnesota negotiations department staff or a combination of field and negotiations department staff.

VI. Important Decisions Prior to Agreement to Arbitrate

1. Is arbitration appropriate for settlement of the collective bargaining agreement?

Arbitration is an option of last-resort for settling the collective bargaining agreement. Only when all other avenues have been exhausted should the local contemplate arbitration. Factors that will be considered include:

- The number of items on the table remaining unresolved
- How far apart the local and the district are on unresolved issues
- Financial position of the district
- Whether or not the local is willing to submit positions that maintain the status quo
- Comparables

2. What type of arbitration would best serve the needs of a local?

Each type of arbitration has both advantages and disadvantages. The field representative, the negotiations department, field manager, and director of field services will jointly determine the type of arbitration in advance of submitting the petition for arbitration to the BMS.

3. What issues should be decided in arbitration?

All issues to be arbitrated must be mutually agreed to between the school district and the local. The BMS mediator may be part of the decision making process, as the BMS will certify Interest Arbitration. Participation in mediation may be required before arbitration. Issues must be very clear and concise.

EXAMPLE: LIST OF ISSUES SUBMITTED FOR ARBITRATION

- Item #1: salary schedule 2013-14 and salary schedule 2014-15.
- Item #2: extracurricular schedules for 2013-14 and 2014-15.
- Item #3: school district contribution to health insurance for 2013-14 and 2014-15

Any issues that are to take effect in the second year should be listed accordingly. Collective bargaining agreement language items should be listed by title, but they do not need to have the position of either party listed when the list of issues is initially submitted to the BMS.

4. Is the local prepared to ratify all tentative agreements and vote to accept an unseen arbitrator's award?

Arbitration requires that a local take a ratification vote that includes the existing tentative agreements and the final positions that the local intends to certify for arbitration. Bargaining teams cannot move to arbitration without the local following the ratification process in its Constitution and Bylaws. Significant communication with members and transparency about both the process of arbitration and final positions is necessary. The Field Representative will assist with communication with local members.

VII. Development of the Final Position

Development of the final position is, perhaps, the most important decision to be made in interest arbitration. The proposed salary schedule improvement in relation to comparable groups is generally more important than the total package comparisons. Choosing comparable groups and the rationale for choosing comparable groups is also extremely important.

Generally speaking, starting with the 1993-95 arbitration awards, the “ability to pay” has been given substantial, if not overwhelming consideration in arbitrators’ decisions. The “Industry Standard,” that is, what the settlements are in the comparable schools, was more important in earlier awards and less so on later awards.

VIII. Selection of Arbitrators

The Education Minnesota negotiations staff will make the selection of the arbitrator in consultation with the Education Minnesota Legal Department.

The selection of an arbitrator must be thoroughly discussed with Education Minnesota Field Representative. There is a cost incurred for the arbitration and without proper consultation with Education Minnesota staff, the cost may be borne exclusively by the local. The local must follow the Crisis Fund guidelines for the Crisis Fund to pay for the arbitration costs.

IX. Procedures for Requesting a Crisis Fund Assessment (from the Crisis Fund Manual)

Interest Arbitration Expenses

- The local/state affiliate cost for interest arbitration will be paid in full by the Crisis Fund.
- Interest arbitration expenses are not subject to the eighty percent (80 percent) reimbursement guideline. Reimbursable costs include the local/state affiliate's share of the arbitrator's bill, the expense of preparing the Education Minnesota arbitration brief (including any secretarial overtime), and any other appropriate expense related directly to the interest arbitration.
- Interest arbitration costs will be reimbursed only if the following obligations are met by the local/state affiliate:
 - The local/state affiliate membership must approve a recommendation to request interest arbitration. The recommendation should be presented with the support of the local/state affiliate executive committee and negotiations team. Such a recommendation shall be presented for local/state affiliate approval only after consultation with the Education Minnesota Field Representative person, the Education Minnesota negotiations department, and an Education Minnesota manager. The recommendation will include the form of interest arbitration to be utilized by the parties.
 - The local/state affiliate will pass the recommendation to proceed to interest arbitration by a two-thirds vote of the general membership unless otherwise specified in the local/state affiliate’s Constitution and Bylaws (faculty representative assembly or other duly constituted body). This shall be at a meeting that has been called and publicized for this purpose.
 - Final position for the local/state affiliate will be established by the local/state affiliate negotiations team and executive committee after consultation with the Education Minnesota Field Representative person and the Education Minnesota negotiations department.
 - The local/state affiliate's brief will be prepared by the appropriate Education Minnesota staff. Education Minnesota will consult with the local/state affiliate's negotiations team, elected leaders, and the Education Minnesota negotiations department during this process.

- The local/state affiliate will provide in a timely manner all information necessary for the completion of the brief and materials for presentation at the arbitration hearing.
- The local/state affiliate's arbitration position will be presented by the appropriate Education Minnesota staff person(s) as determined by the Director of Field Services.

