

# *Advanced Bargaining Training – Dispute Resolution*

Bargaining in adverse conditions



# BARGAINING IN ADVERSE CONDITIONS

## AGENDA

- Process
- Strategy
- Objectives
- Positioning



# PROCESS

**What happens when you  
can't reach agreement?**

- Mediation
- Fact-finding
- Arbitration
- Impasse



# PROCESS – MEDIATION

## **Maine Revised Statutes (Title 26, Ch 9-A)**

### **§965. Obligation to bargain**

#### 2. Mediation.

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between employers and employees or their representatives and other disputes subject to settlement through mediation. [1975, c. 564, §13 (AMD).]



# PROCESS – MEDIATION

## **Maine Revised Statutes (Title 26, Ch 9-A)**

B. Mediation procedures must be followed whenever either party to a controversy requests such services prior to arbitration, or, in the case of disputes affecting public employers, public employees or their respective representatives as defined, whenever requested by either party prior to arbitration or at any time on motion of the Maine Labor Relations Board or its executive director. Requests for grievance mediation are handled in accordance with paragraph F. [2001, c. 92, §1 (AMD).]



# PROCESS – MEDIATION

- At either party's request
- Third-party neutral
- Works between parties
- Non-binding
- Can be skipped by mutual agree



# PROCESS – FACT-FINDING

## **Maine Revised Statutes (Title 26, Ch 9-A)**

### 3. Fact-finding.

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Labor Relations Board to arrange for fact-finding services and recommendations to be provided by the Maine Board of Arbitration and Conciliation,...



# PROCESS – FACT-FINDING

## **Maine Revised Statutes (Title 26, Ch 9-A)**

...or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations. [1975, c. 564, §17 (RPR).]





# PROCESS – FACT-FINDING

## **Maine Revised Statutes (Title 26, Ch 9-A)**

B. If the parties do not jointly agree to call upon the Maine Labor Relations Board or to pursue some other procedure, either party to the controversy may request the executive director to assign a fact-finding panel. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making the appointment. ...



# PROCESS – FACT-FINDING

- At either party's request
- Often panel
- Hearing, providing of evidence
- Non-binding
- Parties have 30 days from finding of fact to reach agreement
- If no agreement, report becomes public



# PROCESS – ARBITRATION

## **Maine Revised Statutes (Title 26, Ch 9-A)**

### 4. Arbitration.

If the parties have not resolved their controversy by the end of said 45-day period, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. Such determinations will be subject to review by the Superior Court in the manner specified by section 972. ...



# PROCESS – ARBITRATION

## **Maine Revised Statutes (Title 26, Ch 9-A)**

If they do not jointly agree to such an arbitration procedure within 10 days after the end of said 45-day period, then either party may, by written notice to the other, request that their differences be submitted to a board of 3 arbitrators. ...



# PROCESS – ARBITRATION

- Often panel (one neutral)
- Hearing, providing of evidence
- Binding on non-economic issues
- Advisory on economic issues
- Parties have 30 days from finding of fact to reach agreement
- If no agreement on economic, report becomes public



# PROCESS – IMPASSE

**What happens if there is no agreement reached on economic issues?**

- Management can unilaterally implement its last best offer once IMPASSE is reached.



# PROCESS – IMPASSE

## **What is impasse?**

Simply stated, an impasse is "a state of facts in which the parties, despite the best of faith, are simply deadlocked." *NLRB v. Tex-Tan, Inc.*, 318 F.2d 472,482 (5th Cir. 1963).

– *Maine Labor Relations Board Case No. 79-43*



# PROCESS – IMPASSE

## What is considered?

Among the relevant factors to be considered in determining whether an impasse existed are "[t]he bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, [and] the contemporaneous understanding of the parties as to the state of the negotiations . . . ." *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), *enf'd sub nom., A.F.T.R.A. v. N.L.R.B.*, 395 F.2d 622 (D.C. Cir. 1968).

– *Maine Labor Relations Board Case No. 79-43*





# PROCESS – IMPASSE

## What is considered?

...an employer may "unilaterally implement its last best offer when negotiations have reached a bona fide impasse." *Mountain Valley*, 655 A.2d at 352.

A bona fide impasse results when "the parties have in good faith exhausted the prospects of reaching an agreement . . . ." "The determination of impasse is predominantly a question of fact and therefore will be upheld unless clearly erroneous and unsupported by substantial evidence on the record." Id. at 354.

– *Minot School Committee v. MLRB and Minot Education Assoc.*, 1998 ME 211



# PROCESS – IMPASSE

## What is considered?

The exhaustion of impasse resolution procedures will not give rise to a bona fide impasse when a party's conduct throughout the negotiations process is motivated by bad faith.[fn]2 The purpose of the MPELRL is "to promote the improvement of the relationship between public employers and their employees . . . ." 26 M.R.S.A. § 961 (1988).

– *Minot School Committee v. MLRB and Minot Education Assoc.*, 1998 ME 211



# PROCESS – IMPASSE

## What is considered?

... To effectuate this intent, the Legislature requires parties "to bargain collectively" by, inter alia, "meet[ing] at reasonable times," "confer[ing] and negotiat[ing] in good faith with respect to wages, hours, working conditions and contract grievance arbitration," and "participat[ing] in good faith in the mediation, fact-finding and arbitration procedures required" by section 965. 26 M.R.S.A. § 965(1). These requirements involve the parties' conduct.

– *Minot School Committee v. MLRB and Minot Education Assoc.*, 1998 ME 211



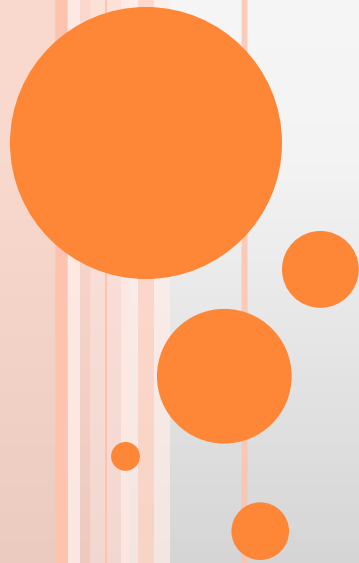
# PROCESS – CONCLUSION

- Understanding of process
- Strategy
- Limitations & Ramifications



# ***Advanced Bargaining Training – Dispute Resolution***

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# STRATEGY

- Set goals



# STRATEGY

- Set goals
- Toolkit



# STRATEGY

- Set goals
- Toolkit
  - Process
  - Facts
  - Arguments
  - Organizing
  - Mobilizing
  - Political





# STRATEGY

- Set goals
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  - Political
- Leverage



# STRATEGY

- Set goals
- Toolkit
  - Process
  - Facts
  - Arguments
  - Organizing
  - Mobilizing
  - Political
- Leverage
- Staying away from impasse



# STRATEGY

- Set goals
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  - Organizing
  - Mobilizing
  - Political
- Leverage
- Staying away from impasse
- Role of language



# STRATEGY

- Set goals
- Toolkit
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  - Facts
  - Arguments
  - Organizing
  - Mobilizing
  - Political
- Leverage
- Staying away from impasse
- Role of language
- Patience



# OBJECTIVES

- Don't fall back



# OBJECTIVES

- Don't fall back
- Keep steps



# OBJECTIVES

- Don't fall back
- Keep steps
- Make proposals with less economic impact



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- Don't fall back
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- Make proposals with less economic impact
- Language has value





# OBJECTIVES

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- Make proposals with less economic impact
- Language has value
- Don't give away language



# OBJECTIVES

- Don't fall back
- Keep steps
- Make proposals with less economic impact
- Language has value
- Don't give away language
- Setting yourself up for the future



# OBJECTIVES

- Don't fall back
- Keep steps
- Make proposals with less economic impact
- Language has value
- Don't give away language
- Setting yourself up for the future
- Defining success



# OBJECTIVES – LANGUAGE

## **Evergreen**

The terms and conditions of this Agreement shall remain in full force and effect after said expiration date and during the period of collective bargaining negotiations for a new Agreement.



# OBJECTIVES – LANGUAGE

## **Maintenance of Standards (MOS)/ Maintenance of Benefits (MOB)**

All conditions of employment, including teaching hours, extra compensation for duties outside regular teaching hours, relief periods, leaves, and general teaching conditions shall be maintained at not less than the standards presently in effect in the school system at the time this agreement is signed except as may be modified by the terms of this Agreement,...



# OBJECTIVES – LANGUAGE

## **Maintenance of Standards (MOS)/ Maintenance of Benefits (MOB)**

...provided that such conditions shall be improved for the benefit of teachers as required by the express provisions of their agreement. This agreement shall not be interpreted or applied to deprive teachers of professional advantages heretofore enjoyed unless expressly stated herein.

*-- RSU 19 contract*



# OBJECTIVES – LANGUAGE

## **Maintenance of Standards (MOS)/ Maintenance of Benefits (MOB)**

Conditions and benefits of employment shall be maintained during the term of this Agreement at no less than the level in effect at the time of the effective date of this Agreement unless modified by a specific provision of this Agreement.



# POSITIONING

- Evergreen
- Status quo
- Continuous bargaining
- Grievance process

