

Collective Bargaining in Idaho K-12 Schools

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- ▶ Title and Citation - Professional Negotiations Act (“PNA”), Idaho Code Section 33-1271 and following (enacted in 1971)
- ▶ Origins of Public Sector Bargaining Generally and the PNA Specifically -- From Prohibition/Criminalization to Wide Acceptance
- ▶ Federal and State counterparts - National Labor Relations Act (“NLRA”) and Firefighters Bargaining Statute

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▶ Similarities Between PNA and NLRA

- ▶ Both Utilize Collective Approach to Reaching Agreement on Terms and Conditions of Employment
- ▶ Both Rely on Employer and Employee Representative Reaching Agreement, Rather than Judicial or Arbitral Decision, on Terms and Conditions of Employment
- ▶ Both Require Bargaining in Good Faith by Employer and Employee Representative
- ▶ Both make terms of Collective Bargaining Agreement part of Individual Employee's Employment Contract

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▶ Differences Between PNA and NLRA

- ▶ PNA - Public Sector Teachers; NLRB - Private Sector Employees, i.e., excludes employees of political subdivisions
- ▶ PNA - Judicially Enforced, but with Master Contracts typically enforced through grievance and arbitration process; NLRA - Enforced by administrative agency via unfair labor practice allegations to National Labor Relations Board (with judicial review by germane federal Circuit Court of Appeal), but with Master Contracts typically enforced through grievance and arbitration process
- ▶ PNA - Parties (Employer and Employee Representative) agree on subjects upon which they will bargain; NLRA - bargainable subjects are classified as mandatory, permissive and prohibited
- ▶ PNA - Impasse Resolution via Mediation (and formerly Fact-Finding)/unclear, but doubtful, on right to strike; NLRB - right to strike guaranteed

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- ▶ 33-1271. SCHOOL DISTRICTS – PROFESSIONAL EMPLOYEES – NEGOTIATION AGREEMENTS. The board of trustees of each school district, including specially chartered districts, or the designated representative(s) of such district, is hereby empowered to and shall, upon its own initiative or upon the request of a local education organization representing a majority of the professional employees, enter into a negotiation agreement with the local education organization or the designated representative(s) of such organization.
- ▶ (1) The parties to such negotiations shall negotiate in good faith on those matters specified in any such negotiation agreement between the local board of trustees and the local education organization.
- ▶ (2) A request for negotiations may be initiated by either party to such negotiation agreement.
- ▶ (3) Upon either party making a request for negotiations, the local education organization, upon board request, shall provide to the district written evidence establishing that the local education organization represents fifty percent (50%) plus one (1) of the professional employees for negotiations. If requested by the board, the local education organization shall establish this representative status on an annual basis, prior to the commencement of negotiations. In order to establish a local education organization's representative status, a local education organization must show that within the last two (2) years, fifty percent (50%) plus one (1) of the professional employees, as defined in section [33-1272](#), Idaho Code, indicated agreement to be represented by the local education organization for negotiation purposes. ...
- ▶ (4) Accurate records or minutes of the proceedings shall be kept and shall be available for public inspection at the office of the affected school district during normal business hours.
- ▶ (5) Joint ratification of all final offers of settlement shall be made in open meetings. Each party must provide written evidence confirming to the other that majority ratification has occurred.

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- ▶ Features of Section 33-1271
 - ▶ Single Employer (School District) - Single Employee Representative (Local Education Organization) Negotiations
 - ▶ Two Steps Process? - Negotiation Agreement setting forth negotiable items followed by bargaining over the terms over those items culminating in a Master Contract? Theory v. Reality
 - ▶ Verification of Exclusive Bargaining Representative Status (50% + 1 of Professional Employees in School District) (Triggered by School Board Request, possibly annually); Compare Boise SD to some Eastern Idaho SDs; Card check vs. Election

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- ▶ Features of Section 33-1271 (cont.'d)
 - ▶ Good Faith Negotiation Requirements? Specifically defined in Section 33-1272; aka Sincere Desire to Reach an Agreement
 - ▶ Examples of Bad Faith Bargaining - Refusal to Provide Requested Financial Information; Failure to Meet and Confer; Surface Bargaining ("Going Through the Motions"); Regressive Bargaining; Circumventing the Bargaining Team; Employer Unilateral Imposition of Terms and Conditions of Employment Prior to Impasse
 - ▶ Minutes of Bargaining Sessions Must be Kept and be Made Available to Public; Strategic Considerations - Joint Minutes; Use later to interpret the terms of the Master Contract
 - ▶ Ratification - each side must obtain ratification from membership

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- ▶ 33-1272. DEFINITIONS. As used in this act:
 - ▶ (1) "Professional employee" means any certificated employee of a school district, including charter districts; provided however, that administrative personnel including superintendents, supervisors or principals are excluded from the professional employee group for the purposes of negotiations.
 - ▶ (2) "Local education organization" means any local district organization duly chosen and selected by fifty percent (50%) plus one (1) of the professional employees, excluding administrative personnel as addressed in this section, as their representative organization for negotiations under this act.
 - ▶ (3) "Negotiations" means publicly meeting and conferring in good faith by a local board of trustees and the authorized local education organization, or the respective designated representatives of both parties for the purpose of reaching an agreement, upon matters and conditions subject to negotiations as specified in a negotiation agreement between said parties.
 - ▶ For the purposes of this section, "good faith" means honesty, fairness and lawfulness of purpose with the absence of any intent to defraud, act maliciously or take unfair advantage or the observance of reasonable standards of fair dealing.

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▶ Features of Section 33-1272's definitional provisions

- ▶ Professional employees include non-administrative certificated employee of a school district; do not include noncertificated educational support personnel (authorized to bargain in other states, but not in Idaho); vice principals - clearly administrators, but not included (can be held hostage)
- ▶ Charter schools are public schools and must follow the PNA
- ▶ Local education organization means any local district organization duly chosen and selected by fifty percent (50%) plus one (1) of the professional employees, excluding administrative personnel, as the employees' representative organization for negotiations.
- ▶ Negotiations must be open to public and requires good faith by the local board of trustees and the local education organization, or the respective designated representatives of both parties for the purpose of reaching an agreement upon matters specified in the negotiation agreement.
- ▶ Good faith means honesty, fairness and lawfulness of purpose with the absence of any intent to defraud, act maliciously or take unfair advantage or the observance of reasonable standards of fair dealing.

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- ▶ 33-1273. SCHOOL DISTRICTS — PROFESSIONAL EMPLOYEES — NEGOTIATIONS. The local education organization shall be the exclusive representative for all professional employees in that district for purposes of negotiations pursuant to the provisions of this chapter. The individual or individuals selected to negotiate for the professional employees shall be a member of the organization designated to represent the professional employees and shall be a professional employee of the local school district. However, in the event a local board of trustees chooses to designate any individual(s) other than the superintendent or elected trustee(s) of the school district as its representative(s) for negotiations, the local educational organization is authorized to designate any individual(s) of its choosing to act as its representative(s) for negotiations. Negotiations pursuant to this chapter shall only occur between the respective designated representatives.

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- ▶ Features of Section 33-1273
 - ▶ Use of Representatives
 - ▶ Bargaining Representatives of professional employees must be a member of the local education organization and a professional employee of the school district, unless the school board uses an outside representative
 - ▶ Significance of Exclusive Representative Provision
 - ▶ Employer or its bargaining representative cannot engage in negotiations with any other union or group, cannot circumvent the exclusive representative by going directly to the professional employees, and cannot cut deals with individual members of the bargaining unit

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- ▶ 33-1274. APPOINTMENT OF MEDIATORS — COMPENSATION. In the event the parties in negotiations are not able to come to an agreement upon items submitted for negotiations under a negotiations (sic) agreement between the parties, one or more mediators may be appointed. The issue or issues in dispute shall be submitted to mediation at the request of either party in an effort to induce the representatives of the board and the local education organization to resolve the conflict. The procedures for appointment of and compensation for the mediators shall be determined by both parties.

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- ▶ Features of Current and Former Section 33-1274
 - ▶ Mediation is Currently Sole Impasse Resolution Procedure
 - ▶ Fact-Finding was Formerly Available under Section 33-1274, but that portion of the statute was repealed in 2015
 - ▶ Last, Best Offer Issue and Impasse

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- ▶ 33-1275. TERMS OF AGREEMENTS. (1) All agreements, by any name or title, entered into pursuant to the provisions of this act, shall have a one (1) year duration of July 1 through June 30 of the ensuing fiscal year. The parties shall not have the authority to enter into any agreement negotiated under the provisions of this act that has any term that allows for such agreement or any provision of such agreement to be in any force or effect for multiple years or indefinitely, or otherwise does not expire on its own terms on or before June 30 of the ensuing fiscal year.
- ▶ (2) Notwithstanding the provisions of subsection (1) of this section, upon mutual ratification, any item other than compensation and benefits as defined in subsection (3) of this section of any agreement entered into pursuant to this act may have a nonrolling two (2) year duration with a designated start date and end date. A second year term for any item not defined in subsection (3) of this section cannot be added, automatically or by mutual consent, back into the agreement after the expiration of the first year but rather may be addressed by the parties at the expiration of the end date of the two (2) year term.
- ▶ (3) For purposes of this section, "compensation" means salary and benefits for professional employees. "Benefits" means employee insurance, leave time and sick leave benefits.

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▶ Features of Section 33-1275

- ▶ Uniform one fiscal year duration term for Master Contracts throughout Idaho
- ▶ Generally, no multi-year contracts and complete prohibition on compensation and benefit terms going beyond one year
- ▶ *But cf.* other terms may be for two years, upon mutual agreement/ratification of the parties

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- ▶ 33-1276. INTENT OF ACT. Nothing contained herein is intended to or shall conflict with, or abrogate the powers or duties and responsibilities vested in the legislature, state board of education, and the board of trustees of school districts by the laws of the state of Idaho. Each school district board of trustees is entitled, without negotiation or reference to any negotiated agreement, to take action that may be necessary to carry out its responsibility due to situations of emergency or acts of God.

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- ▶ 33-522. FINANCIAL EMERGENCY. (1) Prior to declaring a financial emergency, the board of trustees shall hold a public meeting for the purpose of receiving input concerning possible solutions to the financial problems facing the school district.
- ▶ (2) If the state department of education certifies that one (1) or more of the conditions in paragraph (a), (b) or (c) of this subsection are met, then the board of trustees may declare a financial emergency if it determines that the condition in paragraph (f) of this subsection is also met. Alternatively, the board of trustees may declare a financial emergency if it determines that either of the conditions in paragraph (d) or (e) of this subsection are met and the state department of education certifies that the condition set forth in paragraph (f) of this subsection is also met.
- ▶ ***
- ▶ (3) Upon its declaration of a financial emergency, the board of trustees shall:
 - ▶ (a) Have the power to reopen the salary and benefits compensation aspects of the negotiated agreement, including the length of the certificated employee contracts and the amount of compensation and benefits; and
 - ▶ (b) If the parties to the negotiated agreement mutually agree, reopen other matters contained within the negotiated agreement directly affecting the financial circumstances in the school district.
- ▶ If the board of trustees exercises the power provided in this subsection consistent with the requirements of subsection (2) of this section, both the board of trustees and the local education association shall meet and confer in good faith for the purpose of reaching an agreement on such issues.
- ▶ (4) If, after the declaration of a financial emergency pursuant to subsection (2) of this section, both parties have met and conferred in good faith and an agreement has not been reached, the board of trustees may impose its last, best offer, following the outcome of the due process hearing held pursuant to section [33-515\(7\)](#), Idaho Code.

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- ▶ Features of Section 33-1276 and Section 33-522
 - ▶ Section 33-1276 gives school boards an essentially unfettered right to declare an emergency and either not negotiate or avoid requirements of negotiated agreement
 - ▶ In PNA, since 1971 and never utilized by school districts or interpreted by Idaho courts
 - ▶ In contrast, Section 33-522 was enacted during Great Recession of 2008-2009 and contains limitations on ability of school district to declare a financial emergency and reopen negotiations concerning terms of Master Contracts and impose last, best offer
 - ▶ Relationship between the two statutory provisions has not been interpreted by Idaho courts, although courts will attempt to harmonize the two provisions or statute enacted later in point of time will control

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▶ Teacher Strikes

- ▶ In *School District No. 351 Oneida County v. Oneida Education Ass'n*, 98 Idaho 486, 567 P.2d 830 (1977), the Idaho strongly suggested that teachers do not have a constitutional right or a statutory right under the PNA to strike; however, the Court also stated that it was not deciding the right to strike issue
- ▶ But, the Idaho Supreme Court held in Oneida that it would not enjoin a teacher strike and order teachers back to work when the school board had engaged in inequitable conduct and had unclean hands when it refused to participate in statutorily mandated impasse procedures, i.e., mediation and fact-finding

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▶ Questions?

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