Fact Finding

Although there are many myths and misunderstandings about the bargaining process, the subject that causes the most confusion is "fact finding." Unfortunately, misunderstandings about fact finding often influence how members vote on the proposed contract. Thus, it is very important for members to be clear on the fact finding process before they make up their minds how to vote.

It's the Law

First, the general rules that guide public employee negotiations are established by Ohio law. The law allows the Union and management to submit issues on which they cannot agree to a fact finder. This occurs after negotiations – including mediation – have failed and an "impasse" is formally declared.

Mediation involves bringing in a neutral "mediator" – a respected expert in labor relations – who tries to help settle disputes by resolving misunderstandings, setting goals, scheduling meetings and lending independent perspectives to the two sides.

Ultimately, a mediator can only go so far, either because the sides refuse to bargain and compromise any further, or because time runs out. That's when a fact finder comes into play.

Fact Finding as a Last Resort

Fact finding makes sense only as the last resort and safety net to avoid the dangers of a strike. OCSEA leaders attempt to minimize the number of issues presented to the fact finder. Sometimes this doesn't go according to plan. In the past, management has refused to discuss many issues during both regular bargaining sessions and mediation. This has left many unresolved and important issues – like sick leave – for the fact finder to resolve.

"Recommendations?" Not Really

The way fact finding works is far different than bargaining or mediation, and is a poor substitute for direct negotiations because of the uncertainty of involving an outsider. There is no prioritizing. There is no grouping of issues. There is no give-and-take. The fact finder can pick either management's position, the Union's position, or a compromise in between.

The fact finder conducts what amounts to a hearing where, issue by issue, each side presents documentation and witnesses to support its respective position. Typically, the fact finder is swayed by "facts" – documented information such as employment statistics, budgets and contract settlements elsewhere in government and the parties' prior collective bargaining history. The fact finder also looks at patterns and comparable data from the private sector and public employers for guidance.

As with the mediator, both sides look for a fact finder who is fair and has a great deal of familiarity with the issues.

The law requires that the fact finder issue "recommendations" to settle the disputes. The law then makes these recommendations binding on the two sides unless one or both sides votes to reject the recommendations (NOTE: Rejection of the recommendations also means rejection of all of the tentative agreements reached prior to fact finding.)

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Here's the rub: In order to avoid strikes, the Ohio General Assembly defined reject in a way that makes it nearly impossible for union members to reject the recommendations. In order to turn down the recommendations, 60 percent of all union members – not just those voting to reject – must vote against the recommendations. This situation generally makes the so-called recommendations the final word on the contract.

If Rejected, Then What?

Union research shows that many members vote against the proposal because they mistakenly think that turning down the recommendations automatically leads to renewed bargaining. If OCSEA members were to vote to reject the recommendations and tentative agreements, continued bargaining and mediation could theoretically happen, but only if management would agree to go back to the negotiating table.

The only required step is that the two sides participate in "conciliation" only for those employees for whom striking is illegal: Firefighters, Correction Officers, Correctional Sergeants/Counselors, Juven-ile Correction Officers, Shooting Range Attendants, Psychiatric Attendants, Psychiatric Attendant Coordinators, Security Officer 3, Security Technician 1, Security Technician 2, Youth Program Specialists, and employees all at the School for the Deaf and the School for the Blind. The language in the current contract would remain in effect until the conciliator's report is issued and implemented as the new contract for this group of employees. For additional information about "conciliation" see Fact Sheet #902.

It's for this reason that when OCSEA members vote on the fact finder's recommendations and tentative agreements, a "NO" vote also is a strike authorization vote (except for those positions listed above). With a strike authorization in hand and a membership ready to hit the streets, union negotiators could have the leverage needed to bring management back to the table to resume bargaining.

If management will not go back to the negotiating table, OCSEA members would go out on strike (except for those classifications listed above who are prohibited from striking and subject to conciliation). Any members who continued to work would not have the current contract language in effect – management's 'last best offer' would be implemented as the contract until OCSEA members on strike are able to get management to go back to the negotiating table and agree to language that is acceptable to the union members. Management's 'last best offer' is whatever they propose to the union after union members reject a contract – they can go back to their original proposals on anything that was opened during negotiations and they do not have to abide by any tentative agreements or fact finder's recommendations as their offer.

Fact Finding and the related rules can seem to be complex. But, by keeping in mind that fact finding is really the last resort in the process to get a new contract, members can make sure that they are making their votes count the most when the contract voting process begins.

Can Management Reject the Fact Finder's Report?

Yes, recent changes to Ohio's Collective Bargaining Law make it easier for management to reject the Fact Finder's report.

In December, 2002, an attack was made on the Collective Bargaining Law that gave the Controlling Board, rather than the General Assembly, the power to reject a fact finder's report during union contract negotiations with the State of Ohio.

The Controlling Board consists of just six members of the General Assembly plus one member hand-picked by the Governor who holds no elected position. Furthermore, the Board, like the General Assembly, is politically stacked against unions and has no expertise in labor relations.

When the Collective Bargaining Law was written, the idea was to make it difficult for both unions and the state to reject a contract:

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the union and the General Assembly needed a 60 percent super majority to reject the fact finder recommendations.

Now, the fate of our state contract could be in the hands of just seven people.

References:

ORC 4117.14
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OCSEA AFSCME LOCAL 11 AFL-CIO
Ohio Civil Service Employees Association