

Everything You've Ever Wanted to Know About Negotiated Agreements

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The information provided in this presentation is for informational purposes only and is not intended as legal advice. Please consult with your district legal counsel for direct legal assistance.

Here's what we're going to cover...

- What is a negotiated agreement?
- Contract law basics
- Do's and Don'ts of negotiated agreements
- Common contract provisions
- Suggested provisions

What is a Negotiated Agreement?



Negotiated Agreement v. Individual Contracts

Negotiated Agreement

- a/k/a master contract
- Agreement between board and negotiating unit
- Result of negotiations process between board and representative organization
- Usually two-year term (legislative years)

Individual contract

- Based on terms of negotiated agreement
- Agreement between board and individual teacher/admin
- Issued after negotiated agreement finalized
- Issued annually

What is/can be included in Negotiated Agreement?

- ❑ Terms and conditions of employment of teachers/admins
- ❑ Employee/employer relations
- ❑ All terms and conditions?
- ❑ Policies?

Contract Law Basics



Why does it matter?

- Negotiated agreement is a contract
- Governs relationship between the board and teachers/admins
- If there is a dispute, look to the contract
- Look to language in the contract to determine intent of parties
- If can determine intent by contract alone, won't consider outside evidence

- ❑ General contract interpretation principles apply (NDCC ch. 9-07)
- ❑ Use plain and clear language
- ❑ Avoid vague and ambiguous language
- ❑ Make sure language reflects intent (especially benefit provisions)
- ❑ Strongly recommend having legal counsel review (periodically)

Do's and Don'ts



Do's of Negotiated Agreements

- Define contract term and anniversary date
- Address employment terms and conditions not addressed in board policy
- Define important/key terms (e.g., school day, work day, school year,
- Document issues that arise with language/provisions during contract term

Do's of Negotiated Agreements

- Build in flexibility (.e.g, “within discretion of administration” or “ “as approved by administration”)
- Address/clarify confusing language in agreement
- If include an issue, address completely
- Include dispute resolution procedure
- Incorporate board policies by reference (contractually bound to comply)
- Have your legal counsel periodically review your negotiated agreement or any new or revised language

Don'ts of Negotiated Agreement

- Avoid legalese
- Avoid inconsistencies or contradictions with policy
- Don't address items already covered by federal or state law (e.g., FMLA, unemployment benefits, WSI)
- Don't include prep time (discretion of administration)
- Limitations on teacher transfer and assignment

Don'ts of Negotiated Agreement

- Don't include board policy adoption procedure
- Don't include RIF procedures/criteria
- Don't agree to allow teacher input or agreement before adopting or revising a policy
- Don't agree to binding arbitration
- Don't agree to teacher resignation procedure

Common and Suggested Provisions



Common Contract Provisions

Preamble

- ❑ Introductory paragraph
- ❑ Identifies parties to contract
- ❑ a/k/a Recognition clause
- ❑ Positions including in unit that is subject to agreement

Common Contract Provisions

Duration clause

- ❑ Contract term
- ❑ Usually July 1 to June 30
- ❑ Usually two-year term, but can be one-year term
- ❑ Important because notice of intent to renegotiate must be provided no later than 160 days before anniversary date
- ❑ Effective date if negotiations run longer or go to impasse

Common Contract Provisions

Modification/Amendment

- ❑ Contract may only be amended by mutually agreement of parties
- ❑ In writing
- ❑ ND law provides that representative org retains authority throughout contract term or until another org is recognized by board

Common Contract Provisions

Integration clause

- ❑ a/k/a merger clause
- ❑ States the agreement is the final and complete agreement of parties
- ❑ Prevents parties from claiming contract doesn't reflect full agreement
- ❑ Items discussed during negotiations meetings

Common Contract Provisions

Savings clause

- ❑ Contract provisions are independent from each other
- ❑ If one provision is deemed unenforceable, rest of contract stands

Common Contract Provisions

Choice of Law/Jurisdiction

- ❑ Determines which state's rulings will be applied in event of dispute or lawsuit
- ❑ Determines which state's courts lawsuit regarding agreement must be filed

Common Contract Provisions

Management Rights Clause

- ❑ All terms and conditions not covered by agreement are subject to the Board's exclusive direction and control.

Common Contract Provisions

Counterparts clause

- ❑ Sets forth the right of the parties to execute (sign) copies of the agreement without everyone being present in one place at one time to sign them all

Recommended provisions

➤ Definitions

- School or work day
- Other contract time (e.g., P/T conferences, school events, staff meetings)
- Part-time v. full-time teachers
- Contract days?

Recommended provisions

- Salary/compensation
 - Salary schedule/matrix
 - Placement on schedule
 - Payday schedule
 - Credit given for experience for new hires
 - Step advancement for years of service
 - Advancement for additional coursework (lane change)

Recommended provisions

- Salary/compensation (cont.)
 - Part-time staff
 - Extra duty or extended contracts
 - Compensation for non-contracted days/time
 - Co-curricular/Extracurricular pay schedule (applicable to teachers)

Recommended provisions

➤ Leave

- Leave requests
- Sick leave (# of days per year, criteria for using leave, accumulation/carryover, documentation)
- PTO/personal leave (# of days per year, process of request/approval)
- Vacation leave
- Bereavement leave (limited to immediate family)
- Parental leave

Recommended provisions

➤ Leave (cont.)

- Emergency leave (other than for illness and death of family member)
- Jury and Court duty
- Professional leave
- Leave of absence/sabbatical
 - Approved by board
 - Duration
 - pay/benefits during leave
- Payment for unused leave (PTO/personal/vacation/sick)

Recommended provisions

- Benefits
 - Health insurance
 - Dental/vision
 - Life insurance
 - Disability insurance
 - TFFR
 - Initiation of benefits

Recommended provisions

- Grievance procedure
 - What disputes are covered?
 - Start at lowest level of authority (e.g., direct supervisor)
 - Progressive procedure
 - Complete each step before move to next
 - Deadlines
 - Final step (school board?)
 - Mediation/non-binding arbitration?

Questions?