



## **A PRIMER FOR BASIC COLLECTIVE BARGAINING & EMPLOYEE RELATIONS**

**(Adapted from Miller Consulting Group, Inc., and the Florida School Boards Association)**



(THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK.)

## CHAPTER 447, Florida Statutes (FS)

### §447.203, FS - Definitions

**Bargaining Unit:** That unit determined by the public employer and the public employee organization and approved by Public Employees Relations Commission (PERC) to be appropriate for the purposes of collective bargaining; PERC may approve without public employer approval

**Managerial Employees (s. 447.203(4)):** Employees who perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs

**Confidential Employees (s. 447.203(5)):** Employees who act in a confidential capacity to assist or aid managerial employees

**Chief Executive Officer:** The person responsible to the legislative body of the public employer responsible for the administration of the governmental affairs of the public employer

**Legislative Body:** The school board

**Bargaining Agent:** The employee organization which has been certified by PERC as representing the employees in the bargaining unit, or its representative.

**Collective Bargaining:** The performance of the mutual obligations of the public employer and the bargaining agent of the employee organization to meet at reasonable times, to negotiate in good faith, and to execute a written contract with respect to agreements reached concerning the terms and conditions of employment, except that neither party shall be required to make a concession unless otherwise provided

**Good Faith Bargaining:** Willingness of both parties to meet at reasonable times and places, as mutually agreed upon, to discuss issues which are proper subjects of bargaining, with the intent of reaching a common accord. An obligation for both parties to actively participate in the negotiations with an open mind and a sincere desire, as well as making a sincere effort, to resolve differences and come to an agreement

**Bad Faith Bargaining:**

- Failure to meet at reasonable times and places
- Placing unreasonable restrictions on the other party as a prerequisite to meeting
- Failure to discuss bargainable issues
- Refusing, upon reasonable written request, to provide public information, excluding work products prepared for collective bargaining
- Refusing to negotiate because of an unwanted person on the opposing team
- Negotiating directly with employees rather than with their certified bargaining agent
- Refusing to reduce a total agreement to writing

### **§447.209, FS - Public employer's rights.**

- It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations.
- It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons.
- The exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or any civil or career service regulation.

History: s. 3, Ch. 74-100.

### **§447.301, FS - Public employee's rights.**

- Public employees shall have the right to form, join, and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.
- Public employees shall have the right to be represented by any employee organization of their own choosing and to negotiate collectively, through a certified bargaining agent, with their public employer in the determination of the terms and conditions of their employment. Public employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Public employees shall have the right to refrain from exercising the right to be represented.
- Public employees shall have the right to engage in concerted activities not prohibited by law, for the purpose of collective bargaining or other mutual aid or protection. Public employees shall also have the right to refrain from engaging in such activities.
- Nothing in this part shall be construed to prevent any public employee from presenting, at any time, his or her own grievances, in person or by legal counsel, to his or her public employer and having such grievances adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and if the bargaining agent has been given reasonable opportunity to be present at any meeting called for the resolution of such grievances.
- [Community colleges]

History: s. 3, Ch. 74-100; s. 9, Ch. 77-343; s. 191, Ch. 79-400; s. 6, Ch. 83-214; s. 154, Ch. 97-103; s. 1007, Ch. 2002-387.

## **§447.309, FS - Collective bargaining**

- The bargaining agent for the certified organization and the chief executive officer or his or her representative of the appropriate public employer or employers, jointly, shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit.
- In conducting negotiations with the bargaining agent, the chief executive officer or his or her representative shall consult with, and attempt to represent the views of, the legislative body of the public employer.
- Any collective bargaining agreement reached by the negotiators shall be reduced to writing, and such agreement shall be signed by the chief executive officer and the bargaining agent.
- Any agreement signed by the chief executive officer and the bargaining agent shall not be binding on the public employer until such agreement has been ratified by the public employer and by public employees who are members of the bargaining unit.
- Upon execution of the collective bargaining agreement, the chief executive shall, in his or her annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement.
- If any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule, or regulation over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such law, ordinance, rule, or regulation.
- If the agreement is not ratified by the public employer or is not approved by a majority vote of employees voting in the unit, in accordance with procedures adopted by the commission, the agreement shall be returned to the chief executive officer and the employee organization for further negotiations.
- Any collective bargaining agreement shall not provide for a term of existence of more than 3 years and shall contain all of the terms and conditions of employment of the employees in the bargaining unit during such term.

## **§447.605, FS - Public meetings and records law; exemptions and compliance.**

- All discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from the provisions of s. 286.011.
- The collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall comply with the provisions of s. 286.011.
- All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s. 119.07(1).

History: s. 3, Ch. 74-100; s. 23, Ch. 77-343; s. 18, Ch. 91-269; s. 302, Ch. 96-406; s. 1075, Ch. 97-103.

## **§447.4095, FS - Financial urgency.**

- In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency.
- If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, an impasse shall be deemed to have occurred, and one of the parties shall so declare in writing to the other party and to the commission.
- The parties shall then proceed pursuant to the provisions of s. 447.403. An unfair labor practice charge shall not be filed during the 14 days during which negotiations are occurring pursuant to this section.

History: s. 2, Ch. 95-218; s. 159, Ch. 97-103.

## **§1001.42(21), FS - Declare an emergency**

1001.42 Powers and duties of district school board. --The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(21) **AUTHORITY TO DECLARE AN EMERGENCY.** -- May declare an emergency in cases in which one or more schools in the district are failing or are in danger of failing and negotiate special provisions of its contract with the appropriate bargaining units to free these schools from contract restrictions that limit the school's ability to implement programs and strategies needed to improve student performance.

## **§447.505, FS - Strikes prohibited.**

No public employee or employee organization may participate in a strike against a public employer by instigating or supporting, in any manner, a strike. Any violation of this section shall subject the violator to the penalties provided in this part.

History: s. 3, Ch. 74-100.

## **§447.403, FS - Resolution of impasses.**

### **Declare Impasse**

- After a reasonable period of bargaining if a dispute exists between a public employer and a bargaining agent, an impasse shall be deemed to have occurred when one of the parties so declares in writing to the other party to the commission.
- The public employer or the bargaining agent may seek the appointment of a mediator to assist in the resolution of the impasse.

### **Special Magistrate**

- If no mediator is appointed, or upon the request of either party, the commission shall appoint, and submit all unresolved issues to, a special magistrate acceptable to both parties. The parties are unable to agree on the appointment of a special magistrate, the commission shall appoint, in its discretion, a qualified special magistrate.
- The parties may agree to proceed directly to resolution of the impasse by the legislative body pursuant to paragraph (4)(d) - with or without the services of a mediator.
- The special magistrate shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on all unresolved contract issues. The magistrate may establish the time and place for the hearings and; shall be empowered to administer oaths and issue subpoenas on behalf of the parties to the dispute or on his or her own behalf.
- The magistrate's recommended decision shall be discussed by the parties, and each recommendation of the special magistrate shall be deemed approved by both parties unless specifically rejected by either party by written notice filed with the commission within 20 calendar days after the date the party received the special magistrate's recommended decision.

### **Rejection of Report / Public Hearing**

- If either the public employer or the employee organization does not accept, in whole or in part, the recommended decision of the special magistrate:

**NOTE:** Once a rejection is received by the superintendent, the school board enters the "insulated period" and no ex parte communication may be conducted by the union or superintendent regarding the Special Magistrate's report.

- Within 10 days of rejection, the superintendent shall submit to the school board a copy of the findings of fact and recommended decision of the special magistrate, together with the superintendent's recommendations for settling the disputed impasse issues. The superintendent shall also transmit his or her recommendations to the union;
- The union shall submit its recommendations for settling the disputed impasse issues to the school board and superintendent;
- The school board or a duly authorized committee thereof shall forthwith conduct a public hearing;
- Thereafter, the school board shall take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impasse issues;

### **After Board Resolution / Ratification**

- Following the resolution of the disputed impasse issues by the school board: •
  - The parties shall reduce to writing an agreement which includes the TA's and those disputed impasse issues resolved by the school board.
  - The agreement shall be signed by the superintendent and the bargaining agent and shall be submitted to the school board and to the public employees who are members of the bargaining unit for ratification.
  - If such agreement is not ratified by all parties, pursuant to the provisions of s. 447.309, the school board's action taken pursuant to the provisions of paragraph (d) shall take effect as of the date of such school board's action for the remainder of the first fiscal year which was the subject of negotiations; however, the school board's action shall not take effect with respect to those disputed impasse issues which establish the language of contractual provisions which could have no effect in the absence of a ratified agreement, including, but not limited to, preambles, recognition clauses, and duration clauses.

## **§447.501, FS - Unfair labor practices.**

- **Public employers or their agents or representatives are prohibited from:**
  - Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part.
  - Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other conditions of employment.
  - Refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement agreed upon with the certified bargaining agent for the public employees in the bargaining unit.
  - Discharging or discriminating against a public employee because he or she has filed charges or given testimony under this part.
  - Dominating, interfering with, or assisting in the formation, existence, or administration of, any employee organization or contributing financial support to such an organization.
  - Refusing to discuss grievances in good faith pursuant to the terms of the collective bargaining agreement with either the certified bargaining agent for the public employee or the employee involved.
  
- **A public employee organization or anyone acting in its behalf or its officers, representatives, agents, or members are prohibited from:**
  - Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part or interfering with, restraining, or coercing managerial employees by reason of their performance of job duties or other activities undertaken in the interests of the public employer.
  - Causing or attempting to cause a public employer to discriminate against an employee because of the employee's membership or non-membership in an employee organization or attempting to cause the public employer to violate any of the provisions of this part.
  - Refusing to bargain collectively or failing to bargain collectively in good faith with a public employer.
  - Discriminating against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceedings provided for in this part.
  - Participating in a strike against the public employer by instigating or supporting, in any positive manner, a strike. Any violation of this paragraph shall subject the violator to the penalties provided in this part.
  - Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students or students in institutions of higher learning.
  
- **Notwithstanding the provisions of subsections (1) and (2), the parties' rights of free speech shall not be infringed, and the expression of any arguments or opinions shall not constitute, or be evidence of, an unfair employment practice or of any other violation of this part, if such expression contains no promise of benefits or threat of reprisal or force.**

History: s. 3, Ch. 74-100; s. 1, Ch. 77-174; s. 160, Ch. 97-103.

## **§447.509, FS - Other unlawful acts.**

- Employee organizations, their members, agents, or representatives, or any persons acting on their behalf are hereby prohibited from:
  - Soliciting public employees during working hours of any employee who is involved in the solicitation.
  - Distributing literature during working hours in areas where the actual work of public employees is performed, such as offices, warehouses, schools, police stations, fire stations, and any similar public installations. This section shall not be construed to prohibit the distribution of literature during the employee's lunch hour or in such areas not specifically devoted to the performance of the employee's official duties.
  - Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students during classroom time.
- No employee organization shall pay directly or indirectly any fines or penalties assessed against individuals pursuant to the provisions of this part.
- The circuit courts of this state shall have jurisdiction to enforce the provisions of this section by injunction and contempt proceedings, if necessary. A public employee who is convicted of a violation of any provision of this section may be discharged or otherwise disciplined by his or her public employer, notwithstanding further provisions of law, and notwithstanding the provisions of any collective bargaining agreement.

History: s. 3, Ch. 74-100; s. 162, Ch. 97-103.

## The Golden Rule

The Golden Rule or ethic of reciprocity is an ethical code that states:

- Positive form: Treat others as one would like others to treat oneself.
- Negative form: Do not treat others in ways that one would not like to be treated (e.g., Silver Rule).

This concept can be explained from the perspective of psychology, philosophy, sociology, and religion.

- Psychologically, one shows empathy toward others.
- Philosophically, one perceives his or her neighbor as also an individual or "self."
- Sociologically, one treats all people with consideration, not just members of his or her in-group.
- Religion is an integral part of the history of this concept.

Throughout history, religious figures and philosophers across world cultures have embraced this concept as a standard to resolve conflict:

- We should conduct ourselves toward others as we would have them act toward us.  
Aristotle, Ethics
- Do not unto another that you would not have him do unto you. Thou needest this law alone. It is the foundation of all the rest.  
Confucius, The Analects
- Treat not others in ways that you yourself would find hurtful.  
The Buddha, Udana-Varga 5.18
- In everything, do to others as you would have them do to you; for this is the law and the prophets.  
Jesus, Matthew 7:12
- This is the sum of duty: do not do to others what would cause pain if done to you.  
Mahabharata 5:1517
- Not one of you truly believes until you wish for others what you wish for yourself.  
The Prophet Muhammad, Hadith
- What is hateful to you, do not do to your neighbor. This is the whole Torah; all the rest is commentary. Go and learn it.  
Hillel, Talmud, Shabbath 31a

In ancient Japan, the Three Wise Monkeys embodied the proverbial principle in "see no evil, hear no evil, and speak no evil." The three monkeys were Mizaru, covering his eyes, who sees no evil; Kikazaru, covering his ears, who hears no evil; and Iwazaru, covering his mouth, who speaks no evil.



(THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK.)

## Collective Bargaining and Employee Relations

### ★ Rules, Roles, and Relationships of Collective Bargaining

#### ➤ Florida Constitution, Article I, Section VI

- ✓ Article I – Declaration of Rights
- ✓ SECTION 6. Right to work.—
  - The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.
  - The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.
  - Public employees shall not have the right to strike.

#### ➤ Chapter 447, Florida Statutes

- ✓ TITLE XXXI - LABOR, Ch.435-452
- ✓ Chapter 447 - LABOR ORGANIZATIONS
  - Part I: GENERAL PROVISIONS (ss. 447.01-447.17)
  - Part II: PUBLIC EMPLOYEES (ss. 447.201-447.609)

#### ➤ PERC

- ✓ Public Employee Relations Commission
  - Pursuant to Chapter 447, Part II
  - Three commissioners appointed by the governor for overlapping terms of four years, subject to Senate confirmation.
    - Chairman Mike Hogan
    - Commissioner John M. Delgado
    - Commissioner Donna M. Poole
  - Employs nine hearing officers who are licensed attorneys with more than five years' experience who hold hearings throughout the state on labor and employment disputes.
  - Reviews hearing officers' recommendations
  - Issues final order, which may be appealed directly to the District Courts of Appeal

#### ➤ “Good Faith” Bargaining

- ✓ Willingness to meet at reasonable times and places, as mutually agreed upon
- ✓ Sincere effort to resolve differences
- ✓ Intent to reach an agreement
- ✓ An obligation to participate in negotiations actively with an open mind

#### ➤ “Bad Faith” Bargaining

- ✓ Failure to meet at reasonable time and place
- ✓ Failure to discuss bargainable issues
- ✓ Refusing to provide public information when asked for in writing
- ✓ Refusing to negotiate because of an unwanted person on the opposing team
- ✓ Negotiating directly with employees rather than with their certified bargaining agent

➤ **Rights of Public Employers**

- ✓ To determine unilaterally the purpose of each of its constituent agencies
- ✓ To set standards of services to be offered to the public
- ✓ To exercise control and discretion over its organization and operations
- ✓ To direct its employees
- ✓ To take disciplinary action for proper cause
- ✓ To relieve its employees from duty because of lack of work or for other legitimate reasons
- ✓ However, shall NOT:
  - preclude employees or their representatives from raising grievances
  - violate terms and conditions of any collective bargaining agreement or regulation

➤ **Rights of Public Employees**

- ✓ To form, join, and participate in, or not, any employee organization
- ✓ To be represented by, or not, any employee organization to negotiate collectively
- ✓ To engage in, or not, concerted activities
- ✓ However, shall NOT:
  - Prevent any public employee from presenting his or her own grievances if not inconsistent with the collective bargaining agreement and the bargaining agent has been given reasonable opportunity to be present

➤ **Rights of Employee Organizations**

- ✓ To organize employees into a *bargaining unit* determined by the public employer and the public employee organization and approved by PERC (with or without the public employer's approval) for the purposes of collective bargaining
- ✓ To represent the employees within a bargaining unit in negotiations with management
- ✓ To bargain collectively wages, hours, terms, and conditions for a bargaining unit with management
  - ✓ To have union dues deducted from payroll of those employees who authorize it (e.g., s. 447.303 447.303 - Dues; deduction and collection)
- ✓ To file grievances for employees
- ✓ To pursue binding arbitration
- ✓ Public employee unions CANNOT:
  - Strike
  - Solicit public employees during working hours
  - Distribute literature during working hours in employees' work spaces
    - However, unions MAY distribute literature during the employee's lunch hour or in such areas not specifically devoted to the performance of the employee's official duties.
  - Instigate or advocate support for union activities from students during classroom time
  - Pay any fines or penalties assessed against individuals for the above unlawful acts

➤ **Specialized Procedures**

✓ **Bargaining Process**

- Usually begin with union's request
- Must be conducted "in-the-sunshine"
- Executive session of Superintendent, Chief Negotiator, Finance Officer, School Board Attorney, and School Board members to discuss and determine District positions for Negotiator to use
- Items for meeting agenda determined by both parties
- Proposals and counter-proposals for each item by each party
- Tentative Agreement (TA) reached item by item
- Complete package of TA items submitted to the bargaining unit for ratification by a majority vote of the employees
- If no agreement reached, one party may declare impasse.

✓ **Mandatory Subjects = Wages and Hours – or – Terms and Working Conditions**

▪ **Wages and Hours**

- Salary
- Hourly wages
- Overtime
- Extended contract time
- Insurance benefits
- Supplemental pay
- Bonus pay
- Paid leave
- Performance pay
- Differentiated pay
- Compensatory leave
- Longevity pay
- Experience credit
- Clothing allowances
- Work hours
- Work days
- Work year
- Sick leave pool

▪ **Terms and Working Conditions**

- Professional development days
- Planning time
- Calendar
- Transfer restrictions
- Posting vacancies
- Association rights
- Lay offs
- Reductions in force/ recall
- Employee leaves
- Grievance procedure
- Faculty committees
- Faculty meetings
- Teaching conditions
- Teacher's authority/ protection
- Academic freedom
- Political activities
- Summer school assignments
- Temporary duty assignments
- Selection of team leaders or department chairs

✓ **Permissive Subjects = Anything, NOT mandatory**

- Job assignments
- Salary supplements for non-bargaining unit employees
- Creation of new job classifications
- Subcontracting or contracting

➤ **Impact Bargaining**

- ✓ Chapter 447 specifically excludes certain "management rights" from an agency's duty to bargain, such as the right to:
  - determine the agency's organizational structure
  - hire, assign, and discipline employees
  - assign work
- ✓ Although agencies are not required to bargain over whether these management rights will be exercised, the union is entitled to bargain as to **how** these rights shall be exercised.
- ✓ Public employers are required to:
  - give notice and consult with the union *before* implementing a substantive change in conditions of employment (e.g., written demand to bargain);
  - negotiate procedures for exercising a particular management right;
  - negotiate appropriate arrangements for employees who will be adversely affected by the exercise of a management right.
- ✓ Public employers who refuse to engage in "impact and implementation" bargaining violate their duty to negotiate in good faith with the union

➤ **Mediation**

- ✓ Flexible process where a trained neutral third party mediator helps two or three parties negotiate to resolve their dispute
- ✓ Provides vehicle where parties are enabled to reach their own mutually acceptable resolution in a cost efficient manner that preserves ongoing work relationships
- ✓ Preferable to binding arbitration for multiple reasons
- ✓ Contractual time limits waived
- ✓ Informal proceedings
  - Rules of evidence not applicable
  - No recording or records of any type
  - Mediator's notes confidential
- ✓ Federal Mediation and Conciliation Service (FMCS) provides mediators free of charge upon receipt of formal joint written request

➤ **Special Magistrate**

- ✓ Official selected to preside over an impasse hearing
- ✓ Receives list of issues from each party
- ✓ May issue subpoenas
- ✓ Conducts hearings
- ✓ Makes findings of fact
- ✓ Recommends settlement

➤ **Impasse Proceedings**

- ✓ Where negotiations cannot resolve differences, either party may declare an impasse.
- ✓ Party authors a written notice of impasse to PERC.
- ✓ Parties select special magistrate from list PERC supplies.
- ✓ Parties advise special magistrate on issues at impasse.
  - Comparisons to other workgroups in workforce
  - Comparisons to other workforces
  - Budget
  - Impact on services
- ✓ Special magistrate conducts hearing and recommends resolution of all articles at impasse.
- ✓ Parties can accept or reject this recommendation.
- ✓ Issue is presented to the Board of Trustees or subcommittee for hearing and final resolution of impasse.
- ✓ After final resolution, a proposed contract is created.
- ✓ Union submits proposed contract to ratification vote.
- ✓ If ratified, contract stands.
- ✓ If rejected, the impasse resolution is implemented.

➤ **Unfair Labor Practices**

- ✓ *Public Employers **CANNOT**:*
  - Interfere with, restrain, or coerce public employees in the exercise of their rights
  - Encourage or discourage membership in union as condition of employment
  - Refuse to bargain in good faith
  - Discharge or discriminate against an employee for filing charges or testifying
  - Dominate, interfere with, or assist any employee organization or contribute financial support
  - Refuse to discuss grievances in good faith per the collective bargaining agreement
- ✓ *Public Employee Unions **CANNOT**:*
  - Interfere with, restrain, or coerce employees or managerial employees in the exercise of their rights
  - Cause or attempt to cause the employer to discriminate against an employee because of union membership or nonmembership
  - Refuse to bargain in good faith
  - Discriminate against an employee for filing charges or testifying
  - Participate in a strike
  - Instigate or advocate support for union activities from students

- **Managerial Employees**
  - ✓ s. 447.203(4), F.S.
  - ✓ Perform jobs that are not of a routine, clerical, or ministerial nature
  - ✓ Exercise independent judgment
  - ✓ Assist in preparation for negotiations
  - ✓ Administer bargaining agreements
  - ✓ Supervise personnel
  - ✓ Handle employee relations
  - ✓ Assist in budget preparation
  
- **Confidential Employees**
  - ✓ s. 447.203(5), F.S.
  - ✓ Act in a confidential capacity on behalf of management
  - ✓ Assist or aid managerial employees
  
- **Retroactivity**
  - ✓ Judicial decision, a statute enacted by a legislative body, or a local policy which would result in an application to past transactions and legal actions
  - ✓ In general, statutes or court decisions CANNOT take away "vested" property rights or change contract rights.
  - ✓ Examples of retroactivity include retroactive pay, benefits, or application of policies that affect employees.
  
- **Forms of Bargaining: Pros, Cons, Benefits, and Processes**
  - ✓ Traditional
    - Selected spokesperson (usually the Chief Negotiator) discusses expectations and "wants." (Adversarial)
    - Provides solution along with demand.
    - Addresses needs without data
    - Winners and losers
    - Focuses on settlement, quick-fix and closure
    - May bring pressure upon the negotiating team via media
  
  - ✓ Interest-Based – (Collaborative)
    - Selected one chief but anyone can speak
    - Identifies problems and issues to discuss
    - Has data to support concern but allow solutions to evolve
    - Looks for a win/ win
    - Develops strategies for implementing solutions
    - Determines if it is a contract or non-contract issue
    - Share information
    - Media releases are handled jointly
  
  - ✓ Hybrid = Combination of traditional and interest-based bargaining

➤ **Preparation for Bargaining**

- ✓ Superintendent's Role
  - Meet with HR, Finance, Transportation, Maintenance, etc.
  - Select team
  - Select chief
  - Have team trained
  - Review language and identify problems/concerns
- ✓ Team Selection
  - The Superintendent approves the members on the District's bargaining team.
- ✓ Communication
  - It is a best practice that the Superintendent or his or her designee directs communication regarding the District's position on bargaining issues through the Chief Negotiator.

➤ **Executive Sessions**

- ✓ Purpose
  - Confidential discussions between the Superintendent, the Chief Negotiator, and the School Board that are closed and exempt from the Sunshine Law
- ✓ Topics
  - Items under negotiation
  - Only budget issues directly related to negotiations
- ✓ Players
  - Superintendent
  - Chief Negotiator
  - Board Members
  - School Board Attorney
  - Finance Officer
- ✓ Record of Meetings
  - Public notice
  - No recordings
  - No minutes
- ✓ Confidentiality
  - Per 112.313 – Standards of conduct for public officers, Board members may NOT disclose or use information which is not available to the general public for personal gain or benefit.

➤ **Contract Management**

- ✓ Superintendent's Role
  - Chief enforcer of the contract
- ✓ Principals' and Other Managers' Role
  - To comply with the terms of the contract
  - To recommend to the Superintendent changes based upon their experience and data collected for specific issues
- ✓ Grievance and Arbitration Management
  - Level I grievances are resolved between the employee or the union on behalf of the employee and the site administrator and if not resolved, may be appealed to Level II.
  - Level II grievances are resolved between the employee and the union on behalf of the employee and the Chief Human Resources Officer or equivalent and if not resolved, may be appealed to Level III.
  - Level III and Class Action grievances are resolved between the employee and the union on behalf of the employee and the Superintendent or his or her designee and if not resolved, may be referred to mediation or arbitration.
- ✓ Arbitration
  - Parties request Federal Mediation and Conciliation Service (FMCS) to submit a panel of five (5) arbitrators from which the parties shall mutually select the arbitrator.
  - Both parties agree to abide by the Voluntary Rules of the Federal Mediation and Conciliation Service (FMCS).
  - Arbitrator shall not have the power to add to, subtract from, modify, or alter the terms of the contract.
  - Decision of the arbitrator shall be final and binding.
- ✓ Interpretative Memoranda
  - ✓ Communication from management to its administrators regarding management's interpretation of terms of the contract
- ✓ Memorandum of Understanding
  - Interim agreements between management and the union on single issues in addition to the contract
  - Language of MOUs are usually included in the next round of contract negotiations unless the issue is temporal.
  - Expire after one year
- ✓ Past Practice
  - Consistent action or behavior over time such that employees, the union, and the employer recognize the practice as standard