



**NDSBA**

**NORTH DAKOTA SCHOOL  
BOARDS ASSOCIATION**



## **NEGOTIATIONS BASICS HANDBOOK**



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# 1 RECOGNITION

The negotiation process must begin with recognition by the school board of the negotiating unit (i.e. the party with whom the board will negotiate) and the representative organization (i.e. the organization, typically the local teachers association, that represents the negotiating unit in negotiations).

## BOARD INITIATING NEGOTIATIONS

In order to negotiate, either the **board** or **teachers** must provide notice **at least 160 days** before the contract anniversary date (typically July 1). If neither party provides notice by the deadline, the parties are not obligated to renegotiate the agreement.

If the board initiates negotiations, the board should use this language:

### BOARD'S NOTICE OF INTENT TO NEGOTIATE

Pursuant to NDCC Section 15.1-16-13(3), you are notified that the School Board desires to modify the negotiated agreement between the Board and its teachers. Petitions describing an appropriate negotiating unit and seeking recognition as a representative organization should be filed with the business manager of the school district in the immediate future.

*Note: Send to current representative organization.*

## RECOGNITION PROCESS

Regardless of who initiates the negotiations process (board or teachers), the following steps are required by law. During these steps, the board recognizes the group of employees with which it will negotiate and recognizes the organization representing this group. These steps are referred to as **the recognition process**.





## STEP 1 - PETITION FOR RECOGNITION OF APPROPRIATE NEGOTIATING UNIT

NOTE: SUBMITTED BY TEACHERS; BOARD VOTES ON IT UPON RECEIPT USING STEP 2 BELOW

**On or before February 1** of the current school year, teachers must submit a petition with the board containing a description of the group (unit) wanting to negotiate with the school board. The negotiating unit means teachers or administrators who form a group (unit) for the purpose of negotiating with the school board.

To petition the board for recognition, the teachers should use this language:

Pursuant to NDCC Section 15.1-16-10, the \_\_\_\_\_ Education Association requests that the School Board recognize as an appropriate negotiating unit all employees licensed to teach by the ESPB or approved to teach by the ESPB and employed by the School Board primarily as classroom teachers.

## STEP 2 - BOARD'S DETERMINATION OF APPROPRIATE NEGOTIATING UNIT

NOTE: THE BOARD'S RESPONSE TO STEP 1 IS TO USE THE MOTION BELOW TO APPROVE THE PETITION

**Within 30 days** of receipt of the petition in Step 1, at an open meeting, the board reviews the negotiating unit description and, if acceptable, approves the negotiating unit.

To approve the negotiating unit, the board should use this language:

Pursuant to NDCC Section 15.1-16-10, the Board of \_\_\_\_\_ School District recognizes as the appropriate negotiating unit all employees licensed to teach by the ESPB or approved to teach by the ESPB and employed primarily as classroom teachers.

## STEP 3 - PETITION FOR RECOGNITION OF REPRESENTATIVE ORGANIZATION

NOTE: SUBMITTED BY TEACHERS USUALLY AT THE SAME TIME AS STEP 1 (PETITION FOR RECOGNITION OF APPROPRIATE NEGOTIATING UNIT). WITHIN 10 DAYS OF RECEIPT OF THE PETITION, THE **BOARD MUST POST THIS PETITION (BELOW)** IN ALL DISTRICT SCHOOLS BEFORE ACTING ON IT.

If the board accepts the negotiating unit, teachers choose a representative organization and, **on or before March 1** of the current school year, file a petition with the board asserting that the organization represents a majority of the teachers.





Teachers must sign up to be represented by the organization. The list of signatures must contain a majority of teachers in the negotiating unit. Majority= 50% of negotiating unit + 1.

To petition the board for recognition of the representative organization, the education association should use this language:

Pursuant to NDCC Section 15.1-16-11, the \_\_\_\_\_ Education Association requests that the School Board recognize the Association as the representative organization of all licensed or approved teachers who are employed primarily as classroom teachers for the purpose of negotiating. Evidence that the Association represents the majority of licensed or approved teachers included in the appropriate negotiating unit is attached in the form of \_\_\_\_\_ **[use organizational membership list or list of teachers' signatures]**.

\_\_\_\_\_  
Association President

\_\_\_\_\_  
Association Secretary

#### **STEP 4 - BOARD'S NOTICE OF INTENT TO CONSIDER A PETITION FOR RECOGNITION OF REPRESENTATIVE ORGANIZATION**

**Within 10 days** of receiving the petition in step 3 (petition for recognition of representative organization), the board must post the petition in step 3 and the notice in step 4 together in all district schools. For the notice, the board should use this language:

The School Board, having accepted the description of an appropriate negotiating unit, has on file a dated petition from the \_\_\_\_\_ Education Association, which contends that it represents a majority of teachers within the negotiating unit. This notice, which is posted in every school in the district, announces that the Board will meet on \_\_\_ **[date]**\* to consider the petition and to determine the question of representation.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Board President

\* This meeting date must be no sooner than 10 days and no later than 20 days after the date this notice is posted.





## STEP 5 - BOARD'S DECISION AND NOTICE OF RECOGNITION

No sooner than **10 days** but no later than **20 days** after posting the notice in Step 4, the board must meet to investigate and act on the petition. NDCC Section 15.1-16-11(1)(c). The board needs to ensure that a majority of teachers are represented. Typically, the petition includes a list of names and signatures of teachers/administrators. If the board approves the petition, notice of recognition must be posted.

If the petition is approved, the board should use this language for the notice of recognition:

The School Board has investigated the petition filed by the \_\_\_\_\_ Education Association requesting that the association be recognized as the representative organization for the negotiating unit and has determined that the Education Association does represent a majority of the teachers within that unit. The Board recognizes the \_\_\_\_\_ Education Association as the representative organization for a minimum of one year beginning \_\_\_\_\_ **[date]**.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Board President

## STEP 6 - NEGOTIATION START DATE

Negotiations must begin no later than **30 days** after the representative organization is recognized by the board unless otherwise agreed to by the board and the representative organization. NDCC Section 15.1-16-13(5).



## 2 NEGOTIATIONS MEETINGS

### SAMPLE AGENDA: NEGOTIATIONS PLANNING MEETING

#### SPECIAL MEETING OF [NAME OF SCHOOL BOARD]

DATE, TIME, LOCATION

- I. **Call to order**
- II. **Roll call**
- III. **Appointment of negotiations committee members**  
The board should appoint a negotiations committee that is less than a quorum of the board. It may include school administrators, business manager, human resources director, outside consultants, etc.
- IV. **Motion for executive session to discuss negotiations strategy. Legal authority: NDCC Section 44-04-19.1(9)**  
NOTE: While in executive session the board should:
  - a. Review ground rules
  - b. Review the negotiated agreement
  - c. Identify any undesirable or ambiguous language in the negotiated agreement and determine the best strategy for changing or removing the language
  - d. Identify areas where the board might reclaim authority (e.g., removing RIF policy from contract and placing in board policy manual)
  - e. Draft language for proposed changes to the negotiated agreement
  - f. Determine if board can afford current salary schedule over at least the next two years
  - g. Review changes in rates for healthcare and other fringe benefits over at least the next two years
  - h. Prioritize proposals (e.g., changing the base salary is the board's top priority, reducing sick leave is the second priority, etc.)
  - i. Instruct negotiators on board's first proposal
  - j. Discuss which negotiations committee member is best suited to serve as spokesperson
- V. **Reconvene in open meeting**  
NOTE: Open to the public. Do not announce what was discussed. Do not take a roll call vote on any items agreed to during the negotiations strategy executive session. NDCC Section 44-04-19.1(9)
- VI. **Adjournment**



## **STEPS AFTER THE BOARD NEGOTIATIONS PLANNING MEETING**

After the board negotiations planning meeting, the board negotiations committee will hold its first meeting with the teachers' representatives. Meetings between these two groups are open to the public. Notice of these meetings must be posted in accordance with NDCC Section 44-04-20.

## **EXECUTIVE SESSIONS OF THE FULL BOARD**

The board negotiations committee should bring any proposals offered by the teachers back to the school board. The board should provide instructions to the negotiations committee on strategy, including any counterproposals. Board discussions about negotiations strategy occur in EXECUTIVE SESSION at properly noticed regular or special school board meetings. NDCC Section 44-04-19.1(9)

### REMINDERS REGARDING EXECUTIVE SESSIONS FOR NEGOTIATING STRATEGY

- Post notice of the negotiations planning meeting at the district's main office and at the place of the meeting.
- Provide notice to:
  - All board members
  - Official newspaper of the district or county (if the district does not have a newspaper)
  - County auditor or posted on the district's website
  - Anyone who has requested advanced notice of board meetings
- Record the executive session and follow proper format for closing the open portion of the board meeting and opening the executive session.
- Board negotiations sessions (held in accordance with state law on open meetings and executive session) should occur after any proposal is received from the teachers and each time the board negotiations committee needs additional instructions from the board.

The board negotiations committee may only tentatively approve teachers' proposals. Ratification is by a vote of the school board. The school board should avoid voting on any proposals until the negotiations committee has tentatively agreed on a final package with the teachers. **The board should not vote on teacher proposals piecemeal.**







## EXECUTIVE SESSION FORMAT

**To be read by board president verbatim:**

*The next item on the agenda is teacher negotiations strategy. This item may be discussed in an executive session only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the board. The legal authority for closing this portion of the meeting is NDCC Section 44-04-19.1(9). The topic or purpose of this executive session is teacher negotiations strategy.*

*At this time, a motion would be in order to discuss the next item in executive session rather than in an open meeting. Is there such a motion? . . . A second? . . . Any discussion on the motion? . . . I'll call the roll.*

**If the motion for an executive session passes, read the following:**

*The executive session will be recorded. All members of the governing body are reminded to limit their discussion during the executive session to the announced topic. The prohibition on taking final action during the executive session does not apply to providing guidance or instructions to our negotiators.*

*We will now ask the members of the public who are attending the meeting to leave the room. We anticipate adjourning the executive session and reconvening the open portion of the meeting at approximately \_\_\_\_\_ [time].*

*The minutes will show that the executive session began at \_\_\_\_\_ [time] and was attended by: \_\_\_\_\_ [list attendees].*

**After the executive session, read the following:**

*The minutes will show that the executive session was adjourned at \_\_\_\_\_ [time]. The public has been invited to return to the meeting room, and we are now back in open session.*





### 3 GROUND RULES

Ground rules are a set of rules that are agreed to by the board and teachers. They govern how negotiations meetings will be conducted. They should be presented and discussed at the first negotiations meeting. Upon approval by both negotiation teams, they should be disseminated to both sides for discussion and approval. Ground rules should not be placed in the negotiated agreement.

#### GROUND RULES-SAMPLE 2023-25 NEGOTIATIONS

1. **NEGOTIATIONS TEAMS**

Board Team Members (less than a quorum)

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Teacher Team Members

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- 2. **SUPERINTENDENT and BUSINESS MANAGER ROLE:** Serve as resource people to both board and teacher teams.
- 3. **MEETING DATES, NOTICES AND LOCATION:** The first negotiations meeting will be held within 30 days of the board recognizing the representative organization, unless otherwise agreed to by the board and the representative organization.
- 4. **LENGTH OF MEETINGS:** Meetings will be scheduled for [#] minutes, unless both parties agree to go beyond this time limit.
- 5. **MEETING DATES:** Dates and the number of meetings (e.g., limited to four) as mutually agreed upon.
- 6. **COMPLETION DEADLINE:** The parties recognize that in accordance with North Dakota law negotiations must be completed no later than July 1. If the parties do not reach agreement by the deadline, an impasse exists by operation of law.
- 7. **HANDOUTS:** Distributed to all board and teacher negotiators at least [#] days prior to the meeting at which the information is to be discussed.
- 8. **CHAIRPERSON:** The position of chairperson for each meeting will alternate between a member of the board negotiations committee and a member of the teachers' representatives.
- 9. **CAUCUS:** The board negotiations committee and teachers' representatives have a right to caucus, outside of each other's presence. The board or any authorized subcommittee of the board may hold an executive session under section 15.1-16-22 to discuss negotiating strategies. Caucus is included in the weekly allocated time.



10. **MINUTES:** The board negotiations committee or business manager shall prepare minutes of the negotiations meetings and distribute them by the deadline for meeting handouts. The teachers’ representatives may also take minutes. Minutes are subject to both teams’ approval before they become official.
11. **AGENDA FOR NEXT MEETING:** Before adjournment of a negotiations meeting, an agenda must be prepared for the next meeting. Items may be added to the agenda up to [#] days prior to the next meeting or upon consent of the board negotiations committee and teachers’ representatives. Agenda items may not be added at the meeting.
12. **MEDIA RELEASES:** All releases must be made jointly, either in the presence of both spokespersons or by a joint conference call.
13. **DEADLINE FOR PROPOSALS:** All proposals must be exchanged in writing at the first negotiations meeting. Thereafter, proposals on additional issues may be added only with agreement of both the board negotiations committee and teachers’ representatives.
14. **NEGOTIATING AND AGREEING TO PROPOSALS:** The board negotiations committee and teachers’ representatives shall determine by coin toss who selects the first item to be discussed. Thereafter, the parties shall alternate selecting items until all items have been discussed. As agreement is reached on an item, the language must be initialed and dated by the board’s and teachers’ chief negotiators. Any initialed item may only be reopened for amendment by consent of the board negotiations committee and teachers’ representatives. Such agreements are only tentative until negotiations are complete and the entire agreement is ratified by both sides or until the Board issues unilateral contracts. Items that are not agreed upon must be tabled and given reconsideration only after all other items have been considered.
15. **TABLED ITEMS:** Parties will make a good faith effort to reach agreement on tabled items. If agreement cannot be reached, parties agree to initiate the proceedings for impasse.
16. **RATIFICATION:** Both parties have five business days to ratify the agreement. If either party fails to ratify the agreement by this deadline, it shall inform the other party of the items(s) still in contention. This ratification rule does not prevent declaration of impasse or issuance of unilateral contracts.

**THESE GROUND RULES ARE AGREED TO BY BOTH TEAMS ON**

Date: \_\_\_\_\_

SCHOOL BOARD

TEACHERS’ EDUCATION ASSOCIATION

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## 4 NEGOTIATED AGREEMENT

### KEY TERMS

- **Negotiated agreement (a.k.a. master contract):** A contract agreed-upon between the school board and the representative organization that applies to all employees in the negotiating unit (i.e., all teachers or all administrators). This is the document that is created or amended during the negotiations process. It is generally recommended, although not legally required, that the agreement have a two-year term.
- **Individual teacher/administrator contract:** This document is based on the negotiated agreement and outlines each individual teacher's salary, benefits, terms and conditions of employment, and teaching assignment. Individual teaching contracts are issued after the negotiated agreement is finalized. Their terms must be consistent with the negotiated agreement. These contracts are issued annually and pursuant to the requirements and deadlines set forth in NDCC chapters 15.1-15.

### ITEMS TO INCLUDE IN THE NEGOTIATED AGREEMENT

- Salary schedule/matrix and benefits and leave provisions
- Advancement and placement on salary schedule/matrix
- Deadline for submitting college credits for salary schedule advancement
- Contract term or duration clause:

This Agreement, except as otherwise provided, is effective as of July 1, **[year]**, to June 30, **[year]**, at which time it shall automatically renew itself for additional periods of one year, unless written notification to the contrary is made by either party no later than **[insert date (no later than 160 days before contract anniversary date)]**. If such notification occurs, the entire Agreement must be renegotiated. Changes may be made at any time by mutual consent.

(NOTE: **DO NOT** agree to the following phrase: "Until mutual agreement on a new contract is reached." This could prohibit issuance of unilateral contracts after impasse.)





- Integration clause:

The Board and the Association agree that the terms and conditions set forth in this Agreement represent the full and complete understanding and commitment between the parties and that the terms and conditions may not be added to or modified without the consent of the parties, as evidenced by a written amendment attached and made a part of this Agreement.

- Management rights clause:

All terms and conditions of employment not covered by this agreement are subject to the Board's exclusive direction and control and may not be the subject of negotiations during the term of this agreement.

*Note: This was found by the North Dakota Supreme Court to be sufficient to entitle the board to unilaterally assign a sixth teaching period to its high school teachers. It should be given serious consideration for inclusion in your district's negotiated agreement.*

- Savings clause:

If any article, section, or clause of this Agreement is found to be in conflict with law or declared illegal by a court of competent jurisdiction, the article, section, or clause, as the case may be, is automatically deleted from this Agreement to the extent that it violates the law. The remaining articles, sections, and clauses must remain in full force and effect for the duration of the Agreement if not affected by the deleted article, section, or clause.

## **ITEMS TO EXCLUDE FROM THE NEGOTIATED AGREEMENT**

- Binding arbitration
- Board policy adoption procedure
- Classroom size
- Prep time
- Reduction-in-force procedure
- Teacher grievances
- Teacher resignation procedure
- Transfers and reassignments
- Any items already covered by law, e.g.:
  - Unpaid leave under the Family Medical Leave Act
  - Mileage reimbursement rates
  - Military leave
  - Number of instructional hours
  - Payroll taxes





- Unemployment compensation

**TIP:** Negotiate items out of the negotiated agreement and into board policy whenever possible. Boards can amend policy through board action while items placed in the negotiated agreement can only be amended by agreement of the board and teachers.

## CONTRACT WRITING TIPS

- Avoid vague words such as “timely” and “reasonably”
- Define terms such as school day, plan year, family, full-time, and part-time
- Clarify confusing language
- Clearly identify which benefits do and do not apply to part-time teachers
- Ensure that any requirements placed on teachers as a condition of receiving the benefits are clearly outlined (e.g., teacher must be with the district for six months before qualifying for the benefit)
- Ensure that the employer’s and employee’s share of benefits such as insurance and TFFR are clearly defined

NDSBA strongly recommends that each district have its legal counsel review the negotiated agreement prior to board approval. NDSBA legal counsel will NOT review our member districts’ negotiated agreements as this is beyond the scope of our Legal Services Program.

## TIMEFRAME FOR OFFERING INDIVIDUAL TEACHING CONTRACTS

- **New teachers:** A board can offer a contract to a new teacher/administrator upon board approval of the superintendent’s recommendation to hire. The board shall establish a deadline by which the contract must be accepted and returned. This deadline can be any time the board deems appropriate, but should be reasonable (e.g., 10 days from receipt of contract).
- **Returning teachers:** No earlier than March first and no later than May first, except when negotiating. Returning teachers are allowed at least 14 days from receipt of the contract to return it (NDCC Section 15.1-15-04).
- **During negotiations:** Contract issuance deadlines for existing employees are suspended until negotiations are completed (NDCC Section 15.1-15-04). Contracts may be issued to new hires during the pendency of negotiations; however, such contracts will need to be adjusted once negotiations are complete to comply with the negotiated agreement.



## 5 IMPASSE

Under North Dakota law, an impasse exists if:

- After a reasonable period of negotiation, an agreement has not been formulated and a dispute exists;
- No later than July first following the recognition of the representative organization under section 15.1-16-11:
  - An agreement has not been reached between the board of a school district and the representative organization; and
  - The board of the school district and the representative organization have not agreed to extend the negotiation period; or
- The board of a school district and the representative organization both agree that an impasse exists.

### STEPS BEFORE DECLARING IMPASSE

The board should meet in executive session with the board negotiations committee to prepare a final offer before impasse, instruct its negotiators to present the final offer, and, if rejected, waive mediation and declare impasse. In the event an agreement between the parties is not reached following impasse, the board will issue unilateral contracts to the teachers based on its last offer. Thus, it is important for the board to keep this in mind when structuring its final offer.

### STEPS AFTER IMPASSE IS DECLARED

When the board and the representative organization reach impasse, the parties may seek assistance to resolve the impasse from the North Dakota Education Fact Finding Commission. The Commission consists of three members experienced in education. The members are appointed, one each, by the governor, the superintendent of public instruction, and the attorney general, with the member appointment by the superintendent of public instruction serving as the chairperson of the Commission.

If asked to provide assistance and if the Commission determines an impasse exists, the Commission is required by North Dakota law to act as a fact-finding commission. The Commission is required to consider the facts, make findings, and issue recommendations to the parties to resolve the impasse. The Commission's recommendations are simply that – recommendations. They are not binding,





and the parties are not required to accept them. The impasse process is set forth in the ND Century Code in sections 15.1-16-14 and 15.1-16-15.

The following is a step-by-step explanation of the impasse process:

### **STEP 1 – NOTIFY FACT FINDING COMMISSION**

Once impasse is declared, the board should request assistance from the Commission by contacting the Chairperson by telephone or e-mail. The board should provide the Chairperson the contact information for the board representative (e.g., the board president) and the representative organization (e.g., the local teachers association president). The parties must share the cost of the Commission equally.

### **STEP 2 – SCHEDULE THE IMPASSE HEARING**

Within forty (40) days from the date the Commission is asked to provide assistance, the Commission must deliver its findings and recommendations to the board and the representative organization. The Chairperson will work with the parties to schedule and complete the impasse hearing in time to meet this statutory deadline. Generally, the Commission holds the hearing at a location within the school district community.

### **STEP 3 – PREPARE FOR IMPASSE HEARING**

It is important for the board to prepare adequately for the impasse hearing. The board should hold a meeting and discuss strategy in executive session (NDCC 44-04-19.1(9)). The board and the representative organization will each provide the Commission with a position paper and relevant documents. In and along with its written submissions, the board should advise the Commission as to and/or provide copies of the following information and documents:

- ✓ Unresolved issues
- ✓ Tentatively agreed issues
- ✓ Current contract, earnings, benefits, and teacher placement
- ✓ Budget information, historical mill levies, and ending fund balances
- ✓ Minutes of the negotiations meetings
- ✓ Policies, contracts, and benefit plan documents that relate to issues

The board should select a spokesperson who will state the board's position at the hearing. This is typically a board member. Some boards elect to hire an attorney experienced in school law to







assist them in drafting the position paper and preparing for the hearing; however, typically the board elects not to have the attorney representative it or speak on its behalf at the hearing (although these are options available to the board).

#### **STEP 4 – ATTEND THE IMPASSE HEARING**

The impasse hearing is an open public hearing conducted by the Commission. The Commission is a public entity for purposes of the open meetings requirements of North Dakota law, and therefore, it is required to properly notice the hearing and provide access to the public. The Commission requires the presidents of the representative organization (i.e. the local teachers association) and the board, the negotiators for both sides, and school administration to be in attendance at the hearing. If a quorum or more of the board is present at the hearing, it also constitutes a “meeting” of the board, which must be properly noticed by the school district (NDCC 44-04-20).

The hearing agenda is as follows:

- Opening remarks and ground rules by the Commission Chairman
- Opening statements – by each appointed spokesperson(s)
- Justification of positions – by each party
- Commission will ask questions to clarify and focus on unresolved issues
- Public Comments – anyone in the audience can address the Commission
- Final comments and establish a timeline for issuance of advisory report

#### **STEP 5 – COMMISSION ISSUES ITS ADVISORY REPORT**

Within forty (40) days of the date the Commission is asked to provide assistance, the Commission is required by law to issue its findings and recommendations to the board and to the representative organization. Again, the Commission’s recommendations are not binding.





### **STEP 6 – PARTIES MEET IN ATTEMPT TO RESOLVE IMPASSE**

Following issuance of the report, both parties are required to meet at least once in an attempt to resolve the impasse. Prior to meeting with the representative organization, the board typically reviews the Commission’s report and then, in executive session, discusses strategy and provides instructions to its negotiators on a post-Fact finding proposal to the representative organization.

If the parties are able to reach an agreement, the parties follow the procedures set forth in the ground rules to ratify the agreement and issue individual teacher contracts based on the agreement.

### **STEP 7 – IF IMPASSE NOT RESOLVED, BOARD ISSUES UNILATERAL CONTRACTS**

If the parties fail to reach an agreement, the board, at an open meeting, will vote to issue unilateral contracts based on the board’s last offer. Typically, the last offer of the board will be offer proposed just prior to declaring impasse; however, if good-faith negotiations occur following issuance of the Commission’s recommendations, the final offer may occur at the completion of those negotiations. The duration of the individual contracts and the agreement governing the contracts is one year. The board should seek guidance from district legal counsel before issuing unilateral contracts.

At the time the board takes action to issue unilateral contracts, the board should also set a deadline for teachers to return their individual contracts, which must be no earlier than fourteen (14) days after contracts are received by the teachers.

In addition, the Commission’s report is published in the district’s official newspaper (typically a full page ad) with the cost of publication being shared equally by the board and the representative organization. The publication must occur no sooner than ten (10) but no later than twenty (20) days following issuance of the report. Therefore, any meetings between the parties to resolve the impasse should occur before publication. **In its published ad, the Commission will typically assign responsibility to one side or the other for the failure to reach agreement.**



## 6 APPENDICES

### DEFINITIONS

- **Administrator** is an individual who is employed by the board of a school district primarily for administration of a school or schools of the district and who devotes at least fifty percent of their time in any one year to the duties of administration of the school or schools of the district. NDCC Section 15.1-16-01(1)
- **Caucus:** During negotiations meetings, the teacher representatives or board negotiators may need time to discuss a proposal without the other side being present. These meetings are called caucuses and are closed to the public.
- **Costing** is a process used to calculate how much a change in wages, benefits, differentials, and other economic factors cost the school district.
- **Education Fact Finding Commission** is a group of three individuals appointed by state officials to help resolve impasse. When impasse is declared, the Commission is typically contacted. It gathers information from the school board and teachers' representatives, holds a public hearing, and makes recommendations on how to settle the disputed terms.
- **Good faith negotiations** are the duty of the school board's representatives and teachers' representatives to meet at reasonable times, follow agreed upon procedures (ground rules), and execute a written contract when an agreement is reached.
- **Ground rules** are a set of rules agreed to by the board and the teachers. The rules govern how negotiations meetings will be conducted.
- **Impasse** is when the board, teachers, or both determine no further progress can be made toward reaching an agreement after a reasonable period of negotiations.
- **Individual teaching contracts** are documents based upon the negotiated agreement that outline each individual teacher's salary, benefits, terms and conditions of employment, and teaching assignment. Individual teaching contracts are issued after the negotiated agreement is settled and must be consistent with the negotiated agreement.
- **Negotiated agreement or master contract** is a contract between the board and the negotiating unit that applies to all employees in the negotiating unit (e.g., all teachers or all administrators). This is the document that is created or amended during the negotiations process.
- **Negotiating units** are teachers or administrators who form a group (unit) for the purpose of negotiating with the school board.
- **Negotiations** is a process by which the board negotiations committee and teachers' representatives meet to agree on terms and conditions of employment, employer-employee relations, formation of a contract (negotiated agreement), and interpretation of an existing contract (existing negotiated agreement).
- **North Dakota United** is an organization created by the merger of the North Dakota Education Association (NDEA) and the North Dakota Public Employees Association (NDPEA). It



includes teachers employed by North Dakota school districts and is often referred to as the “teachers’ union.”

- **Recognition** is formal acceptance of the negotiating unit and representative organization by the board pursuant to the statutory framework outlined in NDCC chapter 15.1-16.
- **Representative organization** is an organization representing the majority of teachers or administrators in a negotiating unit. This organization may be, but is not required to be, a local affiliate of North Dakota United.
- **Salary schedule** is the section of the negotiated agreement outlining salary for all employees in the negotiating unit. Salary schedules typically take one of two forms: a matrix schedule or a one-line schedule.
- **Teacher** is a public school district employee licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board and employed primarily as a classroom teacher. NDCC Section 15.1-16-01 (5)
- **Teachers’ Fund for Retirement (TFFR)** is North Dakota’s retirement program for teachers and administrators.
- **Unilateral contracts** are issued by school boards to teachers after negotiating, declaring impasse, undergoing Fact Finding, receiving Fact Finding recommendations, negotiating Fact Finding recommendations with the teachers’ representatives, and being unable to reach an agreement with the teachers.
- **UniServ representative** is an area representative of North Dakota United who represents teachers when they have grievances and contract-related concerns. UniServ representatives also assist the representative organization during negotiations if the representative organization has a North Dakota United affiliation.

## CONTESTING THE REPRESENTATIVE ORGANIZATION

In rare cases, a group of teachers may decide to contest being represented by the organization that originally petitioned the board to be the teachers’ representative. Contesting the representative organization occurs in one of three ways:

1. The contesting organization of teachers must file a petition with the board that contains a written statement of contest together with substantiating evidence (list of teachers’ signatures indicating that they do not want to be represented by the original representative organization--this list must contain a majority of teachers’ signatures). This evidence must be submitted to the board within 10 days from the date on which the board posted the original notice of intent to consider the representative organization petition (after step 4, in Chapter One, is completed by the board).
2. The board’s decision on representation is contested or the board fails to post notice of its decision on the representative organization. In this case, the board must call an election to determine the question of representation no sooner than 20 and no later than 30 days after posting the notice of intent to consider the representative organization petition (after step 4, in Chapter One, is completed by the board).





3. If the board of a school district receives a petition that is signed by at least 25 percent of the members of the negotiating unit (i.e. teachers) and the petition calls for an election to determine the question of representation, the board shall call the election.

## **FAQS - NEGOTIATIONS COMMITTEE MEETINGS WITH TEACHERS' REPRESENTATIVES**

### **When should these meetings occur?**

The first meeting of the board negotiations committee and teachers' representatives must occur "no later than the thirtieth day after the representative organization is recognized by the board of the school district, in accordance with NDCC Section 15.1-16-11, unless otherwise agreed to by the board of the school district and the representative organization" (NDCC Section 15.1-16-13). The scheduling of additional meetings should be addressed in negotiations ground rules.

### **Do we need to take minutes at these meetings?**

Yes. Minutes need to be taken at these negotiations meetings but do not need to be published in the official newspaper (even if residents voted to require publication of board meeting minutes in the newspaper). Your ground rules should cover who will take minutes and the procedure for approving them.

### **Should board members who are not on the negotiations committee attend negotiations committee meetings?**

No. If a quorum of the board attends a negotiations committee meeting, even for information gathering purposes or just to observe or stay informed, the meeting becomes a meeting of the full board. Different notice provisions are required to avoid violating the open meeting laws. (See ND Attorney General Opinion 2012-O-06)

### **Are the board negotiating committee caucus meetings open to the public?**

No. "The board of a school district, or any authorized subcommittee of the board, may hold an executive session under section 44-04-19.2 to discuss negotiating strategies." (NDCC Section 15.1-16-22) Do not relinquish this statutory right by agreeing to open caucus meetings in the ground rules.

## **EXAMPLES OF BAD GROUND RULES**

- Rules that allow a quorum of the board or more to serve on the negotiations team
- Rules that do not address who can call a meeting
- Rules that allow continuous introduction of proposals without the other side's agreement
- Rules that do not address how far in advance of negotiations meetings materials must be distributed
- Rules that allow for public participation at negotiations meetings
- Rules that require the board and teachers to accept offers piecemeal
- Rules that are unbalanced (e.g., require the teachers' spokesperson to chair each meeting)
- Rules that prevent declaration of impasse or issuance of unilateral contracts



## TYPES OF SALARY SCHEDULES

There are essentially two types of salary schedules:

1. One-line schedule: Only newly hired teachers receive an increase in the base under this schedule. All returning teachers receive an increase of a separate negotiated amount on an annual basis and a salary increase after obtaining additional education credits and/or degrees.
2. Matrix schedule: This schedule is based on a matrix that begins with a base amount and increases in accordance with a teacher's education and experience. Every teacher receives the amount by which the base increases. Returning teachers also receive an experience increase (vertical step) and any education increase (horizontal step) that they have earned subject to timely filing requirements.

## EXAMPLE OF ONE-LINE SALARY SCHEDULE EXAMPLE

- **New hires:** Minimum salary for teachers employed by the district on a nine-month basis is BS **[\$27,500]**. Any teacher hired into the system may, at the discretion of the board, be granted previous years of teaching experience from another system. For each year of experience granted, a newly hired teacher will receive **[\$500]**, subject to the condition that the teacher's total curricular salary may not exceed the total curricular salary to be paid to a returning teacher with the same number of years of teaching experience and on the same education lane<sup>1</sup> except for areas of critical need as determined by the board in accordance with NDCC Section 15.1-16-21 and any signing bonus offered to a new teacher under NDCC Section 15.1-09-33.1.<sup>2</sup>
- **Educational steps:** District shall pay **[\$500]** for each **[8]** graduate credits up to **[40]** credits, **[\$1000]** for a master's degree, **[and {\$} for earned graduate credits beyond a master's degree]**. All college/university semester credits must be approved by the superintendent and all credits earned must be filed by the teacher with the business manager by **[date]**.<sup>3</sup> Failure to meet these requirements shall result in forfeiture of any raise on the education lane of the salary schedule to which the teacher would otherwise be entitled.
- **Returning teachers:** District shall provide each contracted full-time returning teacher with a **[\$500]** annual increase to the teacher's compensation package. Each part-time contracted teacher will receive the pro-rated amount.<sup>4</sup>

*NOTE: This schedule does not address hiring back a teacher who was a former employee. Such language may be added above.*

1. Such language might help convince experienced teachers to change from a matrix to a one-line schedule.
2. This language is included as a reminder that state law authorizes bonus payments to teachers who meet certain statutory criteria.
3. Such deadlines help ensure that the district does not have to make salary adjustments throughout the school year.
4. Ensure that your salary schedule addresses how pay will be calculated for part-time teachers. The board may also consider defining how years of experience will be calculated for these employees.





## MATRIX SCHEDULE EXAMPLE

SALARY SCHEDULE 2013-2014

STEP	BS	BS+8	BS+16	BS+24	BS+32	Masters	Masters+8
0	41000	41350	41725				
1	41465	41815	42190				
2	41930	42280	42655				
3	42395	42745	43120	43520			
4	42860	43210	43585	43985	44585		
5	43325	43675	44050	44450	45075	45700	46325
6	43790	44140	44515	44915	45565	46215	46840
7	44255	44605	44980	45380	46055	46730	47355
8	44720	45070	45445	45845	46545	47245	47870
9	45185	45535	45910	46310	47035	47760	48385
10	45650	46000	46375	46775	47525	48275	48900
11		46465	46840	47240	48015	48790	49415
12		46930	47305	47705	48505	49305	49930
13		47395	47770	48170	48995	49820	50445
14		47860	48235	48635	49485	50335	50960
15			48700	49100	49975	50850	51475
16			49165	49565	50465	51365	51990
17				50030	50955	51880	52505
18				50495	51445	52395	53020
19				50960	51935	52910	53535
20				51425	52425	53425	54050
21					52915	53940	54565
22					53405	54455	55080
23					53895	54970	55595
24					54385	55485	56110
25						56000	56625
26						56515	57140
27						57030	57655
28						57545	58170
29							58685
30							59200
31							59715

Insurance/Annuity 23% of base = \$9,430.00

Section 15.1-16-01 (5)). Such a teacher may be advanced to the next step of experience credit, provided that the final year of teaching was a full school year, as defined by NDCC Section 15.1-06-04.

*Note: This schedule encourages teachers to pursue continuing education. It freezes teachers' pay after ten years if they fail to make a lane change.*

## SAMPLE LANGUAGE TO ACCOMPANY MATRIX

Teachers new to the district and those desiring a change in lane based on education must file an official transcript of credits in the office of the superintendent on or before [date]. Only college or university graduate credits, or credits that are part of an approved graduate program, may be used for horizontal movement on the salary schedule. Credits earned must be in the field of education or subject matter in which a teacher is licensed or assigned to teach and must be approved by the superintendent or his/her designee. Failing to provide the required documentation by the stated deadline will result in the forfeiture of any horizontal movement on the salary schedule to which an individual is otherwise entitled.

No more than five years of credit (full years only will be considered) is allowed on the salary schedule for teaching experience prior to employment with the district.

A teacher who was previously employed in the district and is re-employed may be granted the same number of years of experience on the salary schedule as allowed the last year the individual was employed by the district as a teacher (see definition in NDCC





## PAYMENTS IN ADDITION TO SALARY

Boards should be cautious in compensating teachers above or beyond what is provided by the negotiated agreement. State law authorizes certain payments to teachers in addition to the salary set forth in the negotiated agreement under the following limited circumstances:

- **Hard-to-fill positions (NDCC Section 15.1-16-21):** School districts unable to fill a teaching position may offer a salary above the negotiated salary schedule. The teacher may not have taught in North Dakota in the past 12 months to qualify. State law contains DPI notification requirements to be followed before this “off-the-schedule” payment may be offered.
- **Signing bonuses (NDCC Section 15.1-09-33.1):** School districts may offer certain teachers a “one-time” bonus that is specifically excluded from the “continuing contract offer” provisions of North Dakota law and from the negotiated salary schedule. A signing bonus may be paid to an individual who is licensed or approved by ESPB, has signed a contract of employment with the district, and has never been employed in the newly assigned role by the board of the district. It can be paid in one lump sum or in installments, payable over a period of time not to exceed five years.

If additional compensation is desired or needed in a particular situation, the board and representative organization may need to negotiate a modification or addendum to the negotiated agreement. NDCC 15.1-16-18 provides that a representative organization that enters into a contract with a board retains authority to represent the negotiating unit for the duration of the contract term or until another representative organization is recognized by the board under NDCC 15.1-16-11.

## COSTING

School boards must carefully calculate the cost of teachers’ proposals. This process is called costing. Each school district should develop a spreadsheet showing teachers’ current placement on the salary schedule, cost of anticipated lane changes for at least the next two years, new teaching positions that the district anticipates creating over at least the next two years, costs of benefits over at least the next two years, and other direct and indirect costs associated with compensating teachers and offering fringe benefits. The costing spreadsheet should contain formulas allowing the board to quickly determine how teacher proposals will impact the total compensation package. Once a proposal is costed, it should be compared to the district’s budget for the upcoming school year and revenue and expenditure projections for the subsequent year to ensure the district can afford the proposal.

The following is a list of items that may be considered when costing a proposal from the teachers. Review your negotiated agreement, board policies, and teachers’ proposals to determine which of these items apply to your district and should be included when costing.







- Accidental death/dismemberment insurance
- Activities pass
- Association (ND United) leave
- Bereavement leave
- Business leave
- Cafeteria plan (flexible spending account)
- Dental insurance
- Duty-free lunch
- Early retirement
- Emergency leave
- Employee Assistance Program (EAP)
- Extended contract pay
- Extra class load pay
- Extracurricular pay
- Family Medical Leave (FMLA)
- Funeral leave
- Jury duty leave
- Health insurance (single, single plus dependent, or family)
- Health savings account
- Holidays
- Life insurance
- Long-term disability
- Mileage reimbursement
- Military leave (NDCC Section 37-01-25)
- Parental leave
- Parking
- Payroll tax for Medicare and Social Security (employer's portion)
- Personal leave (vacation)
- Professional leave
- Sabbatical leave
- Severance pay
- Sick leave days (NDCC Section 15.1-16-19)
- Sick leave bank
- Teacher retirement (TFFR) (employer paid)
- Tuition reimbursement
- Unemployment compensation
- Vision insurance
- Workforce Safety and Insurance (WSI)





The North Dakota School Boards Association is a leading advocate for public education. NDSBA is governed by a board of seven local school board members elected by their peers. Staff members have many years of experience in school-related work and, by working cooperatively with school board members around the state, combine to form an effective voice for public education. NDSBA exists to serve the needs of school leaders in areas of board training, information, and presentations.

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- Policy Services
- Superintendent Search
- NDUC Group Account
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- NDSBA publications
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