



# "Hot Topics"

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**NOTE:**

*Information provided in this document is meant to be a general survey of the law and reflect current opinions on general matters only. It should not be relied on to aid in specific legal disputes without further legal consultation.*

## COLLECTIVE BARGAINING RIGHTS OF FIREFIGHTERS AND DISTRICTS

Idaho Code Title 44, Chapter 18 sets forth the collective bargaining rights of firefighters and Districts. Yes, the Employer actually has rights too! This Hot Topic article is meant to briefly describe what happens when commissioners are informed by employees that they either have or intend to join a firefighter's union. Of course, whether the firefighters join a union or not, they still have the right to organize (sometimes as a "labor-management group" or as an "employee association"). They do not have to join an official union in order to collectively bargain with their employer concerning the terms and conditions of employment.

Idaho Code Section 44-1801 provides the definitions of two important terms used in the collective bargaining process. It defines "firefighter" as basically meaning any paid members, except supervisors, of any regular constituted fire department in any city, county, fire district or political subdivision within the State of Idaho. Please understand that the term "supervisor" is generally only going to apply to fire chiefs, assistant chiefs, and some fire marshals. Please review this definition and note how narrowly the term "supervisor" is defined.

The second term that is defined is “corporate authority”, which means a council, commission, trustees, or any other governing body of any city, county, fire district or political subdivision whose duty it is to establish wages, working conditions, and other conditions of employment of firefighters.

Section 44-1802 is a broad statement of the collective bargaining rights of firefighters. Please note that all this section states is that the firefighters have the right to bargain collectively with their respective employers and to be represented by a bargaining agent (usually a union or an employee association) as to the wages, rates of pay, working conditions and other terms of employment. Section 44-1803 provides that bargaining agents selected by a majority of the firefighters of an employer shall be recognized by the employer as the sole and exclusive bargaining agent of the employees. Section 44-1804 states that it is the obligation of the employer to bargain in good faith with the employee representative, and to cause any agreement resulting from the negotiations to be reduced to a written contract. The written contract is often referred to as the collective bargaining agreement or CBA.

So what does this duty of good faith bargaining require? Well, the Idaho Statute is quite vague on this matter, and there are very few cases in Idaho that provide any guidance from the courts on what this statutory language means. Therefore, as to the general parameters of good faith bargaining, we can look to guidance from the National Labor Relations Board’s decisions. Idaho case law does state that where the Idaho Statute is silent as to the intent and meaning of a particular provision, a reviewing court can consider as guidance the case decisions from the National Labor Relations Board. The NLRB interprets the Federal National Labor Relations Act.

Although the NLRB decisions are full of twists and turns that commissioners need to be aware of when they commence collective bargaining, in general, “bad faith” in the bargaining process will be found if the totality of bargaining circumstances show that a party went into negotiations with a fixed position and was unwilling to consider any alternative proposals. However, the corollary to this general rule is that the obligation to bargain in good faith does not compel either party to agree to a proposal or require the making of a concession. Indeed, the courts have recognized that adamant insistence on a bargaining position which is genuinely and sincerely held by a party does not constitute bad faith. NLRB decisions hold that if the insistence on a particular position is genuinely and sincerely held, it may be maintained though it produces a stalemate.

Therefore, if commissioners are about to engage in collective bargaining for the first time, it is strongly suggested that they contact legal counsel who can advise them concerning the “do’s and don’ts” of this process. Without a road map of how to bargain in good faith, the result will be a recipe for receiving a claim from the union for bad faith bargaining. Commissioners must know the rules of the road before they enter the collective bargaining highway.

Additional indicators of bad faith bargaining include the following:

1. Mere discussion with a resolve not to enter into any agreement;
2. Making patently unreasonable proposals or demands;
3. Dilatory tactics;
4. Failing to provide negotiators with the ability to conduct bargaining;
5. Failure to provide relevant information;
6. Conditioning further negotiations on matters such as abandonment of a strike;
7. Unilateral changes in wages, hours or conditions of employment before bargaining is completed or impasse has been reached;
8. Bypassing the bargaining representative and dealing directly with employees; and
9. Making intentionally false or dishonest statements.

Idaho Code Section 44-1805 provides that if an agreement is not reached within 30 days from the date of the first collective bargaining meeting, all unresolved issues shall be submitted to a fact finding commission. Section 44-1806 provides the process for how the fact finders are appointed. Basically, the union chooses one individual to serve as its fact finder (usually a union official of some sort), and the fire district chooses an individual to serve as its fact finder. The fact finder does not need to have any particular qualifications to serve, and the process is set up so that the fact finders chosen by the parties will be inherently biased in favor of the party selecting the fact finders. As with many dispute resolution processes, this means that a third fact finder is to serve as the neutral fact finder. The fact finders for the two parties thereafter attempt to agree on a person to serve as the neutral fact finder. If they are unable to reach agreement on the neutral fact finder, then the matter is submitted to the Idaho Department of Labor, and the IDOL selects the neutral fact finder. There are time limitations for this selection process, so please review this section of the law carefully.

Section 44-1809 provides that the fact finding commission will actually conduct a hearing in the matter, that the parties are entitled to be heard, that they can present evidence material to the controversy and shall also have the right to cross-examine witnesses at the hearing. The hearing is conducted by all members of the fact finding commission, but a majority may render the "recommendation". Section 44-1810 provides that the fact finders "recommendation" is to be in writing and then signed by the members of the fact finding commissioner who join in the recommendation. The commission shall then deliver a copy of the recommendation to the bargaining agents. Please note that sections 44-1809 and 1810 provide that the work of the fact finding commission will result in only a "recommendation" to be provided to the parties. The board of fire commissioners is free to accept or reject the recommendation. This is a very important point to understand because the typical draft CBA presented by the employees to a District contains a provision that states the recommendation of the fact finders shall be "binding" on the commissioners. As you can see, the statute states specifically that the opinion of the fact finders is merely a "recommendation" to the board. Therefore, a board must carefully consider

whether it wants to agree in a CBA that the opinion of the fact finders should be binding on the elected officials of the district.

This brings up another hot issue concerning the collective bargaining process. The employee groups would prefer to have the employee grievance procedures and the fact finding process, be binding on the elected officials. The process to reach a binding resolution of these issues is often times referred to as “binding arbitration”. In essence, the employees would like to see that if the bargaining agents for the district and the bargaining agents for the employees can’t reach agreement on provisions to be included in a collective bargaining agreement, or in employee grievance procedures, that the matter then be arbitrated to some third party. Then, the third party would ostensibly enter its decision concerning the matter, and, under binding arbitration, the decision of the third party or “arbitrator” would be binding on the elected officials of the district. It should be noted that binding arbitration has pros and cons and each board of commissioners should weigh carefully the advantages and disadvantages of agreeing to binding arbitration in any form. Employees often argue that binding arbitration is a cheaper and quicker way to resolve disputes. Commissioners, on the other hand, often recognize that they are elected by the taxpayers to make final decisions on such important matters as wages, benefits, employment status, and other employment issues. Obviously, if commissioners agreed to binding arbitration, they would be relinquishing that duty to a third party, who may or may not be familiar with the local community in which the district is located.

It should be noted that the Idaho Legislature never intended to pass a collective bargaining act that required “binding arbitration”. In fact, when the employee group first ran the collective bargaining act through the Legislature, the act failed to pass the senate because it contained a binding arbitration provision. The next year, the legislature noted that the binding arbitration provision had been removed and the collective bargaining act was then passed. So, it seems clear that the legislature was not in favor of tying the hands of the elected officials by passing a collective bargaining act that included mandatory binding arbitration. Nonetheless, a board of commissioners can elect to agree to a binding arbitration process if they feel that such is appropriate under the particular circumstances in their district.

It should also be noted that there is presently a bill pending before Congress to allow collective bargaining rights for public safety employees, including firefighters. One version of that bill has passed the U.S. House of Representatives. However, it only passed after the binding arbitration language was taken out of the bill. Further, the Idaho congressional delegation voted unanimously against the bill. Even with the binding arbitration provisions removed, the Idaho representatives voted against the bill.

Finally, Idaho Code Section 44-1811 prohibits employees from going out on strike during the term of a written collective bargaining agreement. In addition, said section provides that no firefighter shall strike or recognize a picket line of any labor organization while in the performance of his/her official duties.

When your district is informed that the paid firefighters would like begin collective bargaining concerning the wages, benefits, terms and other conditions of their employment, please understand that There are some basic rules and time deadlines that must be followed. Beyond that, commissioners must understand the general rules concerning what does and does not constitute bad faith bargaining and unfair labor practice. It is essential that commissioners obtain legal advice prior to starting collective bargaining, since commissioners need to have a solid understanding of the “dos” and “don’ts” of collective bargaining in order to avoid claims by the employee representative that they have committed an unfair labor practice or otherwise bargained in bad faith.

In conclusion, as long as the rules of the road are generally understood by the parties, and adhered to, collective bargaining can be a positive process. It affords elected officials the opportunity to sit down with representatives of its employees to discuss the terms and conditions of employment. It provides an opportunity to explain why a district takes a certain position on an employee matter, and it gives the district officials the opportunity to hear the concerns of the employees. The process can result in better communication and working relationships between a district and its employees. However, if the rules are not understood and followed, and the process is allowed to get out of hand, the process can result in contracted legal disputes and deep wounds in the employer-employee relationship. Accordingly, commissioners who have employee groups within their fire districts are urged to become familiar with the rules of the road concerning the collective bargaining process.