




Impact Bargaining 101



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Impact Bargaining – What is it??

When there is a change to how management and the union interact, outside the scope of an existing agreement.

Our Union, upon being made AWARE of the change(s), then has the right and responsibility to demand the employer to bargain the impacts of the change(s).

- Don't forget the unwritten "30-day Rule".

What means of recourse do we have if the employer refuses to bargain?

- Grievances with Binding Arbitration (RCW 41.56.122)
- Unfair Labor Practice filed under PERC (RCW 41.56.140)

Why does the employer have to bargain impacts?

- In Washington State for Public Employers: RCW 41.56.100 – “...no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative.”
- Private Employers: **National Labor Relations Act**
- In 1935, Congress passed the National Labor Relations Act (“NLRA”), making clear that it is the policy of the United States to encourage collective bargaining by protecting workers’ full freedom of association. The NLRA protects workplace democracy by providing employees at private-sector workplaces the fundamental right to seek better working conditions and designation of representation without fear of retaliation.

What are some examples of impact bargaining

- Policy Changes
- Promotional Process/Requirements
- New Laws or Changes to Current Law
- The Order of Layoffs
- Severance Pay
- Continued Insurance Coverage
- Order of Recalls
- Simply put: Any change to your working conditions as they were known when your current collective bargaining agreement was ratified. "...including wages, hours, and working conditions..."



What do we do, and when?

- Send our demand to bargain the changes.
 - This is NOT a request... it is a demand per law.
 - “30-Day Rule”
- Should know what we are asking for:
 - Money
 - Training
 - Other Benefits, etc.
- Meet with the employer, bargain, then finalize and memorialize.
 - Memorandum’s of Understanding, Co-written policies, etc. These can depend on time constraints.

Say Hello to My Little Friend: COVID-19 Vaccine Mandate...

- Vaccine Mandate: done federally and by individual states, including Washington.
- Success
 - Many Locals jumped ahead and made that demand to bargain, not only the vaccination mandate, but the accommodations as well.
- Fail
 - Many did not, waited too long, and the implementation date fell on them quicker than they thought.

Boeing Example:

- My employer bargained directly with some of the biggest unions at Boeing. I worked closely with IAM 751 Local President Jon Holden and we accomplished what many employers weren't willing to offer.
- Religious and Medical Exemptions

What is an Accommodation?

Various federal and state laws, including the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), and the Washington Law Against Discrimination (WLAD) prevent employers from discriminating against employees on the basis of disability or sincerely held religious beliefs or practices.

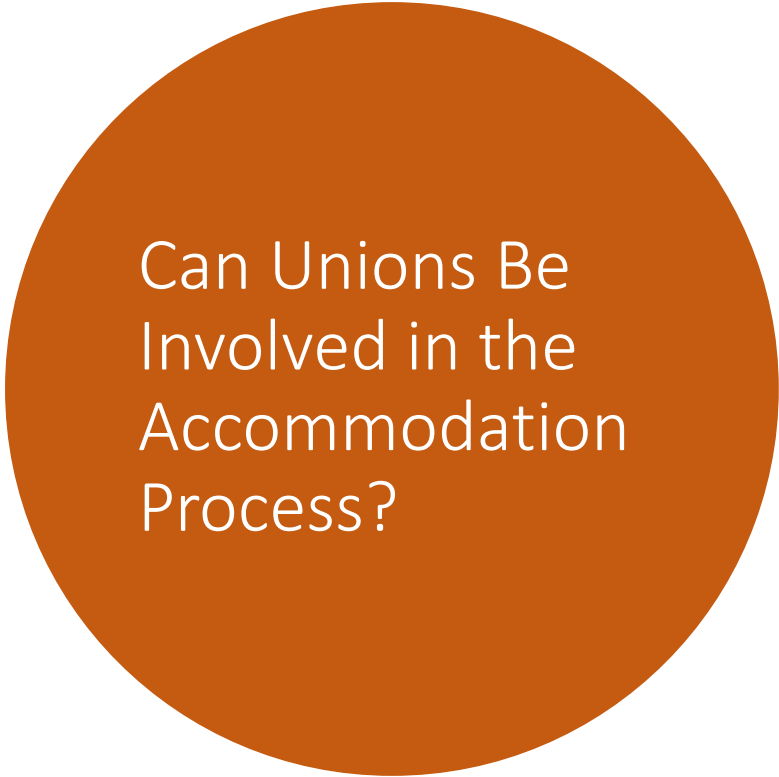
Under these laws, employers must accommodate such employees, unless the accommodation would impose an undue hardship on the employer.

What Qualifies for a Disability Accommodation?

- Under Washington law, "disability" is defined broadly, but generally to qualify for an accommodation, the employee will need documentation from their doctor supporting that they have a medical reason preventing them from complying with the work rule.

What Qualifies for a Religious Accommodation?

- "Religion" includes "all aspects of religious observances and practice, as well as belief." In this context, "religious belief" may not align with the stated beliefs of the church, and it includes religious beliefs that are new, uncommon, not part of a formal church, or only held by a few people.
- "Sincerely held religious belief" also includes moral or ethical beliefs about what is right and wrong, when those views are held with the strength of traditional religious views.
- However, views which are social, political, medical, or which are simply personal preferences, are not considered "religious" and are not required to be accommodated under the law.



Can Unions Be Involved in the Accommodation Process?

- When the work requirement or policy is new, Unions can bargain over the requirement (wages, hours, working cond.) or over the effects of the change.
- Unions also have a right to bargain the manner of the implementation of the exemption and accommodation process.
- Unions also have the right to be a part of the individual accommodation for members who meet the criteria for an exemption. Employees and employers often engage in the accommodation process without union involvement, unless the accommodation would violate the applicable CBA, or otherwise affect the rights of other represented employees. If the accommodation would materially and substantially change the employees' working conditions, Unions may bargain concerning the accommodation.

If the Employer
Denies an
Accommodation
Request, Should the
Union File a
Grievance?

- If the employer did not extend an accommodation to a member who qualifies for one, the member or union may file a grievance under the non-discrimination clause of the CBA (unless your CBA excludes discrimination claims from the issues that can go to arbitration or does not include a non-discrimination provision).
- These grievances should be evaluated in the same manner as other grievances and brought forward or not brought forward on the same basis as other grievances; doing so will meet the union's obligation to treat discrimination grievances in the same manner as other grievances. So long as a union treats failure to accommodate grievances similarly and without discriminatory intent.
- The union will have complied with its duty of fair representation and should not be found to have violated the ADA or WLAD.

Down and Dirty

The pandemic put a strain on all parties



As Firefighters we have a duty to protect the public



This is something we signed up for

NLRA Unfair Labor Practices

- **Bargaining in good faith with employees' union representative (Section 8(d) & 8(a)(5))**
- Employers have a legal duty to bargain in good faith with their employees' representative and to sign any collective bargaining agreement that has been reached. This duty encompasses many obligations, including a duty not to make certain changes without bargaining with the union and not to bypass the union and deal directly with employees it represents. These examples barely scratch the surface.
- Section 8(d) of the Act sets forth what is encompassed within the duty to bargain collectively. Section 8(a)(5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of its employees, subject to the provisions of Section 9(a)" of the Act. (An employer that violates Section 8(a)(5) also derivatively violates Section 8(a)(1).) For example, you may not

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Make changes in wages, hours, working conditions, or other mandatory subjects of bargaining before negotiating with the union to agreement or overall impasse, unless...

- (1) the union prevents the parties from reaching agreement or impasse;
- (2) economic constraints compel prompt action; or
- (3) the proposed change concerns a discrete, recurring event scheduled to recur in the midst of bargaining (such as an annual merit-wage review), and you give the union notice and opportunity to bargain over that matter.



MORE & Simplified

The employer is prohibited from changing the terms of your agreement unilaterally

If you are served notice of a change via memo, verbal discussion or even the newspaper, you **MUST** request to bargain

- Failure to do so, you have accepted the change by your silence

Even if you agree to the proposed change, request to meet in a formal setting

The Union leaders must stay sharp and understand their rights by law and their obligation to the members



MORE.....

- You must put employer on notice in a reasonable time period
- Even if you do not have a prevailing rights clause in the CBA, you still have prevailing rights minus a zipper clause
- Let it happen once, it will happen over-and-over again



Questions?

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