Reopening contract negotiations and the use of conditional provisions

The education workforce is experiencing converging crises including student and staff mental health struggles, large-scale economic impacts like rising inflation, and the effects of long-standing disinvestment. All of these are exacerbated by the ongoing COVID-19 pandemic. For years, Minnesota school districts have been facing increasing shortages in some positions. Now, districts across the state are currently facing a labor shortage in all staffing areas, which has shone a spotlight on the inadequate compensation for all educators.

In spite of difficult economic conditions for most working people, the state of Minnesota recently reported increased revenues that provide an opportunity for lawmakers to make significant investments in education funding. The governor recently included an increase in education funding in his 2022 budget proposal that would bring more funds to districts, if passed.

In recognition of staffing shortages in all positions in education, there are possibilities for increasing compensation for school staff in the event the 2022 Legislature agrees to increased education funding. This additional funding would allow increases in compensation arrangements that can be critical tools in meeting staffing needs. Such increases can be negotiated even when a Collective Bargaining Agreement is already in place.

**Guidance**

1. **PELRA clearly states that teacher contracts cannot contain reopener clauses. But there is no prohibition for other contracts, such as any ESP contract that doesn’t fall under the definition of teacher.**
2. **PELRA does not prohibit the reopening of contract negotiations under mutual agreement between the exclusive representative and the employer. This is true for contracts of both licensed and unlicensed bargaining units.**
3. **Contract language with conditional provisions is allowable in a bargained agreement.**

## Statutory framework

## The relevant statute for contract reopening issues is PELRA *(MN Statute 179.20, Contracts).* This statute prohibits a reopener clause in a contract for teachers (licensed educators). It does not prohibit the parties from reopening negotiations by mutual agreement.

## *Subd. 3. Duration. The duration of the contract is negotiable but shall not exceed three years. Any contract between a school board and an exclusive representative of teachers shall be for a term of two years, beginning on July 1 of each odd-numbered year. A contract between a school board and an exclusive representative of teachers shall contain the teachers' compensation including fringe benefits for the entire two-year term and shall not contain a wage reopening clause or any other provision for the renegotiation of the teachers' compensation.*

## For settled and unsettled locals, changes in external conditions require different paths for solving issues

The possibility of additional state education funding has prompted some local unions and districts to reconsider current compensation structures and reevaluate the need for more recruitment and retention tools. Whether for their ability to attract and retain employees or due to an increase in funding, a local and district may want to agree to enter into negotiations about their current contract.

Settled locals and a reopener clause

PELRA **does not allow** for a reopener clause to be contained in a contract for a bargaining unit covering licensed educators. An example of an illegal reopener clause would be:

*Due to the unknown rates for the 2022-24 health insurance renewal, no settlement has been reached on Article VII - Health Insurance of this master agreement and negotiations will resume once the necessary information is available, no later than Jan. 15th, 2022.*

While PELRA specifically prohibits a reopener clause for the contracts of licensed educator contracts, it **does not prohibit** such a reopener for other exclusive bargaining groups. A reopener clause is therefore possible for contracts covering non-licensed bargaining units.

A lawful reopener clause in an agreement covering non-licensed staff could read:

*In the event that the 2022 legislative session results in an increase in general education revenue, negotiations on Wage Schedules A and B of the master agreement will resume no later than July 15, 2022 or 30 days after the close of the legislative session.*

Settled locals and reopening negotiations

PELRA **does not** prohibit a settled contract from being reopened by mutual agreement, as long as it wasn’t predetermined at the time of settlement. If both the district and the local agree, they may bargain wages, compensation, current language in the agreement or items not currently in the agreement. This is true for both teacher and ESP contracts.

Unsettled locals and conditional language

Unsettled locals are in a different position in that they have a possibility to proactively bargain language that can address possible changes to education funding, even if those changes occur after settling a contract. A local could simply wait to see what happens in this legislative session and remain unsettled, which we do not recommend. A different option involves the use of conditional language. **Conditional language addresses what the agreement is under current conditions and what the agreement will be if the conditions change.**

For example, there may be a settled salary schedule that goes into effect at the time of ratification and a different salary schedule that will go into effect if a certain condition is met, like an increase in state funding during the 2022 legislative session. An example of recommended language is in the Sample Language below.

## Problematic contractual language

Some contracts may have existing language that does not allow for the reopening of contract negotiations under any circumstances, including mutual agreement. A “zipper clause” such as the example below eliminates the option to open negotiations under the term of the current contract. Different versions of a zipper clause may limit as well.

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Language from a 2019-21 licensed educator collective bargaining agreement:

*Finality*

*Any matters relating to the current contract term, whether or not referred to in this Contract, will not be open for negotiation during the term of this Contract.*

The local should first review the current contract language and discuss with their field staff what options are available.

## Ratification

A common question around MOUs and negotiated agreements is what procedure(s) the exclusive representative needs to follow to complete the negotiation process. As with any negotiated agreement, whether in the form of the whole collective bargaining agreement or a Memorandum of Understanding, locals should always check their Constitution and Bylaws for any procedural requirements. Locals should also consult with field staff on ratification procedures. In general:

* If an MOU or bargained agreement is agreeing on the interpretation of current contract language, a vote of the general membership is not necessary. The local can then follow its normal practices to reach that type of agreement. (ex. Notification of Executive Board)
* If an MOU or bargained agreement changes the terms and conditions of the contract, a ratification vote following the procedures in the Constitution and Bylaws is necessary.

## Sample conditional contract language

The following language is an example of conditional contract language that goes into effect based when triggered by agreed-upon conditions. Please note that the terms and conditions that will be in place when the conditions are met must be explicit. Contract language that increases wages needs to include the actual wage or salary schedule that will be in effect, not just a reference to an increase that will be triggered.

*In the event that any 2022 legislative session results in any increase to basic formula revenue under MN Statutes 126C.10, 2, the following provisions will take effect:*

*A.      In the event of an increase to formula revenue between 0 and 1 percent, an additional 1 percent will be added to all cells of the salary schedule found in Schedule B. The salary schedule for 2022-23 shall be as follows:*

***[insert the schedule that will be in effect if the additional revenue, up to 1 percent, passes]***

*B.       In the event of an increase to formula revenue between 1.01 and 2 percent, an additional 2 percent will be added to all cells of the salary schedule found in Schedule B. The provisions in Section A of this MOU will not apply. The salary schedule for 2022-23 shall be as follows:*

***[insert the schedule that will be in effect if the additional revenue, between 1.01 and 2 percent passes]***

## Additional considerations

* A local and district could bargain as many contingencies as are necessary to meet local union and district needs.
* With respect to increases in compensation, locals can negotiate flat dollar amounts and/or percent increases to a wage schedule.
* Districts may want language that states that an agreement is not precedent-setting, etc. Locals should consult with their field staff on any such proposed language.
* When discussing the idea of reopening negotiations, the local should very clearly detail with the district what topics and issues are to be discussed.
* All other statutory timelines in PELRA are still applicable, regardless of any reopening agreement.
* While a formal MOU or agreement is not necessary in order for a district and exclusive representative to reopen contract negotiations after a settled contract, we advise locals to document discussions between the parties. For simplicity’s sake, that documentation can be through email.