



Bargaining and Advocating Beyond COVID January 2023

The persistence of COVID-19 and the return of respiratory syncytial virus (RSV) and flu reminds us that the lessons learned from the pandemic can be enshrined in our CBAs or continued as policies. MOUs negotiated during the pandemic can serve as templates for language to be embedded in the main body of the CBA or appended to the contract. Depending on the issue, these provisions can either be specific to a public health event or applicable during the general course of operations. Below are just a few of the topics that can be addressed in our CBAs or in discussions with employers, where bargaining does not occur.

Impact Bargaining: Although requirements relating to impact bargaining, affects bargaining, or mid-term negotiations are often dealt with through statute and case law, a CBA can address impact bargaining either in broad application or for specific issues. When it comes to matters of public health, the bargaining agreement may cover things like an automatic trigger for impact bargaining such as transmission rate, number of cases in the school or community, and number of persons exposed on any particular school grounds; notice requirements for initiating impact bargaining; and how agreements and disagreements are handled for clearly mandatory subjects of bargaining and for decisions that affect terms and conditions of employment. An agreement on impact bargaining can also identify the topics to be addressed such as how the continuity of educational services will be maintained; necessary health and safety protections and requirements; assignment and reassignment of job duties; continuity of pay and benefits; and conditions for reopening. Qualify a specific list of bargaining topics with “including but not limited to,” “e.g.,” or “for example.”

Health and Safety Committee: A provision for a health and safety committee can be negotiated into the CBA. The existing health and safety committee language should be reviewed and can be modified to include important operational features. The language should spell out committee composition; meeting frequency, venue, and records; release time and costs; memorializing agreements; and specific operational responsibilities such as:

- Monitoring and inspecting health and safety conditions of the district, school buildings, campuses, and worksites (including buses and extracurricular activities).
- Reviewing and recommending appropriate health and safety procedures to be implemented and maintained by the employer.
- Assuring compliance with state and federal occupational safety and health laws, other relevant laws and regulations, and any additional legal requirements that take effect during the term of the agreement.
- Placing sole responsibility on the employer to provide a safe and healthy workplace.

Hazard Pay: A contract can include a provision for hazard pay for bargaining unit members who are required to work in-person when schools or campuses are physically closed for public health reasons.

Paid Leave: An Association can bargain additional paid leave (separate from an employee's accrual) when employees or family members contract or are exposed to a contagious disease or for vaccination-related absence. Additionally, an Association can negotiate for a sick leave bank that can be accessed by unit members who have exhausted their accrued leave. Also, the CBA can make available a short-term disability program to ensure continued compensation to employees in case of illness or disability. Access to short-term disability benefits can begin after a defined period of illness or disability and sick leave used during the period prior to granting a short-term disability can be restored.

Healthcare Benefits: Since the pandemic, many affiliates have successfully reversed the decades' long trend of shifting healthcare costs on to employees by negotiating lower costs for their members and expanding health coverage. An Association can bargain for comprehensive healthcare coverage to ensure that deductibles, copays, premium contributions, and out-of-pocket expenses are not cost prohibitive of the services needed including, but not limited to, in-office visits, prescription medications, or continuing tests for long-term illness. This also means that affiliates with high deductible health plans can revisit whether those plans should be continued. Telehealth services can also be included as part of the health benefits plan and those services can be made free of charge to employees. In addition, due to the ambiguity surrounding the coverage of the COVID vaccine following the ending of the public health emergency and the uncertainty of the out-of-pocket costs of obtaining such vaccine, an Association can bargain for coverage of the vaccine to decrease any out-of-pocket expenses for the employee.

ADA: The pandemic saw an increase in requests for accommodation under the Americans with Disabilities Act; a trend that is likely to continue moving forward. The provisions of the ADA apply to unions as the exclusive representative and as an employer, and unions have a legal duty of fair representation. As such, an Association should be prepared to assist unit members in seeking a reasonable accommodation and work with the employer to determine the reasonable accommodations that are available to employees. This may require negotiation if the requested accommodation results in a material, substantial, or significant change in the terms and conditions of employment. However, an accommodation agreement should not infringe on the contractual rights of other unit members.

American Rescue Plan: ARP funds come with a tremendous amount of flexibility in how they are used. Things like paid leave, hazard pay, and telehealth benefits are included among the allowable uses of ARP funds. As a reminder, ARP funds must be obligated for use by September 2024.

Instructional Models: The pandemic taught us a lot about instructional delivery models. With the lessons learned still fresh in our minds, in addition to considering bargaining the creation of an instructional model joint committee for potential planning preparations, here are a few key demands in the event it once again becomes necessary for schools to pause from fully in-person instruction:

Fully Remote Instruction

- Provide employees with all necessary technology and equipment, including assistive devices for employees with disabilities.
- Provide training, user guides, and direct support.
- Reimburse employees for high-speed connectivity.
- Work with vendors to modify software and platforms to make them more practical and user friendly.
- Ensure all students have equitable access to connectivity and technological devices, including any necessary assistive devices, to fully participate in the educational program and complete assigned work. This may entail delivering hard copies of materials to students if internet connectivity is unavailable.
- Establish a workday that specifies grade-level time requirements for synchronous and asynchronous instruction, office hours, planning time, collaboration time, and breaks.

Hybrid Instruction

- Allow staff to select a preference for either an in-person or remote teaching assignment and require them to do only one or the other, but not both.
- Prohibit staff from being required to provide in-person and remote instruction concurrently.

For more information on these and other issues that can be bargained beyond COVID, please contact CBMA at CollectiveBargaining@nea.org.