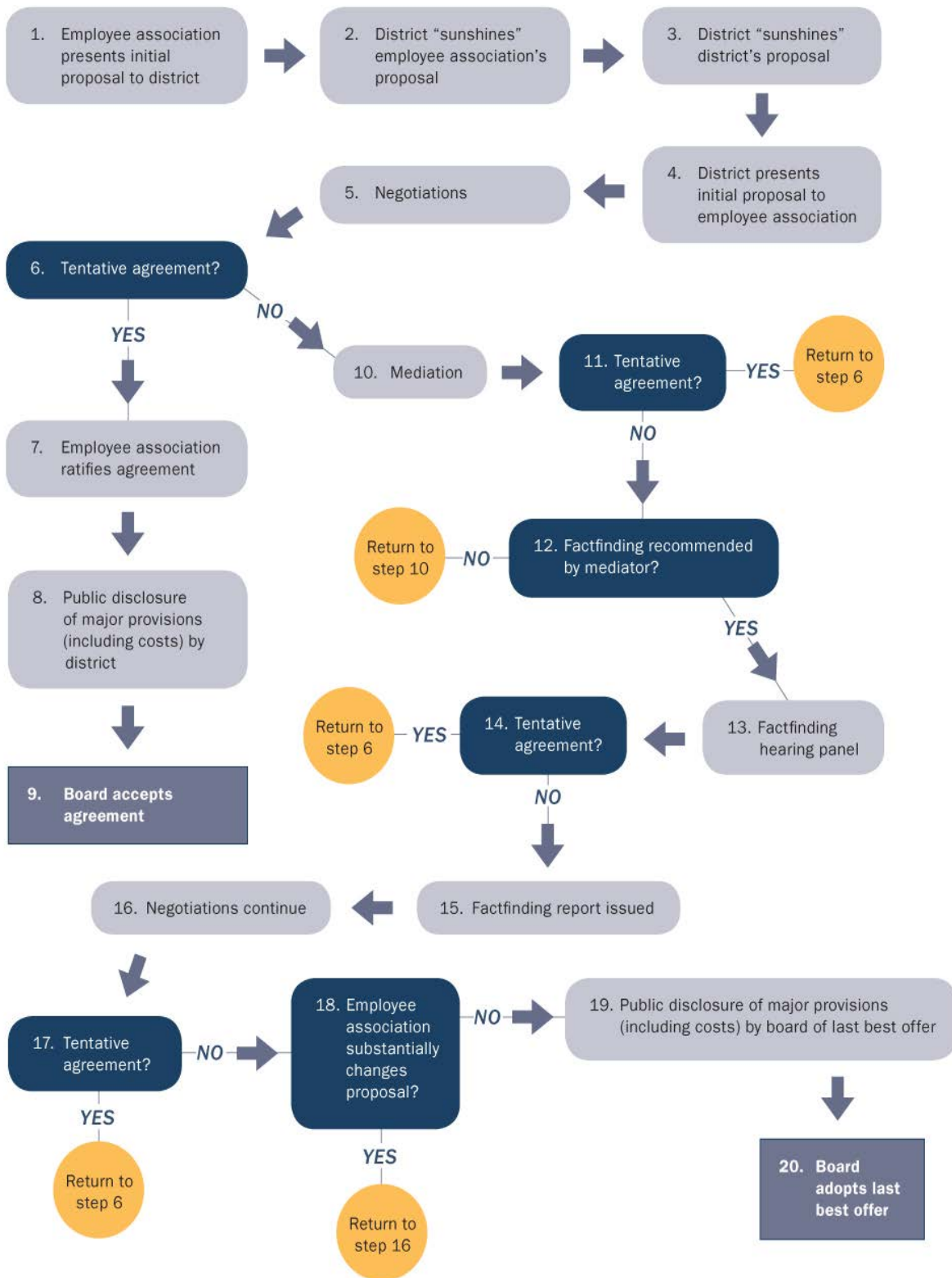


Collective Bargaining Flowchart



Collective Bargaining Flowchart Narrative

1. The collective bargaining process is governed by Educational Employment Relations Act, Government Code Section 3540 et. seq. Negotiations usually begin when the employee organization (exclusive representative) submits its initial proposal to the employer, although the district may also initiate negotiations.
2. Government Code Section 3547 requires that all initial proposals of an exclusive representative and school district be presented at a public meeting of the school district, and that a public hearing be held on the proposals at subsequent public meetings. This process is called “sunshining.” When a board sunshines a proposal, it provides an opportunity for the public to be aware of and comment on the subject matter and proposals being negotiated by the district and employee organization. After presentation of initial proposals, the board has an ongoing duty to sunshine within 24 hours any new subjects under negotiation and the roll call of all votes taken on such subjects.
3. Typically, the district sunshines its proposal after the employee organization’s proposal is released. Providing public notice of the availability of proposals and holding public hearings can take from one to two months to complete. California Code of Regulations, Title 8, Section 32900, mandates that every school district adopt a board policy implementing these public notice requirements.
4. After sunshining its initial proposal, the board adopts its initial proposal and presents it to the employee association.
5. After all proposals are sunshined, negotiations can begin. Government Code Section 3543.7 states that the duty to bargain in good faith requires that negotiations begin in time to reach agreement or resolve an impasse prior to the adoption of the district budget. EERA specifies the scope of what must be bargained (Government Code Section 3543.2) and imposes duties upon both parties related to appropriate conduct (Government Code Sections 3543.5 and 3543.6). Either party may file an unfair labor practice charge against the other party alleging a violation of EERA (Title 8, Section 32615).
6. If both bargaining teams reach tentative agreement, the process concludes with acceptance of the agreement by both parties. If the district and employee organization are unable to reach agreement, one or both parties may declare impasse (Government Code Section 3548).
7. Typically, following tentative agreement, the employee organization membership ratifies the contract first.

8. Government Code Section 3547.5 requires that before the board enters into a written agreement with an exclusive representative, the major provisions of the agreement including, but not limited to, the costs that will be incurred in the current and subsequent fiscal years, be disclosed at a public meeting. Government Code Section 3540.2 specifies that districts whose budgets are certified as qualified or negative must allow the county office of education at least six working days to review and comment on any proposed agreement. In addition, districts whose budgets are disapproved by the county superintendent are subject to review and control by the county superintendent as set forth in the Education Code Section 42127 et. seq.
9. The Government Code Section 3540.1 definition of meeting and negotiating concludes: “a written document incorporating any agreements reached...shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties...” Education Code Section 42142 requires the superintendent to forward any budget revisions necessary to fulfill the terms of the agreement within 45 days of the adoption of the agreement.
10. The statutory impasse procedures begin with mediation (Government Code Sections 3548 and 3548.8). The mediation process consists of the appointment of a professional mediator (also known as a conciliator). These individuals are usually employees of the State Mediation and Conciliation Service, Department of Industrial Relations, although the parties may select another person if they pay the costs. The mediator has no authority other than the power of persuasion and the fact that the parties must participate in the mediation process “in good faith” or risk being charged with an unfair practice by the other side.
11. If mediation produces an agreement, the process of accepting the contract takes place (numbers 7–9 on the flowchart). If mediation does not produce an agreement, the mediator may require that the parties continue negotiations or may declare fact-finding to be appropriate to the resolution of the impasse.
12. If the mediator does not declare fact-finding to be appropriate, the mediator retains jurisdiction and may call for additional mediation. If the mediator declares fact-finding to be appropriate, either party may request that fact-finding take place by notifying the other party in writing (Government Code Section 3548.1).
13. The fact-finding hearing is conducted by a three-member fact-finding panel. Within five days after receipt of a request to proceed with fact-finding, each party selects one member of the panel. Within five days of the selection of panel members, the Public Employment Relations Board selects a chairperson from a PERB-supplied list. (Both sides alternately delete a name from the list until one is left.) Within five days after PERB selection of a chairperson, the parties may agree on a chairperson other than the person appointed by PERB (Government Code Section 3548.1). There are no specific statutory

guidelines for how the hearing is conducted; there is, however, a list of specific criteria that the panel must consider when making their findings (Government Code Section 3548.2).

14. Often the parties are notified of the fact-finding recommendations by their panel representatives prior to the issuance of the report and a settlement is reached. If fact-finding results in agreement, the fact-finding report is usually not issued and the process of accepting the contract takes place (7–9 on the flowchart). If no agreement is reached within 30 days after the factfinding hearing or longer if mutually agreed upon, the panel issues an advisory recommendation on the terms of the settlement.
15. The fact-finding recommendations are submitted privately in writing to the parties and must be made public by the employer within 10 days of receipt (Government Code Section 3548.3).
16. Following completion of the impasse procedures, the next steps depend on the previous conduct of the parties and the strategy they each choose to pursue. The parties may continue negotiations. The mediator may continue mediation efforts (Government Code Section 3548.4). The employee organization may decide to go on strike. (PERB has the authority to determine the legality of a strike and whether or not to seek a court injunction against the strike. If the employee organization has participated in good faith in the bargaining process, PERB will most likely not attempt to stop a strike.)
17. If agreement is reached, the parties conclude negotiation by accepting the agreement (7–9 of the flowchart). Absent any agreement and assuming the district participated in negotiations and impasse proceedings in good faith, the board may decide to adopt its last, best offer. Adopting a last offer, however, is a very complicated matter which should only be undertaken with advice of legal counsel.
18. If the employee organization makes substantial changes in its position, the district has a duty to continue bargaining.
19. Public disclosure of major contract provisions is required prior to entering into a written agreement (8 on the flowchart) and should also take place prior to any unilateral action by the district to implement its last, best offer.
20. If the district has gone through the bargaining process in good faith and the employee organization makes no substantive change in its proposals, the district may choose to implement its last, best offer or the district may choose to do nothing and to continue operating under the terms of the expired contract.