Bargaining is not a “one size fits all”. Please contact your MFPE Field Consultant for advice tailored to your local’s situation and labor agreement <https://www.mfpe.org/about-mfpe/meet-our-staff/>

Given recent constraints on public gatherings COVID-19 imposed in Montana, MFPE has fielded questions related to bargaining contracts that were in the process of or are open for negotiation in 2020.

If your labor agreement is not open, the employer cannot demand the union engage in bargaining. The current pandemic does NOT provide any rational basis for the Employer to conduct layoffs or to demand rollbacks.

To limit the spread of the virus, the State of Montana has ordered Montanans to stay home as much as possible. While citizens may leave their residences for essential activities or to operate essential businesses or operations, they must practice social distancing guidelines that include no gathering in groups of more than 10 and staying at least 6 feet away from one another. <https://covid19.mt.gov/Portals/223/Documents/Stay%20at%20Home%20Directive.pdf?ver=2020-03-26-173332-177>

While this order is/was set to expire on April 10, 2020, we fully expect continued limitations on group gatherings until the pandemic has passed.

**So how does this affect collective bargaining?** As it relates to Montana’s school boards, honestly, ***not much***.

Montana’s school boards have continued to conduct business in both regular and special board meetings from the first week Montana’s governor issued his executive order closing schools on March 15, 2020. These meetings are occurring in person or through some type of video conferencing.

Bargaining meetings are also public meetings and require the same treatment as any other board meeting--public notice of the date and time of meeting, the purpose of the meeting, and an opportunity for the public to be heard.

The school board cannot delay bargaining using the current pandemic as an excuse. While you may not be meeting face-to-face and the new process may be somewhat unwieldy, **i*t can be done***.

Montana Code Annotated imposes a “Duty to Bargain in Good Faith” on both the school board and the exclusive representative (union) and that duty continues to exist. <http://erd.dli.mt.gov/Portals/54/Documents/Labor-Standards/MAA%20Conference%20Presentations/Collective%20Bargaining%20Outline%20M%20Thiel.pdf?ver=2019-08-30-090634-317>

**Montana law requires:**

**Duty to Bargain Collectively -- Good Faith**

“**39-31-305. Duty to bargain collectively -- good faith.** (1) The public employer and the exclusive representative, through appropriate officials or their representatives, have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2).

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or the public employer's designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising under an agreement and the execution of a written contract incorporating any agreement reached. The obligation does not compel either party to agree to a proposal or require the making of a concession.”

**COVID-19 and the limitations placed on public gatherings does not give your school district the right to:**

* Delay bargaining, or refuse to meet
* Make any changes in wages, hours, working conditions, or other mandatory subjects of bargaining before negotiating with the union to agreement or impasse
* Engage in bad-faith or surface bargaining
* Refuse to furnish, or unreasonably delay in furnishing, information the union requests that is relevant and necessary for the union to bargain
* Make unilateral changes in terms and conditions of employment during the term of a collective-bargaining agreement, unless the union has clearly and unmistakably waived its right to bargain
* Insist on ground rules prior to bargaining. Ground rules are not required, and the school board may not insist on them before meeting with the union
* Bypass the union and deal directly with employees

It’s also possible for the union and management to open the labor agreement but mutually agree to delay bargaining. If this is a strategy that your union might want to pursue, be sure to bargain the details, including how long bargaining will be delayed AND what provisions bargained will be retroactive to the labor agreement’s expiration date? Details matter! **These agreements** **should be memorialized in a Memorandum of Agreement.**

MFPE advises all local affiliates to conduct business as usual *but modified as necessary* to comply with the guidelines Montana has issued and may issue in the near future. **When in doubt, call your Field Consultant!**