



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

May 23, 2013

*Delivered via Electronic and Statehouse Mail*

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STATE DEPARTMENT OF EDUCATION  
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Re: Request for Additional Analysis – Teacher Contracts and Master Agreements

Dear Mr. Hancock:

This letter is in response to your request of May 7, 2013, for a written legal analysis on the following question:

If a school district board of trustees is unable to reach a collective bargaining agreement with its teachers union in time to meet the July 1 statutory deadline for issuing individual employment contracts, and then proceeds to declare an impasse and issues such contracts based on the board's last collective bargaining offer, can the board continue negotiating with the union after the July 1 issuance of such contracts, and reach an agreement at a later date, which could then modify the terms of the individual employment contracts under the contract language that states "*The terms of this Contract shall be subject to amendment and adjustment to conform to the terms of a Master Contract applicable for the same school year as this Contract, including, but not limited to, amendments or modifications made pursuant to Section 33-522, Idaho Code.*"?

**1. Individual certificated personnel contracts incorporate the terms of a master contract applicable to the same school year even if the master contract is reached after those individual contracts are issued.**

Currently employed certificated personnel must be given notice of whether they will be rehired for the next school year by July 1 of each year.<sup>1</sup> The individual contracts for such certified personnel are issued by school districts by the same date. The practical effect of this requirement is that the contracts for certificated personnel being rehired by a school district are issued on or before July 1 for the next school year. As your question points out, it is quite possible that master contract collective bargaining may not have concluded by the July 1 date referenced above, and any individual certificated personnel contracts issued prior to July 1 may contain provisions that differ from those in a master contract reached thereafter. Your question's italicized quotation from the standard contract form reflects the parties' determination to incorporate any later-negotiated master agreement terms that differ, and this contract provision has been enforced by the Idaho Supreme Court.<sup>2</sup> Thus, individual certificated personnel contracts entered prior to a master contract for the same school year will incorporate the applicable provisions of the master contract pursuant to the express terms of the individual certificated personnel contracts and Idaho law.

**2. Under Idaho Code § 33-1275, as amended April 11, 2013, school districts likely may issue individual certificated personnel contracts on July 1, even if the parties have not negotiated to impasse.**

The recent amendments to Idaho Code § 33-1275<sup>3</sup> prompted additional consideration of what terms may be incorporated into individual certificated personnel contracts issued prior to a master contract for the same school year. As stated in the March 28 letter to Superintendent Luna concerning similar collective bargaining issues, school districts must negotiate in good faith with local education associations until the parties either reach an agreement or impasse. The National Labor Relations Act ("NLRA") provides that the duty to bargain in good faith includes continuing the terms and conditions of employment existing prior to negotiations, which typically are those terms and conditions specified in the collective bargaining agreement being re-negotiated. Under the NLRA, once impasse is reached, the employer may institute its last, best offer with respect to terms and conditions of employment, which is described more fully in the March 28 letter. However, the March 28 letter did not address the issue of whether a school district may implement its last, best offer on July 1 even if the parties have *not* negotiated to impasse.

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<sup>1</sup> See Idaho Code § 33-514(2) (Category 2 and 3 contracts); see also Idaho Code § 33-515 (renewable contracts).

<sup>2</sup> See *Buhl Educ. Ass'n v. Joint Sch. Dist. No. 412*, 101 Idaho 16, 22-23 (1980) (with respect to individual certificated personnel contracts entered prior to a master agreement applicable to the same school year, "those [individual] contracts become and are modified by applicable provisions of the [master] agreement which thereafter results."). See also, e.g., *Potlatch Educ. Ass'n v. Potlatch Sch. Dist. No. 285*, 148 Idaho 630, 633, 226 P.3d 1277, 1280 (2010) ("When interpreting a contract, this Court begins with the document's language. . . . 'In the absence of ambiguity, the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument.'") (citation omitted).

<sup>3</sup> 2013 Idaho Session Laws Chapter 329; 2013 S. 1147aa (enacted April 11, 2013, effective retroactively to November 21, 2012).

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Under revised Idaho Code § 33-1275, master agreements are limited to a one-year duration between July 1 and June 30. Specifically, subsection (1) provides:

The parties shall not have the authority to enter into any agreement negotiated under the provisions of this act that has any term that allows for such agreement or any provision of such agreement to be in any force or effect for multiple years or indefinitely, or otherwise does not expire on its own terms on or before June 30 of the ensuing fiscal year.

Idaho Code § 33-1275(1).<sup>4</sup> The categorical prohibition against provisions in a master contract having “force and effect” after the contract’s termination is absolute and likely means that school districts *may* implement their last, best offer as part of individual certificated personnel contracts, even if the parties have not negotiated to impasse.<sup>5</sup> In other words, requiring a school district to continue prior terms and conditions of employment through application of NLRA-grounded principles cannot be reconciled with the unambiguous prohibition in Idaho Code § 33-1275(1). As a result, school districts likely have the statutory authority to issue individual certificated personnel contracts on July 1 even if the parties have not negotiated to impasse.

I hope you find that this analysis responds adequately to your inquiry and provides additional guidance on those issues discussed in the March 28 letter to Superintendent Luna. Also, please note that this is a general analysis of the issues identified above, and, as noted in the March 28 letter, it is imperative that school districts collaborate closely with their attorneys to ensure compliance with their obligations under Idaho’s education statutes.

Sincerely,



ANDREW J. SNOOK  
Deputy Attorney General

cc: Tom Luna, Superintendent of Public Instruction  
Luci Willits, Chief of Staff

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<sup>4</sup> Subsection (2) provides an exception to the general one-year requirement for items other than “compensation and benefits”, which allows the parties to enter an agreement with “a nonrolling two (2) year duration with a designated start date and end date” for items other than “compensation and benefits”. Idaho Code § 33-1275(2).

<sup>5</sup> School districts likely may also choose to incorporate existing terms and conditions into the individual contracts as opposed to implementing its last, best offer; *i.e.*, the district likely has the option either to implement its last, best offer or to incorporate existing terms and conditions of employment.