

# More and more of you experience contentious, drawn-out bargaining

Is it time to seek a solution to negotiations that go on and on?

In Delaware, if you and your district cannot come to agreement on the terms of a new contract, you can request mediation. If that produces no settlement, you may ask the Public Employment Relations Board (the PERB) for the services of a third-party, neutral “fact-finder” to examine the issues and make a recommendation on what he/she thinks is fair. The trouble is that the recommended settlement is just that. It is only recommended – “advisory-only.” If both parties don’t accept it, then you’re back at the table.

In recent history, DSEA locals have experienced long delays and lack of a legal resolution or closure, with negotiations lasting up to two years. Time and energy are spent picketing school board meetings, engaging parent groups, finding some way to get back to the table.

## Solutions do exist

In Pennsylvania, Alaska, California, Colorado, Hawaii, Illinois, Minnesota, Montana, Ohio, Oregon, Vermont and Wisconsin, public school employees have the legal right to strike. However, according to NEA, strikes have been less and less frequent over the years.

Several states have gone a different route to giving contract negotiations real finality, passing laws which give their organized public school employees what is called “binding interest arbitration.”

That is the name for binding arbitration for contract resolution, not to be confused with what public school employees in Delaware do have (thanks to intense DSEA lobbying in the late 90’s) which is binding arbitration for grievances.

The term “binding interest arbitration” comes from the fact that the arbitrator takes into consideration the interests of both parties with his/her decision being “binding” on both parties.

There are two types: last best offer, whereby the arbitrator looks at the last offers of both sides and picks one; and issue by issue arbitration, where the arbitrator looks at each issue and decides which side’s position to include in the settlement.

## Seventeen states and D.C. have binding interest arbitration for public school employees

Alaska, Connecticut, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island and Vermont have various forms of legal, final resolution processes that call for binding arbitration of contract disputes. Some are only for non-economic matters (i.e., money items such as wages, pension benefits, and health care benefits are excluded and are not subject to this process).

## State merit employees have binding interest arbitration

Just last spring, the General Assembly passed a collective bargaining bill for state merit employees that included refinements to their right to binding interest arbitration.

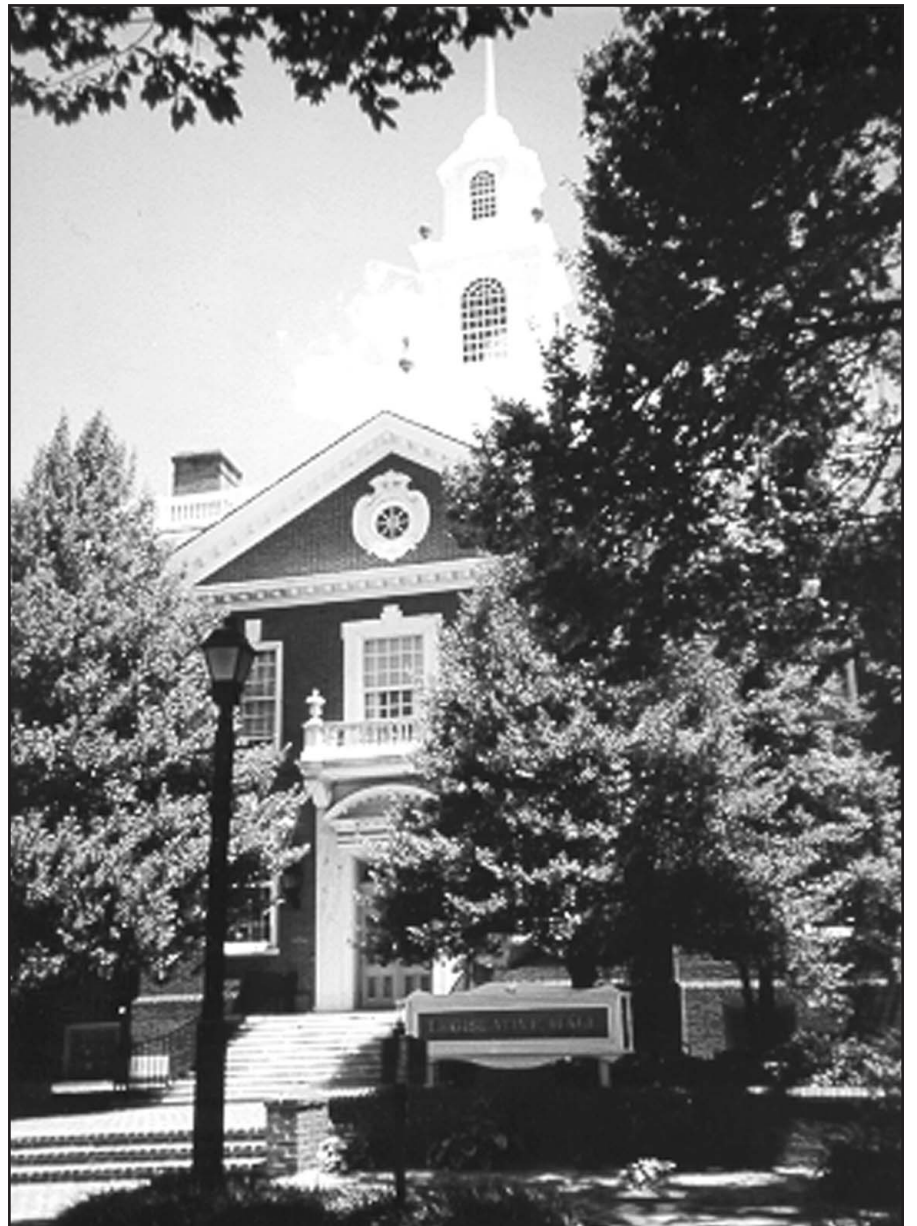
Says Howard Weinberg, DSEA’s executive director, “Given the frequency of bargaining struggles, perhaps we should reexamine this legislative solution. The current situation, that gives no finite ending to bargaining, is demoralizing to our members and can be damaging to the educational process: it pits administrators and school boards against us when, in fact, we should be working together for the betterment of the students and education in general.”

## We have history of long bargaining disputes

In Delaware, you don’t have to look far to remember long, contentious bargaining that took over two years to settle, going through mediation and fact-finding with no resolution in sight.

And right now, we have several locals at the mediation and fact-finding stages:

- Brandywine E.A., Appoquinimink E.A., Christina E.A., Sussex Tech E.A., Christina Paras and Secretaries have all filed for mediation.
- Red Clay Food Service is at mediation.
- Colonial E.A. has filed for fact-finding.



**Take our survey:** Do you think DSEA should pursue binding interest arbitration with the General Assembly next year? Go to [www.dsea.org](http://www.dsea.org) and let us know.

The Indian River Paras just went through fact-finding. The school board not only rejected the fact-finder’s recommendations, it then offered less than they offered during fact-finding, a situation which our attorneys are currently researching as an Unfair Labor Practice.

## There are risks, however

Binding interest arbitration does have a downside. You might not always win. The decision of the arbitrator may not go your way on every issue. “It might not be as chancy as say, rolling dice, but it is a gamble to a certain extent. You’d have to be extra careful that your bargaining position was winnable,” adds Weinberg. “Our overwhelming experience, however, has been that fact-finder decisions have been acceptable to us, but rejected by the school boards.”

## Delaware law provides us a model for “last best offer” binding interest arbitration

The system set up for organized state merit employees, firefighters and state police is regulated by the Public Employment Relations Board. You can find the entire regulation on the web at: <http://delcode.delaware.gov/title19/c013/index.shtml>. (Caution: these regulations do NOT apply to public school employees in Delaware.)