Impasse Explained

(Cliff Notes Version)

In California, public schools bargain under the EERA (Education Employment Relations Act) which is administered by PERB (the Public Employment Relations Board). On the national level, we would think of this as the NLRA and NLRB.

Under the EERA, there are several steps in the bargaining process, all designed to help the parties reach a written agreement. The first step is meeting and negotiating directly. If these meetings fail to produce a settlement, the second step, mediation, takes place.

Mediation is just what it says it is. A mediator from the State Mediation and Conciliation Service comes in and tries to bring the sides together. If successful, there is a settlement. If not successful, it is as if it never happened.

If mediation is not successful, the mediator can certify the parties for the last step: fact-finding. Fact-finding is a formal hearing held before a panel of three – a "neutral" chairperson, a panelist from the District, and a panelist from the Association. The chairperson is selected from a list from PERB by "striking names" (picking the best of the least desirable to both sides), by mutual agreement, or by PERB appointment, if the first two methods aren't used.

Both the District and the Association present their case for each of the issues to the panel. This includes both testimony and supportive evidence. (A second mediation effort can, and often does, occur at this point.)

The panel is charged in the EERA with considering:

1. applicable law;
2. stipulations of the parties (mutually agreed to);
3. interests of the public including the employer's ability to pay;
4. salary and working conditions comparability;
5. cost of living;
6. benefits already in place; and,
7. other factors the panel finds relevant.

After the hearing, the panel publishes a written decision which includes each of the issues in dispute. This decision is not binding. It is only advisory. With the report, mediation, usually with the original mediator returning, resumes for at least one session. If this effort still fails to generate a settlement, impasse is said to have now been "exhausted."

With the "exhaustion of impasse" any of four things can legally happen:

1. The District can lock out the employees. In the 30+ years we have been under this law, this has seldom (if ever) happened.
2. The employees can engage in a strike. This would entail a strike authorization vote by the members.
3. The District can "impose" its "last, best and final" offer, implementing its proposal on the table when impasse was declared.
4. Nothing happens. Everything remains status quo and the process starts all over for the next year.