
**2012 OHIO SCHOOL BOARDS ASSOCIATION
CAPITAL CONFERENCE**

OCSBA SCHOOL LAW WORKSHOP

***TEACHER EVALUATIONS, REDUCTIONS IN FORCE AND
COLLECTIVE BARGAINING AFTER HB 153 and SB 316***

**November 13, 2012
Greater Columbus Convention Center
3:30 p.m.**

Presented by:

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Update on Teacher Evaluation, Reduction in Force and Collective Bargaining

I. Implementing Education Reforms in a Tough Financial Environment: HB 153 + SB 316 – SB5 = A Challenging Time at the Table!

A. Introduction – The Backdrop for District Negotiations – 2013 and Beyond

As budgets continue to shrink, efforts to understand the dynamics of compensation (including the cost of fringe benefits) has never been more important to leaders in public education.

1. Despite the overwhelming decision by Ohio voters not to support the emasculating of collective bargaining (Senate Bill 5), it is fair to say that there has been a transformation in the minds of constituents regarding the salaries of teachers, administrators and other employees of our schools.
2. The longstanding anonymity of the infamous matrix known as the “salary schedule,” with its built in raises, has all but evaporated – partly in response to the extensive attention drawn to the ill-fated legislation. These costs are simply no longer hidden from the view of the public.
3. In point of fact, as the effects of the recession and the snail’s pace of the recovery linger in our communities, the concept of cost-savings and “doing more with less” has become the mantra.
4. Roughly 60% of Ohio voters polled prior to voting on Senate Bill 5, said they would favor the following:
 - a. A minimum 15% contribution by employees for health care premiums;
 - b. A minimum 10% of employees wages to be paid toward retirement; and
 - c. Merit pay to replace automatic step increases.

B. The “Mother Ship” is Still Taking on Water – Despite the Casinos

Inadequate funding of public education in Ohio is not likely to resolve anytime soon, despite the presence (and promise?) of casinos. We are long removed from the days of projecting state foundation increases in our Five-Year Forecasts.

C. Conserving Water in the Camel’s Hump – It’s a Long Walk between Levies

Similarly, the ability to convince local voters to add increases in taxation in the midst of their current plight has become more difficult – and in some areas, impossible.

Consequently, the passage of new money is no longer cause for raising the expectations of school employee groups, since “making the money last” is the predominant motivation for prudent districts.

D. Get ready to address the “fear factor”

These are not your father’s negotiations! We are being asked to do more with less and employee morale is at a low point.

E. Less Money + Increased Accountability + Unfunded Mandates = ?????

Does the socio-political “sea change” provide us with more or fewer opportunities at the table?

F. Invest in the process!

Clearly, districts spend most of their money through the terms of the negotiated labor contracts. These agreements also organize relationships that are critical to student outcomes. Minimizing the importance of bargaining and failing to embrace the process would be a major oversight – particularly at this juncture.

G. One size does not fit all

That said, each district must tailor the bargaining process and its goals to meet the circumstances that exist on the ground.

H. Swinging for the fences v. incremental change

Collective bargaining is about relationships and the connection of people to the District; remember that the pendulum swings both ways and how we treat employees in these difficult times will not be forgotten (one way or the other!).

I. Preparation, preparation, preparation

The value of focused and comprehensive pre-bargaining preparation cannot be understated. This means that all the stakeholders must be invited to the conversation.

II. Education Reform and Collective Bargaining – Washington, Wisconsin, Chicago and Columbus

A. The Chicago Teacher Strike:

Increased teacher accountability for student outcomes was at the heart of this labor action. Will Ohio schools follow suit?

B. Teacher Evaluations under the Ohio Revised Code After H.B. 153 and S.B. 316

1. As we all know by now, the passage of H.B. 153, as modified by S.B. 316, portends unprecedented changes to the way school districts evaluate their teachers. As required by this accountability legislation, teacher evaluations must now rely on two key evaluation components: a rating of teacher performance and a rating of student academic growth. Each rating is weighted at 50% of each evaluation, though there is latitude within each category for local input and development.
2. As the deadline looms (July 1, 2013, for “non-RttT” districts) for the adoption of a board policy on standards-based teacher evaluation, the fear factor rises for both labor and management. Sensing that this is not just another “compliance” issue and fearing that the motivation for this legislation was to make it easier to end teaching careers, the labor unions are working to ameliorate the perceived ills of the legislation.
3. Meanwhile, a number of Ohio districts appear to still be waiting for further guidance from the ODE, SERB, the courts – somebody/anybody – while hoping for the “magic bullet” to emerge that will solve all their compliance problems before the deadline hits. Since the ODE has already issued its Model Policy Framework – complete with “spaces” for each district to fill in, there is little justification for any district not being actively engaged in the policy development process by this point. The clock is ticking and there is a considerable amount of work to do before the deadline.
4. Clearly, the evaluation of teachers has always been a subject of significant concern for the unions, particularly since “Black Tuesday” when the Supreme Court announced a series of decisions that gave credence to the nickname for the legislation of that time (HB 330) as “instant tenure.”
5. To be sure, the effects of a poor evaluation have a direct impact on teacher employment. Since the passage of HB 153, the response from labor has been consistent and pointed – i.e., you can pass all the board policies you want, but, as always – you will need to bargain over how the implementation of those policies affects the terms and conditions of employment.
6. Remember, also, that the evaluation legislation has significant ramifications for teacher layoffs, which can no longer be accomplished on the basis of “seniority,” absent a tie between two teachers with “comparable” evaluations (whatever that means – more on this later).

7. Added to the drama is the fact that this dynamic is playing out at a time when the OEA and the OFT are struggling mightily to hold on to what they have in an environment of scarcity and unprecedented public scrutiny. (This is not Wisconsin.....yet).
8. What path will you take when dealing with the sensitive issues raised by the teachers union? What are the short and long term effects of “digging in” on these issues? Can we implement? Should we?

C. Breaking it Down: What does the passage of H.B. 153 and S.B. 316 mean for boards of education?

R.C. § 3319.111 - Evaluating Teachers on Limited Contracts

(A) Not later than July 1, 2013, the board of education of each school district, in consultation with teachers employed by the board, shall adopt a standards-based teacher evaluation policy that conforms with the framework for evaluation of teachers developed under section 3319.112 of the Revised Code. The policy shall become operative at the expiration of any collective bargaining agreement covering teachers employed by the board that is in effect on the effective date of this section and shall be included in any renewal or extension of such an agreement.

D. What are the timelines for implementation?

Traditional public schools that do not receive “Race to the Top” funds must have approved evaluation policies in place no later than July 1, 2013. Implementation of those policies must begin in the 2013-2014 school year.

Race to the Top LEAs must implement in 2013-2014 or earlier per their approved “Scope of Work” and timelines.

These provisions do not apply to community schools unless they participate in Race to the Top.

E. What does the final framework of a standards-based teacher evaluation policy look like?

(See R.C. § 3319.112 – Standards-based State Framework for the Evaluation of Teachers and ODE Model Teacher Evaluation Policy)

F. Interpretations of the Requirements for Implementing Teacher Evaluations:

1. What is the meaning of the phrase “*in consultation with teachers*”?

Does it mean the board must collectively bargain the terms of the evaluation process with teachers? ☹

-or-

Does it mean a board must take teacher input into account in the drafting of the terms of the evaluation process? ☺

2. Two Views on the Impact of H.B. 153/S.B. 316 on Collective Bargaining:

Labor: The statutory inclusion of the evaluation policy in future collective bargaining agreements clearly points out the statutes’ intent that the evaluation policy is an item subject to collective bargaining. ☹

-vs-

Management: While the evaluation policy must be made “in consultation with teachers” the statute does not state that the Board must negotiate the evaluation policy with a teachers’ union. In essence, consultation is not a synonym for bargaining and the General Assembly never intended to make boards of education negotiate its own policies. ☺

3. Regardless of interpretation, nothing in H.B. 153 or S.B. 316 states boards of education do not have to bargain the **effects** of the mandatory teacher evaluation system. (If that is what they wanted to do – as they did in Senate Bill 5 – why didn’t they just say it?)
4. Thanks to Senate Bill 316, the requirements of Section 3319.111 are subject to the following somewhat cryptic proviso:

Notwithstanding any provision to the contrary in Chapter 4117 of the Revised Code, the requirements of this section prevail over any conflicting provisions of a collective bargaining agreement entered into on or after the effective date of this amendment.

- a. Really? That’s all you got?
- b. What are the requirements?

- c. When is there a conflict?
- d. It is déjà vu all over again (R.C. 3319.17).

G. The Death of Seniority – Reduction in Force after 153/316

- 1. In addition to driving promotion (?), retention, professional development and the removal of poorly performing teachers, the new evaluation language takes on an added dimension, since the Budget Bill removed seniority from consideration in any reduction in force. As such, employees who are at the bottom of the “performance” chain are more likely to be laid-off.
- 2. In light of existing financial circumstances, reductions are expected to continue as districts struggle to balance their budgets. Therefore, the ranking (Accomplished, Proficient, Developing, Ineffective) of teachers by performance will have significant impact on who stays and who goes.
- 3. The operative changes in the Reduction in Force Statute, 3319.17, are set forth below:

(C) In making any such reduction, any city, exempted village, local, or joint vocational school board shall proceed to suspend contracts in accordance with the recommendation of the superintendent of schools who shall, within each teaching field affected, give preference first to teachers on continuing contracts and then to teachers who have greater seniority. In making any such reduction, any governing board of a service center shall proceed to suspend contracts in accordance with the recommendation of the superintendent who shall, within each teaching field or service area affected, give preference first to teachers on continuing contracts and then to teachers who have greater seniority. The board shall not give preference to any teacher based on seniority, except when making a decision between teachers who have comparable evaluations.

On a case-by-case basis, in lieu of suspending a contract in whole, a board may suspend a contract in part, so that an individual is required to work a percentage of the time the employee otherwise is required to work under the contract and receives a commensurate percentage of the full compensation the employee otherwise would receive under the contract.

The teachers whose continuing contracts are suspended by any board pursuant to this section shall have the right of restoration to continuing service status by that board in the order of seniority of service in the district or service center if and when teaching positions become vacant or are created for which any of such

teachers are or become qualified. No teacher whose continuing contract has been suspended pursuant to this section shall lose that right of restoration to continuing service status by reason of having declined recall to a position that is less than full-time or, if the teacher was not employed full-time just prior to suspension of the teacher's continuing contract, to a position requiring a lesser percentage of full-time employment than the position the teacher last held while employed in the district or service center. Seniority shall not be the basis for rehiring a teacher, except when making a decision between teachers who have comparable evaluations.

(D) Notwithstanding any provision to the contrary in Chapter 4117. of the Revised Code, ~~the~~:

(1) The requirements of this section, as it existed prior to the effective date of this amendment, prevail over any conflicting provisions of agreements between employee organizations and public employers entered into after between September 29, 2005, and that effective date;

(2) The requirements of this section, as it exists on and after the effective date of this amendment, prevail over any conflicting provisions of agreements between employee organizations and public employers entered into on or after that effective date.

4. Expect to see these requests from your Teachers Association:
 - a. Preserving seniority for a lengthy “phase in” period;
 - b. Requiring multiple years of “Ineffective” evaluations before they can be used to justify a reduction;
 - c. An attempt to tie-in the concept of “transfer” to employee evaluations;
 - d. Additional “grace periods” for teachers who have a change in evaluators;
 - e. The same old, same old – “just cause” and “arbitrary, capricious” language;
 - f. Preservation of “displacement rights” based on (you guessed it) seniority;
 - g. Recall rights that also preserve seniority;
 - h. Efforts to severely restrict the definition of “comparable evaluations”; and

- i. Language preventing any teacher with errors in the evaluation to be exempted from RIF.

H. Resolution of the Evaluation/RIF Issues Does Not Require a Fight – Some Perspective

1. Evaluation systems that fail to provide meaningful feedback and/or those developed without stakeholder input are doomed to failure. If you can work out an evaluation system that conforms to the statute and regulations – you are on your way.
2. When utilizing a new or existing evaluation “committee,” it is critical to fight for the right to get “consultation” from recognized teacher leaders, not just survivors or union leaders.
3. It really is about the kids – embrace the opportunity for change.
4. ...but, at the same time, hedge your bets a little on the controversial issues of the day vis-à-vis the duty to bargain (what, when and how), as this may be changing even as we speak. To date, SERB has refused to hear “duty to bargain” cases filed on the evaluation process – a good sign.
5. Even if your districts are successful in hammering out a collaborative system with stakeholder input and “buy in,” there are still some obstacles to accountability – not the least of which is the time and resources necessary to complete the task of implementation of the new system. There is little reason to believe that teachers will not actively challenge non-renewals or “removals of poorly performing teachers” in order to have the courts lessen the effects of this legislation.
6. Sample CBA language that may prove useful as we develop the new board policy:

Evaluation Review Committee (“ERC”)

In accordance with Ohio Revised Code Section 3319.111, the parties acknowledge that a standards-based teacher evaluation policy must be adopted by the Board and thereafter included in this Contract on or before July 1, 2013. In order to facilitate the adoption of Board policy as required by law, an Evaluation Review Committee (ERC) will be formed to provide additional stakeholder input and facilitate the statutorily required consultation with teachers relative to the development of that Board policy.

1. *Composition*

- a. *In addition to participating administrators, the Committee shall be comprised of four (4) bargaining unit members recommended by the Association President and approved by the Superintendent.*
- b. *Bargaining unit Committee members shall be teacher leaders representative of elementary, secondary and specialty areas within the District.*

2. *Operational Procedures*

- a. *The Committee shall be chaired jointly by a bargaining unit Committee member and an administrator.*
- b. *Members of the Committee will receive training in the state adopted Evaluation Framework model prior to beginning their work.*
- c. *The Committee will establish by mutual agreement a meeting calendar and timeline for work completion. At the initial meeting, the Committee will develop the ground rules by which the Committee will operate.*
- d. *The Committee may establish sub-committees to assist with their work whose members will be jointly appointed by the Committee co-chairs.*
- e. *By the end of the 2012-2013 student school year, the Committee will recommend an evaluation policy for adoption by the Board.*

3. *Secretarial Support*

The Board will provide necessary clerical support and assistance to the Committee.

4. *Committee Authority*

- a. *The Committee shall not have the authority to negotiate wages, hours or terms and conditions of employment.*
- b. *The Committee is responsible only for recommending a standards-based teacher evaluation policy to the Board.*

“Kicking the can down the road” on RIF:

Reduction In Force

For the purposes of any Reduction in Force (RIF) for the school year 2012-2013 all bargaining unit members will be considered “comparable.” RIF procedures for 2012-2013 will be conducted under current contract language.

.... and on Evaluation:

TEACHER EVALUATION

The evaluation of the work of any teacher is the responsibility of the administration, but the development of an appropriate and fair instrument and procedure for evaluation is of proper concern to the entire teaching staff and administration. The primary purpose of teacher evaluations is to aid in the professional development of each certificated/licensed staff member.

A Board-adopted policy for standards-based teacher evaluation will be included in this Agreement and replace this Article in consultation with teachers and in accordance with R.C. 3319.111. Until such time, the following will continue to be implemented: (followed by Current Language).

DEVELOPMENT OF NEW EVALUATION SYSTEM

*The Board will consult with teachers during the Board’s development of a standards-based teacher evaluation policy/system as required by House Bill 153. The Association will **recommend** to the Superintendent up to six (6) bargaining unit members to participate in a committee that provides feedback and consultation to the Board/administration as it develops the new teacher evaluation policy. Additional District educators may be asked to participate by the Superintendent. The Board will make efforts to include all committee members in any county-level trainings and/or meetings hosted by the county educational service center to develop a template for the teacher evaluation policy. The new teacher evaluation system may be piloted during the 2012-2013 school year at a variety of grade and subject levels. Teacher participants in any pilot testing will be voluntary and must not be*

employees on limited contracts that expire at the end of the 2012-2013 school year, or employees on probationary status or on plans of assistance/improvement. The pilot evaluations shall not become part of any employee's personnel file and will not be used as a basis for any employment actions.

If necessary and only to the extent required by law, following the Board's adoption of the standards-based teacher evaluation policy, the Parties shall engage in mid-term bargaining to address the effects of the new teacher evaluation policy on terms and conditions of employment if requested by the Association.

I. Top Ten Suggestions for Addressing Teacher Evaluation and RIF Issues

1. Maintain a forceful position that the ultimate responsibility for the new evaluation policy, like any other required board policy, resides with the board of education. (Be ready to respond to the OEA template – see Appendices A and B).
2. Openly acknowledge that the “consultation” process is an important component of the policy development and emphasize that collaboration on what makes sense to all stakeholders is a high priority for the district.
3. Find a way to assure that teacher leaders with good knowledge of pedagogy and effective instruction are involved in the consultation process.
4. Clarify that you fully understand that should the process not result in total consensus, a bargaining obligation may well arise vis-à-vis the effects of the evaluation policy on terms and conditions of employment.
5. Support the collaborative process with time, resources and energy – the clock is ticking! The ODE Model Policy provides a framework, but there are a number of significant local decisions that remain to be made.
6. Resist efforts to “pre-determine” the components of the policy before the committee begins the work (on both sides!).
7. Pay close attention to the time constraints endemic to the new evaluation process – there will be pressure from teachers to compress the timelines from the expanded calendar provided by the new legislation (i.e. June 1 vs. April 30, etc.).

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8. Since the “teacher performance” aspect of the evaluation process must align with the Ohio Standards for the Teaching Profession – an immediate focus upon the “student growth measures” is crucial.
9. Be prepared to address the following:
 - a. Do you need a definition of a “*walkthrough?*”;
 - b. What does “*comparable*” mean with respect to evaluations;
 - c. Procedures for using the evaluation in “*promotion and retention*” decisions;
 - d. Procedures for using evaluations in the removal of “*poorly performing*” teachers;
 - e. The allocation of district resources for *professional development*;
 - f. The structure and components of *professional growth and improvement plans*; and
 - g. Who are teachers “*under consideration for nonrenewal?*”
 - h. Are you going to utilize *outside evaluators?* Peers?
10. Avoid the inevitable efforts by labor to disregard the clear message that seniority is no longer an important factor in the reduction in force process.

Information is power – take the extra steps to remove the underlying fear and distrust out of the process. Remember that the kids are the focus here.

APPENDIX A

*OEA Template on Evaluation Policy Development
Coming to a Theater Near You!*

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE _____ TEACHERS ASSOCIATION
AND
THE _____ LOCAL SCHOOLS BOARD OF EDUCATION**

This Memorandum of Understanding is entered into this ___ day of _____ 2012, by and between the _____ **TEACHERS ASSOCIATION** (hereinafter referred to as the “Association”) and the _____ **LOCAL SCHOOLS** (hereinafter referred to as the “Board”).

WHEREAS, the Board of Education and the Association are currently parties to a negotiated agreement effective _____ through _____; and

WHEREAS, Article _____ of the current negotiated agreement establishes the evaluation procedure; and

WHEREAS, recently enacted Ohio HB 153 legislation requires School Districts to establish a new evaluation framework for teachers to be adopted by July 1, 2013; and

WHEREAS, the parties desire to collaboratively develop a new evaluation system consistent with the requirements established by HB 153;

NOW THEREFORE, the parties agree to the following:

1. To establish a joint Evaluation Development Committee for the purpose of creating an Evaluation Framework, procedure, and process for the evaluation of certified employees in _____ Local Schools.
2. The Committee shall be comprised of 8 Association members appointed by the Association and 2 members appointed by the Board or its designee. In addition each party may appoint up to one (1) ad hoc non-voting member to assist and/or attend committee meetings.
3. Committee members shall be representative of elementary, secondary, and specialty areas within the District.
4. The Committee shall be chaired jointly by a committee member from the Association and a committee member from the Board.
5. Members of the committee will receive training in the state adopted Evaluation Framework model prior to beginning their work.
6. The committee will establish by mutual agreement a meeting calendar and timeline for work completion.

7. All decisions of the committee will be achieved by consensus.
8. At the initial committee meeting, the committee will develop the ground rules by which the committee will operate.
9. Members of the committee will receive release time for committee work and training.
10. The committee may establish sub-committees to assist with their work. Sub-committees will be jointly appointed by the Superintendent/designee and the Association President.
11. The committee shall be authorized to use consultants as it deems appropriate.
12. Any committee work required outside the work day will be paid at the per diem rate.
13. The committee is solely responsible to jointly develop the policy and procedure for teacher evaluation. The committee shall not have the authority to negotiate wages, hours, or terms and conditions of employment.
14. By February 1, 2013 the committee shall recommend an evaluation model to the Board and the Association.
15. The Board and the Association shall produce the final evaluation model for ratification and vote by the parties.
16. Once ratified by both parties the newly adopted procedure shall be incorporated into the parties' negotiated agreement and will go into effect for the start of the 2013-2014 school year.
17. Any subsequent changes/revisions to the adopted Evaluation Procedure shall be subject to ratification by the Board and the Association.
18. In the event of legislative action by the Ohio General Assembly that impacts in any way on this topic, the parties agree to bargain any appropriate adjustments required.
19. The current evaluation procedure as established in Article _____ of the current negotiated agreement between the parties shall remain in effect during the work of the Evaluation Committee and until the effective date of the newly adopted evaluation procedure.
20. This constitutes the entire agreement between the Board and the Association regarding the issues outlined herein. There are no other written or verbal

agreements, understandings or arrangements between the parties regarding the issues outlined herein. Any amendment to this MOU must in writing and signed by both parties.

_____ **TEACHERS ASSOCIATION**

_____, President

_____ **LOCAL SCHOOLS**

_____, Superintendent

APPENDIX B

Sample MOU Language – Binding Arbitration on Effects Bargaining

**SAMPLE MOU LANGUAGE – BINDING ARBITRATION ON EFFECTS
BARGAINING**

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between the _____ Local Board of Education (“Board”) and the _____ Education Association (“Association”) on this _____ day of _____ 2012.

WHEREAS, recently enacted legislation requires the Board to adopt a standards-based evaluation policy, after consultation with teachers, by July 1, 2013; and

WHEREAS, the parties desire to work collaboratively develop a recommendation to the Board for the adoption of said policy;

It is the agreement of the parties as follows:

1. Article ____ Evaluations will remain as current contract language until the lawful implementation of the Board adopted, standards-based teacher evaluation policy. When said policy is adopted and implemented, Article ____ of the Contract will be deemed a nullity as to employees covered by said Board policy.
2. Evaluation Review Committee (ERC)

In accordance with Ohio Revised Code Section 3319.111, the parties acknowledge that a standards-based teacher evaluation policy must be adopted by the Board and thereafter included in this Contract on or before July 1, 2013. In order to facilitate the adoption of Board policy as required by law, an Evaluation Review Committee (ERC) will be formed to provide additional stakeholder input and facilitate the statutorily required consultation with teachers relative to the development of that Board policy.

A. Composition

In addition to participating administrators, the Committee shall be comprised of four (4) bargaining unit members appointed by the Association President and approved by the Superintendent and four (4) members appointed by the Superintendent. Committee members will be representative of elementary, secondary and specialty areas.

B. Operational Procedures

1. The Committee shall be chaired jointly by a bargaining unit Committee member and an administrator.

2. Members of the Committee will receive training in the state adopted Evaluation Framework model, including the OTES model for the teacher performance component.
3. The Committee will establish by mutual agreement a meeting calendar and timeline for work completion. At the initial meeting, the Committee will develop the ground rules by which the Committee will operate.
4. The Committee may establish sub-committees to assist with their work whose members will be jointly appointed by the Committee co-chairs.
5. By the end of the 2012-2013 student school year, the Committee will recommend an evaluation policy for adoption by the Board. Nothing herein, including the failure of the ERC to make such recommendation, will be deemed to diminish the statutory duty of the Board to adopt a standards based teacher evaluation policy.

C. Compensation/Release Time

Any Committee work required outside of the work day (release time) by teacher members of the Committee will be paid at the _____ rate for time approved by the Committee co-chairs.

D. Secretarial Support

The Board will provide necessary clerical support and assistance to the Committee.

E. Committee Authority

- a. The Committee shall not have the authority to negotiate wages, hours or terms and conditions of employment.
- b. The Committee is responsible for recommending a standards-based teacher evaluation policy to the Board.

3. Post Policy Adoption – Effects Bargaining – Mutual Dispute Resolution

- A. If necessary and upon request of the Association, following the Board’s adoption of the standards-based teacher evaluation policy, the Parties shall engage in mid-term bargaining to address the effects of the new teacher evaluation policy on terms and conditions of employment to the extent required by law.

1. Should such bargaining occur and should the parties fail to reach agreement when bargaining over the effects of the Board adopted, standards-based teacher evaluation policy within thirty (30) days of a request to bargain, if any, the following procedure shall be utilized by the parties exclusively for the purpose of resolving any differences relative to said “effects” bargaining:
 - a. The Federal Mediation and Conciliation Service (FMCS) will be requested by the parties for the purposes of obtaining the services of a federal mediator. The assigned mediator shall seek to promote and/or develop an agreement between the parties, and shall have all the necessary authority to call and schedule meetings between the parties for such purpose. Any and all costs and/or expenses charged by FMCS for its services, if any, shall be shared equally by the parties. However, if mediation is scheduled during the teacher work day, the Board shall provide release time for the Association’s bargaining team at its expense.
 - b. In the event that mediation is unsuccessful in developing an agreement between the parties on the issue(s) of the effects of the Board adopted teacher evaluation policy on terms and conditions of employment after a period of thirty (30) days, and if there is no mutually agreed extension of the time period for mediation, the parties agree to submit the outstanding items to expedited binding arbitration through the American Arbitration Association (AAA).
 - c. The parties shall mutually petition the AAA to provide both parties with a list of seven (7) names from which an arbitrator will be selected by the alternate strike method and notified in accordance with the rules of the AAA. The toss of a coin will determine who strikes first. Either party has the right to request a second list.
 - d. Once the arbitrator has been selected, he/she shall hold the hearing promptly and issue the decision within such time as may be agreed upon. The arbitrator shall confine him/herself strictly to those issues which relate to the effects of the Board adopted teacher evaluation policy on terms and conditions of employment. On each outstanding issue, the arbitrator shall consider the last written proposal of both parties and shall decide whether to:
 - i. Accept the Association’s last written proposal made during effects bargaining as a final settlement; or,

- ii. Accept the Board's last written proposal made during effects bargaining as a final settlement.
- e. The arbitration award shall be final and binding upon both the Board and the Association regarding the Board adopted evaluation policy unless contrary to law.
- f. The parties shall equally share the expenses of the arbitration between them.
- g. The parties agree that this procedure represents the parties' mutually agreed upon dispute resolution procedure for mid-term bargaining on the matters relating to the effects of the Board-adopted evaluation policy on terms and conditions of employment therefore supersedes the procedure contained in O.R.C. 4117.14.

IN WITNESS WHEREOF, the parties hereby signify their agreement by affixing the signatures of their respective representatives below.

FOR THE BOARD:

FOR THE ASSOCIATION:

Superintendent

Association President

Board President

Association Officer