

Negotiations 101: **An Overview of the Process & Helpful Guidelines**

- I. Introduction
 - A. Overview of how parties prepare for and conduct negotiations between boards of education and school employee associations
 - B. Effective bargaining for school boards requires preparation
 - C. Preparation should begin at least 2 months before first meeting with the school board and at least 3 months before first table session with the employee's association
- II. Knowing the Law and Other Bargaining Parameters
 - A. Scope of Bargaining
 1. Refers to the topics the parties will negotiate
 2. Determined by state law
 3. Three main categories of possible bargaining subjects are mandatory, permissive and prohibited (illegal)
 4. Public school collective bargaining is governed by state law
 5. Often, the negotiation process is the product of local practice, custom, and history
 - B. Duty to negotiate in good faith
 1. School board's obligation to negotiate in good faith is a necessary part of collective bargaining
 2. Failure to do so could subject the school board to unfair labor practice charge (ULP)
 3. Note that the duty to negotiate in good faith does not mean that a party is compelled to make a proposal, to agree to a proposal, or to make a concession (*i.e.* "hard bargaining" not prohibited)
 4. Obligation is on both parties
 5. Basic elements

- a. Meet at reasonable times and places
- b. Bargain over mandatory subjects of bargaining, including salary, wages, hours, and other terms and conditions of employment, until an agreement or impasse is reached
- c. Bargain with the intention of reaching an agreement (*i.e.* “best efforts” to consider and respond to proposals made by the other party)
- d. Endeavor to agree on an effective bargaining process
- e. Respect the role of the exclusive bargaining representative by not seeking to bargain directly with employees represented by the unit
- f. Do nothing to undermine the bargaining process or authority of the other’s representative
- g. Make every reasonable effort to conclude negotiations with a final written agreement in a timely manner
- h. Reduce to writing the matters agreed on as a result of negotiations
- i. Honor and administer existing agreements
- j. Not unilaterally change a term of employment that is a mandatory subject of bargaining while a valid collective bargaining agreement is in effect, while the parties are bargaining, but have not yet reached an impasse

6. Examples of bad faith bargaining

- a. Surface bargaining (*i.e.* meeting and going through motions with no intent of reaching an agreement)
- b. Refusing to meet
- c. Delaying meetings
- d. Failing to give chief negotiator sufficient authority to make agreements

C. Three Main Types of Bargaining

1. Traditional Bargaining

- a. The most widely used form of bargaining

- b. Each side submits proposals and the agreement is the result of compromise
- c. The process can be confrontational, as the positions of each party are often firmly entrenched

2. Expedited

- a. May be useful when the number of issues is small and the parties are well prepared to directly address them

3. Interest-based negotiation

- a. A process that focuses on interests, separates the people from the problem, and where teams work together to invent options that meet the interests of both sides for mutual gains
- b. A collaborative decision-making process, which requires a high level of commitment from the participants
- c. Consider current labor-management climate, the need for timely resolution, and the amount of change that needs to be made from the current agreement
- d. Consider training on this model of bargaining beforehand to ensure everyone understands the process

4. Other variations exist

III. Pre-Bargaining (Preparation)

A. Gathering information

- 1. Administrators, human resources directors, principals, and other employees identify barriers in collective bargaining agreement as well as ways to improve education in the district and make recommendations for contract changes to management's benefit
 - a. Individuals should comment on issues they have noticed, or areas where practice does not meet the contract language
- 2. Review grievances and arbitrations from the contract term
- 3. Address past union issues to identify potential union proposals
- 4. Address ambiguous language and provisions that resulted in grievances and/or litigation and determine whether language needs to be changed or clarified

5. Address unfavorable arbitration awards by proposing changes to problem-causing language
 6. Review unfair labor practice charges filed during prior contract term
 7. Strengthen management rights and obtain agreement to address prior unilateral changes and pending charges
 8. Consider legal compliance review of current contract to identify areas where current language conflicts with changes in law or best practices
 - a. Evaluation
 - b. RIF
 9. Housekeeping changes to current contract
 - a. Out of date materials
 - b. Memorandums of Understanding/side letters not attached to the document/MOAs
 10. Business office/manager reviews the contract and provides information regarding funding parameters and budget expectations
 - a. Get an understanding of the school system's expenditure posture and what will compete with compensation and benefit dollars
 - b. *E.g.*, fixed costs, planned programmatic improvements, etc.
- IV. Collect and analyze data (Bargaining Notebook – for board members, superintendent, and district negotiating team members)
- A. Know the bargaining unit
 1. Prepare a chart identifying number of employees on each step/lane of the salary schedule
 2. Identify the number of employees likely to retire within the next three years
 - B. Financial information
 1. District's recent history of increment and cost of living adjustment (COLA) increases
 2. Current consumer price index (CPI) or other inflationary measures

3. District's salary rankings, especially at step one on the bachelor's scale (*i.e.*, for recruiting purposes)
 4. Revenue projections
 - a. Current five-year forecast filed May/October
 - b. Informal five-year running updates by Treasurer (particularly if in between May/October)
 5. Annual cost of steps/increments
 6. Annual cost of education credit movement
 7. Annual cost of longevity movements
 8. Cost/value of providing unit members 1% increase
 9. Percentage of unit members eligible for steps/increments
 10. Health benefit information (costs)
 11. Financial "cheat sheet" of necessary costs/savings
 12. Insurance "cheat sheet" of potential savings
 13. SERB wage report
 14. SERB insurance report
 15. History of steps (granted/not granted)
 16. History of raises/stipends
 17. Position, step, and salary scale placement as well as extra-curricular positions held by members of the union's negotiating team
- C. Collect internal comparables
1. School department bargaining units
 2. Bargaining units in municipality
- D. Collect external comparables
1. Similar districts
 2. Review the list to be sure districts formerly considered comparable still are comparable; don't rely on an old list

3. Competitor districts
 - a. Nearby school districts that recruit the district's employees or attract the same applicants
 - b. Remember, "apples to apples" when comparing salaries/wages
 - c. Consider
 - i. Salary, wages
 - ii. Leave benefits
 - iii. Health insurance premium contributions

E. Insurance review generally

1. Insurance committee
2. Broker consultant
3. Renewal rates
4. A la carte savings menu
5. Current plans in place
6. Current costs to district and employee
7. Other benefits, such as longevity payments, tuition reimbursement

V. Selecting the Bargaining Team

A. Background

1. There are no legal requirements or restrictions regarding who can be on the employer's bargaining team

B. Considerations

1. Number of team members
 - a. Only necessary members should be included: the more members, the greater potential for bargaining team mistakes (*i.e.*, crossed signals, information leaks, and union "divide and conquer" tactics)
2. Team member titles
 - a. Chief spokesperson (*e.g.*, an experienced negotiator or attorney)

- b. Central administration representative (*e.g.*, director of human resources)
- c. Financial representative (*e.g.*, business manager)
- d. Administrator(s) who directly supervise bargaining unit members (*e.g.*, a superintendent and/or principal who has expertise in the day-to-day operations of the school system)
- e. Board member(s)
 - i. Availability?
 - ii. No quorum of board members on the bargaining team
 - iii. Consider whether board members have necessary time to commit to bargaining and whether board's need to be kept apprised of bargaining can be satisfied (*i.e.*, frequent updates from the bargaining team)
 - iv. Board member may become unstated "power figure" to whom union will direct attention, which can erode authority of the chief negotiator and cause friction with other board members

C. Team Roles

- 1. Determine in advance
 - a. Who will do the talking (*i.e.*, the point person)
 - b. How to signal for caucuses
 - c. Dates, times, length, schedule, and agenda of meetings
 - d. Procedures for signing tentative agreements ("TAs")
- 2. Different Roles
 - a. Designate an official note-taker
 - i. Important role
 - ii. Written notes capture the parties' purposes, intent, and understanding made contemporaneously with the discussions
 - iii. Can be very valuable in possible future grievances or other challenges to the terms of the contract

- b. Designate who will be responsible for drafting proposals
 - c. Designate who will be responsible for communicating with the employee association regarding bargaining-related matters
 - d. Designate who will be responsible for coordinating communication with other stakeholders, including the school board
 - e. Designate individuals who could watch for association reactions (*i.e.*, not everyone has a “poker-face”)
- 3. Team discussions should remain confidential
 - 4. Team members will attend all meetings and stay focused on the task at hand
 - 5. Team members must be respectful to each other and discuss issues/disagreements openly and constructively
 - 6. These roles may be different, depending on the type of bargaining

D. Group Dynamics

- 1. Forming
 - a. The team comes together for common purposes and team members begin to understand how they fit within the team
- 2. Norming
 - a. The team establishes its internal rules, which should be created cooperatively by team members to ensure commitment to them
- 3. Storming
 - a. The team gets into conflict due to perceptions that it cannot achieve its goals
 - b. Remedy by admitting and identifying problems, creating options to resolve them, and implementing the solutions
- 4. Performing
 - a. Good performance shown by support, commitment, participatory, and effective team

VI. Developing a Communication Plan

- A. How will the board communicate with a number of groups

1. Includes the school board itself, administrators, rank-and-file bargaining unit members, the press, and the public
2. Be aware, while state law allows the board to communicate directly with the bargaining unit, there can be no direct bargaining
3. Important because bargaining unit members often do not get full/accurate picture of bargaining from their own team
4. Note, though, that if communication is prohibited, the school board or a negotiating team spokesperson may always communicate to the public or to media outlets, which provides a limited means of supplying employees with updates

B. Communication Plan

1. Initiate communication early in the bargaining process instead of waiting until a crisis, when management communications may be viewed with skepticism
2. Establish regular, routine communication with unit members of a factual nature
3. Utilize format and delivery method most likely to reach the widest audience
4. Avoid any ground rules or other agreements that would limit communication during the bargaining process
5. Accurately describe the proposals made by both teams as well as the impact of the of the teams' proposals

VII. Board Review Process

- A. How does the Board prefer to provide input on language/changes to language?
- B. How will administrators provide input to the changes?
- C. What role does the Board want to play?
- D. How will communications occur between the Board and the team/counsel?
- E. Formulate goals
 1. Ultimately, the board sets the direction for bargaining with input from the superintendent, chief negotiator, key administrators, advisors, etc.
 2. Board needs to make its wishes known, especially on economic subjects

3. Involves setting parameters on financial components of the contract, including the total amount of dollars available to settle the contract
 4. Goals/parameters should be coordinated closely with business office of the school to ensure accuracy
- F. The association's proposals
1. Board can review and provide parameters on the association's proposals
 2. May have to deal with "extreme proposals," which make counter-offering difficult
 - a. Note that association often faces internal pressure – from members, association officers, or key personnel – to include certain bargaining proposals
 - b. What the association presents formally very often is substantially different from what it will accept
 - c. Also, the association may fail to present the issue accurately
 - d. Will require making sense of the association's proposals, and getting at the "real issue," to make a contract
- G. Examples of board and individual board members roles and responsibilities
1. Neither should interfere with bargaining process
 2. Treat all information and parameters as highly confidential
 3. Not discuss any negotiating topic or position with a unit member or association staff member
 4. Support the chief negotiator and the positions he/she takes at the table (*i.e.*, common tactic for association to blame the chief negotiator when they don't like the board's position)
 5. Union will try to "work" a board member, either to gain confidential information or a favorable vote on the board
 6. Respect all board positions as the position of the board, no matter the vote or how the individual board member voted
 7. No side deals with the union

VIII. When Bargaining Starts

A. Contract language

1. Many contracts contain provisions that dictate when notice must be given to initiate bargaining

2. Other agreements contain a date certain when bargaining must begin

B. State law

1. Some states proscribe the bargaining timelines by statute

2. Regardless, bargaining should be finalized in time for financial aspects to be incorporated into the school board's adopted budget for the respective fiscal year

3. Requires backward-mapping the negotiation process to ensure sufficient time for "good faith" negotiations before the board's budget adoption

IX. The Bargaining Process

A. Exchanging proposals

1. Union proposals

- a. Upon receipt of union proposals, review them, determine whether they need clarification and whether any of them are "throw-aways"

- b. Review proposed and contemplated contract language carefully

- c. Entire team and administrators who have worked in the department or with the particular subject matter should review it

- d. Allow the board at least one additional bargaining session to respond

- e. Rank proposals in order of those than

- i. Can be agreed upon

- ii. Can be agreed upon with modification

- iii. Can be agreed to in exchange for concessions

- iv. Should be rejected

2. Board proposals

- a. Give in response to union proposals

- b. Drafting contract language

- i. Contract language should be clear and unambiguous and not subject to unintended interpretations
- ii. Association often will want brief language and will deride attempts to add specificity to contract language
- iii. You may hear “we all know what’s intended”
- iv. Do not accept brief language when it’s vague or general, even if under the pressure of getting an agreement (this is an association tactic, i.e., last-minute or under-pressure negotiating)
- c. Vague language and terms are to the association’s advantage – provides an option to argue later for a more favorable interpretation
- d. Understand distinctions between will v. may; shall v. should; as well as vague terms such as “best efforts” or “reasonable attempts”

B. Tentative Agreements

- 1. When both parties agree to a language proposal, the chief spokesperson and union spokesperson should place their initials, the date, and the time on the agreement
- 2. A tentative agreement only becomes final when adopted by the board and ratified by the union; should have a written understanding that any and all tentative agreements are contingent upon the final contract being reached on all terms
- 3. Common way to reach
 - a. Bundle various proposals and resolve them through a combination of agreements and withdrawals
- 4. Contrasting theory – no tentative agreements

C. Off-the-table agreements

- 1. A commitment to explore something or to make an administrative change
- 2. Can be an effective way to address association issues without the binding contract language that comes when a provision is added to an agreement

D. Additional authority necessary

- 1. Do not asked for increased authority to settle an agreement beyond the school board’s parameters unless it is certain to seal the deal; conversely,

if no change in parameters is given, the board should be informed of the risks of impasse

E. Last-minute end run

1. Common union tactic
2. Union's team works in earnest with the board's team to negotiate the best deal they can
3. Before signing off, their negotiator or president often will go to a board member or influential administrator and say, "We're almost there, we just need this little thing. . . ."
4. This is a no-loss strategy for the union; if it doesn't work, the union hasn't lost anything
5. Strategy plays on board member's or administrator's fear that a contract will be held up on a minor issue
6. Appropriate response: tell the individual that the chief negotiator is the only board spokesperson and that they must follow the negotiating process

F. Caucus

1. If there is a question about an issue among team members, discuss it away from the bargaining table
2. Do not argue differences of opinion at the table

X. Tips for successful negotiations

A. Use the process (traditional, expedited, interest-based) to get what you want

1. The process selected by the parties can have a significant impact on the results
 - a. Traditional
 - i. Proposals drive the process
 - ii. Each side pads proposals by bringing throwaway items
 - iii. Must ask for more or offer less than you are willing to settle for, otherwise, there is no room for movement
 - iv. May need this process when there is insufficient trust between the parties to engage in other forms of negotiation

- v. Involves a lot of strategizing (*i.e.*, what the other party's proposal "really" means)
 - vi. Best to set goals upfront and work towards them
- b. Expedited
- i. Timelines drive process
 - ii. Parties attempt to create artificial pressure to complete negotiations
 - iii. Idea is to move parties off of unrealistic expectations quickly
 - iv. To move quickly, the teams must be highly prepared to address all issues raised (*i.e.*, must identify issues before deciding to work with this model)
 - v. May be appropriate when the number of issues is small and the board knows its bottom line (*i.e.*, protracted negotiations are pointless)
 - vi. May also be appropriate if – for some reason (political or otherwise) – the board wants to avoid lengthy negotiations (*i.e.*, an election year or referendum)
 - vii. Do not let timelines drive you into a bad agreement
- c. Interest-based
- i. Honest sharing of issues and interests drives process
 - ii. Requires mutual commitment and some level of trust between the parties (*i.e.*, a more mature bargaining relationship)
 - iii. Typically, process involves identifying issues, interests, options, and solutions
 - iv. Can help parties build trust and a more collaborative relationship
 - v. Can be used to repair the relationship, but again, requires commitment to transition away from an adversarial relationship

- vi. Beware of union approach to “collaborative” bargaining, which really is an effort to get the board to the table for direct bargaining
 - 2. Selected process
 - a. Will influence make-up of team
 - b. Will determine the level of advance preparation/training required
 - c. Will determine how a final agreement is reached
- B. Understanding the Past
 - 1. Bargaining does not happen in a vacuum; there is context and history
 - a. What happened before?
 - i. Did one party make a significant concession or make a particular gain in past negotiations?
 - ii. Were there prior wage increases?
 - iii. Were there agreements to “pilot” changes and review them in the future?
 - iv. What is the relationship with the union? Adversarial, collegial, cooperative?
 - v. Has the culture changed?
 - vi. What happened during the life of the prior contract that will affect negotiations?
 - vii. Resolution of grievances for/against a party that drives posture during current bargaining?
 - viii. Arbitration losses?
 - ix. Changes in the law or long-standing practices?
- C. Think systemically
 - 1. Look at the big picture
 - a. Before reaching an agreement, take the proposal to its logical end
 - i. E.g., early retirement provision encourages higher paid employees to leave and results in cost savings, but will that

change staff demographics – which in turn – create other costs (such as staff development)

- ii. Review potential agreements against the board’s long-term strategic goals and plans

D. The role of team members

1. Team should be representative from the district

- a. Promote a variety of experience and points of view
- b. Add specific issue representative to address topics you know the union will bring up (i.e., special education, teacher evaluation, health insurance, etc.)
- c. “Role” at the table
 - i. Each team member’s role should be clearly defined at the outset
 - ii. Each team member should stick to the role he or she will play in negotiations
- d. Moving outside one’s role creates problems
 - i. Puts team in a position of reacting at the table to whatever has been done
 - ii. Puts doubt in the other team’s mind as to the cohesiveness of your team; if the union senses division, it will try to use that to its advantage
 - iii. Consider superintendent: Has much to contribute, but superintendent will have to go back to day-to-day work with employees when the bargaining is all over

2. Union also is playing roles

- a. *E.g.*, the “instigator,” the “disgruntled grievant,” the “single issue spokesperson”
 - i. At bargaining table, you are not in a superior/subordinate situation; instead, you are negotiating with equals
 - ii. Be prepared for frank talk from the union
 - iii. Put aside employer/employee mentality

- iv. Watch carefully to see what role each union member is playing, which can help with anticipating responses to board proposals
 - b. Do not personalize the dispute
- E. Who has authority to make commitments
 - 1. The team's authority to bind the board or not must be clear from the beginning
 - 2. Designate an individual authorized to sign tentative agreements and bring them to the full board for approval
 - 3. Make the process clear: negotiation and tentative agreement on all issues is subject to ratification and approval by the board
 - 4. Do not allow the union to assume that someone has the authority to reach binding agreements (*i.e.*, "spell it out")
 - 5. Provide periodic reports to the Board, written and verbal
 - 6. Board members and administrators understand that engaging the union in separate conversations undermines and significantly damages the credibility of the bargaining team
 - 7. Be clear at the table whether a package will be presented with or without recommendation
 - 8. Verify that union team will affirmatively recommend and advocate for the tentative settlement package
- F. Listen
 - 1. Most important skill to bring to negotiations
 - 2. You learn when you listen
 - 3. Helpful phrase: "Seek first to understand, then to be understood."
 - 4. Do not assume you know what is being said
 - 5. If you want to test what is behind a statement or proposal, ask questions
 - 6. If the answers do not appear to be sincere, ask different questions
 - 7. Debate is defending your point of view: use only after you have achieved a complete understanding of why the proposal is being advanced

G. True costs of the agreement

1. Language items can have an impact on cost
2. Useful to examine every proposal at the outset with respect to whether it has a dollar cost to the district
3. Items with a dollar cost can be grouped together for analysis of the total cost of the union's proposals as well as the total cost of the ultimate settlement
4. Understanding cost components that make up total cost of employing the bargaining unit makes it easier during the process to examine the impact of each proposal on total cost
 - a. *E.g.*, class size restrictions may force you to hire more staff, redemption of unused sick leave days, etc.
5. The entire cost of the package must be calculated (i.e., what does it mean when the parties agree the first year is 5%)
 - a. Components
 - i. Salaries
 - (a) Lane movement (how much likely will occur)
 - (b) Step movement (is it included in overall increase, or assumed)
 - ii. Insurance
 - (a) Types of anticipated increases
 - (b) Including increased payments by the board in the package of available funds
 - iii. Other fringe benefits
 - (a) Extra personal days, paid holidays, tuition reimbursement, etc.

H. Know when you have an agreement

1. Assuming you have an agreement on language items is dangerous
2. Establish procedure for when you have a tentative agreement (i.e., if agreement is reached, reduce it to draft language; present draft language at

next bargaining session for review and approval; raise concerns at that time; etc.)

3. Test the understanding of each party on the agreement's terms
4. Use examples to check your understanding of how a proposal would work
5. Ensure that language that reflects your understanding of the tentative agreement makes it into the final contract

XI. Post-Bargaining

A. Committees

1. Issues that have not been fully resolved in bargaining may be assigned to committee for further study
2. Committees should have clear expectations and defined authority (*i.e.*, when should they have results, will they recommend options or return with tentative agreements, etc.)
3. Unanticipated events may require adjustments for individual circumstances

B. MOUs

1. Make an exception in the form of a Memorandum of Understanding, rather than rewriting the rule
2. Ensure that people responsible for the day-to-day implementation of the agreement are made aware of pertinent changes