

IN SEARCH OF AN ALTERNATIVE APPROACH TO NEGOTIATIONS*

In any given year, approximately one third of the school boards in New Jersey find themselves facing a new round of negotiations with their employee associations for collective bargaining agreements. Some school boards and employee associations approach the bargaining table with trepidation, and perhaps dread, anticipating a long, difficult, possibly hostile set of negotiations. Increasingly, board members, administrators and even employee associations have asked “Isn’t there a better way?”

While we would like to be able to say, “Yes, there is an alternative approach that is easier, cheaper, less time-consuming and much less uncomfortable than ‘traditional’ negotiations,” what we really have to say is “there ain’t no such animal.”

There is a non-traditional model on the scene which has been utilized in other states and has been attempted in a number of districts in New Jersey with varying degrees of success and failure. Referred to as “Win-Win Bargaining,” this model has garnered some interest by districts who are seeking a less confrontational approach to negotiations.

Boards who consider adopting this model should understand the implications and risks associated with “Win-Win,” identify what they hope to achieve by using this process, and realistically assess whether this model can really meet their expectations and goals. Boards should also recognize that, although going through the “Win-Win” model may be an overall positive experience, the negotiated terms of the new agreement may not prove more favorable to the board or better serve the district’s needs.

The following provides a very general overview of one “Win-Win” model. However, readers should recognize that there exists a variety of alternative bargaining models (e.g., Principled Bargaining, Mutual Gain, Non-adversarial Bargaining, Integrative Conflict Resolution Techniques, etc.), which are expressions of collaborative bargaining.

What is “Win-Win”?

In general, the “Win-Win” model is designed to take a more collaborative approach to bargaining. This model rejects the traditional bargaining model as encouraging a competitive and adversarial interaction, and attempts to replace it with an approach that focuses on interests not positions; issues not personalities; collaboration not competition.

In order to assist the parties to move away from a confrontational competitive style toward a cooperative problem-solving approach, “Win-Win” bargaining uses some non-traditional techniques. For example: bargaining proposals are presented as *questions* rather than *positions*; all members of both teams are allowed to communicate during the process; all team members sit together in a circular seating arrangement; subcommittees comprised of board members and union members are formed to work on the issues; the process occurs in a compressed time frame; a “facilitator” is present to observe and to guide the parties through the process.

Questions Instead of Positions The use of open-ended “questions” instead of “positions” is intended to assist the parties to work cooperatively to explore mutually acceptable answers or solutions to a problem. The “Win-Win” model contends that positional bargaining is based on the assumption that the party who has the concern also knows the best way to address the concern and brings to the table a proposed “solution.”

For example, in traditional bargaining, a board concerned with abuse or overuse of personal leave may come to the bargaining table with an initial bargaining proposal to reduce the number of personal days from five days per year to two. This approach suggests that the answer to the leave usage problem is to decrease the number of available leave days; and this forms the basis of the board’s position. In “Win-Win” bargaining, the board would instead bring a question such as “How can we improve

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attendance and avoid inappropriate use of personal leave?” The “question” approach is designed to allow the parties to openly communicate about the issue and then to jointly find a way to address it.

Open Communications Unlike traditional negotiations where the parties generally appoint a single spokesperson to represent their positions, “Win-Win” bargaining provides an open forum for communications. When the parties come together to discuss their “questions,” everyone is permitted to speak about the issues. The open discussions are intended to air concerns, to explore issues and underlying needs, to build consensus and to identify mutual interests and possible solutions.

The discussions are guided in an orderly fashion by a facilitator, members of the teams are permitted to speak in the order in which they raise their hands. What this means, however, is that team members’ responses to comments made by other team members (from their own side or the other side) are often delayed and made sometime after numerous other comments may have intervened. This method of communicating serves to defuse tension and keep communications flowing.

Circular Seating Arrangement When the full teams come together to discuss issues and explore solutions, they sit in a large circle rather than across from each other at a bargaining table. This more informal seating arrangement is employed to emphasize the collaborative approach and to break down the barriers of the “us against them” mentality.

- **Subcommittees** After the parties have developed their “questions” and have met for a two-day period to discuss and explore these issues, subcommittees are directed to meet over the period of a month or so to make recommendations for addressing the concerns. Subcommittees may be developed along different lines: one committee works on language items while another works on economic items. During the month, members of each subcommittee may meet many times (perhaps even five days per week) to work through the issues that have been referred to them. At the end of the designated time period, the subcommittees report back to the full teams for a final intensive two-day period of negotiations to resolve all issues.

Compressed Time Frame The time frame for reaching agreement is usually very tight and is often projected as a four-week or six-week period of time. However, the stated time frame only covers the first two-day period when the parties meet to discuss the questions, the weeks of intense subcommittee work, and the second two-day period where the final negotiations take place. It does not include time spent in initial meetings with the facilitator, the training sessions, the preparations prior to the first “communications” session, the writing of the final language after agreement is reached or time spent developing and agreeing on the salary guide distribution.

The Facilitator The role of the facilitator is to train the parties in the specific model being utilized and to observe

and guide the process. The training addresses the techniques to be used as well as improved communications and listening skills. The facilitator is a third-party neutral; however, he or she is not a “mediator” in the traditional sense of the word. While both roles focus on expediting a mutually acceptable settlement, the mediator focuses his/her attention more on the *content* of the negotiated agreement, and the facilitator focuses more on the *process* of reaching that agreement. However, the facilitator generally assumes a more traditional mediation function during the final negotiation session to assist the parties to reach a final agreement.

Does “Win-Win” Work?

The answer to that question is not clear-cut. With respect to the negotiated *terms* of the new agreement, the board should not expect results that are more favorable using the “Win-Win” model than those which may have been produced in traditional bargaining.

With respect to the process itself, the answer to that question is: “It depends.” It depends on the totality of the parties’ ongoing relationship. It depends on the ability of the board members, administrators, union leaders and employees to make a huge leap of faith and to let go of a tried-and-true (or, at least, a known) approach. It depends on the parties’ willingness to take a risk. It depends on what the parties hope to achieve by utilizing an alternative negotiations model.

At the beginning of this article, it was stated that there is not an alternative to negotiations that will be easier, cheaper and less time-consuming than traditional bargaining. This is true. Thus, boards who believe that adoption of an alternative negotiations model will decrease their work, time or financial commitments are likely to be disillusioned and disappointed.

Time and Energy Commitment

Boards who have utilized the “Win-Win” model report that the amount of time and energy expended is *not less* than that required for traditional negotiations; in fact, it may be *greater* and more intensive. As stated earlier, the four to six-week suggested time frame for settlement only covers the period of time allowed for the first joint meeting of the parties to discuss the questions, the many subcommittee meetings and the final two-day period of negotiations.

However, there are also advance meetings with the facilitator for training, planning and formulating the questions; there may be a large number of meetings after the tentative agreement to hammer out the specific contract language and distribution on the salary guide.

In addition to the two, two-day sessions and the numerous subcommittee meetings, the board team needs to find time to meet on its own. Added to this is the time necessary to gather information and prepare for the following subcommittee meeting, which may be scheduled for the next day rather than a few weeks later. Thus,

the many hours of meetings and preparation for those meetings are simply compressed into a very tight time frame, rather than stretched out over a period of several months as in traditional bargaining.

Financial Commitment

Boards should also be aware that the financial costs may be greater under the “Win-Win” model. First, boards should recognize that it is highly unlikely that a collaborative model of establishing a salary increase will result in a more fiscally conservative settlement. In other words, boards should not expect their settlement rates to be lower using “Win-Win” than using traditional bargaining. In fact, “Win-Win” may result in higher rates.

Second, the cost of going through the “Win-Win” model will likely be greater than the cost of going through traditional bargaining. The cost of the facilitator may be in excess of \$10,000 (which may be paid in full by one party or split by the parties); the cost of a board attorney or labor relations professional (if the board uses either one) could be significant; and if the board agrees to provide release time for teachers to attend subcommittee meetings, there would be the added cost of substitutes. One board reported paying over \$25,000 to go through the “Win-Win” model.

Other Considerations

In addition to time and money considerations, boards should assess a variety of other factors when exploring the “Win-Win” concept.

For example, a board needs to assess the personalities and temperaments of the people who would be involved. Do the players on both sides of the table have the ability to adopt a collaborative style? Are the personalities compatible with this communicative, cooperative approach? Sometimes people on both sides of the table are so entrenched in their past competitive postures, that they may not be able to genuinely assume this new attitude. Conversely, some personalities are so compatible with the cooperative approach that they may not be able to maintain the strong stance during “Win-Win” negotiations necessary to protect the needs and interests of the district.

Risks associated with “Win-Win” also need to be assessed. For example, if the process does not produce a settlement, the parties would find themselves back at the traditional bargaining table. In addition to the loss of time and money involved in going through the process, the negative effect on morale and on the parties’ relationship could be significant. Furthermore, the board may find that it has compromised some of its bargaining positions during the open communications sessions that occurred during “Win-Win.”

Another concern with the “Win-Win” model may be the compressed time frame. While, initially, a seemingly shorter period of negotiations may appear to be desir-

able, boards run the risk of hastily agreeing to contract language that could have adverse long-range operational and educational implications. While traditional bargaining does not guarantee that boards will always make well thought-out decisions at the bargaining table, “Win-Win” is more likely to result in ill-advised concessions (or “solutions”) because of the lack of time needed to do research and tap resources in order to make well-informed decisions.

An additional danger associated with “Win-Win” is the possibility of agreeing to contract language that compromises managerial prerogatives. The facilitator is not likely to know (or care) about the scope of negotiations (i.e., legal and illegal topics of bargaining). During this collaborative, cooperative, communicative process, a board may be reluctant to refuse to address an issue on the basis that it is an illegal topic of bargaining; consequently, it may agree to educational policy language that does not belong in a labor agreement. While a board has just as much right in “Win-Win” bargaining to refuse to agree to any issue, a collaborative approach may make it more difficult for some boards to take a hard and fast stand on tough issues while trying to maintain a “collaborative” attitude.

Finally, the workability of “Win-Win” will depend in large part on the parties’ ongoing relationship. If the parties have a positive relationship with mutual trust and respect, “Win-Win” may prove to be a successful alternative. However, if the parties’ overall relationship has been marked with distrust, hostility and competition, then “Win-Win” is not likely to change that relationship. In such situations, the parties may be better-advised to work toward improving their relationship and developing mutual trust and respect outside the bargaining arena, prior to adopting “Win-Win.” Otherwise, it is more likely that the prior negative relationship will adversely affect the “Win-Win” model, rather than the “Win-Win” model having a positive impact on the troubled relationship.

Using “Win-Win” Concepts in Traditional Bargaining

It seems that much of the interest in “Win-Win” has evolved because of the desire to avoid the uncomfortable, confrontational, often hostile nature of bargaining. However, boards should recognize that the goals and concepts of “Win-Win” can be, and have been, used during traditional bargaining. In fact, when traditional bargaining is done well, it utilizes many of the techniques thought to be unique to the “Win-Win” model. For years, the NJSBA has emphasized such bargaining techniques in its labor relations training programs.

At the outset it was stated that “Win-Win” assists the parties to focus on interests not positions; issues not personalities; collaboration not competition. The parties may be well-served during regular negotiations to follow the same guidelines.

For example, boards should try to adopt a positive

communications style which avoids insults and personal attacks; exhibits good listening skills; identifies the real needs behind the proposals; and attempts to really understand the issues and explore alternative ways to address a concern or problem. Such techniques may go a long way in helping the parties work through the negotiations process in a more positive productive manner.

Summary

Boards considering “Win-Win” should weigh the potential risks and rewards of the “Win-Win” model; determine the suitability of that model to their district; focus on what their objectives are in using an alternative approach; and assess the achievability of those objectives.

The districts in New Jersey that have tried “Win-Win” bargaining report diverse experiences ranging from

“a disappointing and dismal failure” to “a positive and rewarding experience.” As stated earlier, the parties’ relationship outside the negotiations arena will have a strong influence on what happens at the bargaining table regardless of whether the parties engage in “Win-Win” or traditional negotiations.

Boards should not expect “Win-Win Bargaining” to be a panacea for the ills that have plagued their past negotiations. They should not expect “Win-Win” to make it easier to attain conservative settlement rates or cost containment on insurances; in fact, “Win-Win” might make it more difficult to do so. The fact of the matter is that the negotiations process is a process of allocating limited financial resources. And, particularly during difficult economic times, that will be a difficult task irrespective of the bargaining model used.