



BASIC AT THE TABLE “DON”TS: Avoiding Bargaining Errors

The goal of any negotiator is to reach an agreement with the people on the other side of the table. That agreement, however, must contain terms which sufficiently satisfy both parties' needs to be mutually acceptable. The process of negotiations involves sifting through the numerous proposals on the table to identify the real needs, and then working out a combination of solutions which can provide the best possible settlement for both parties at that given point in time.

Experienced negotiators agree that there is no single foolproof recipe that can be brought to each bargaining table to guarantee a smooth, amicable “meeting of the minds” to every district. However, they also agree that certain at-the-table behavior, under most if not all circumstances, complicates the negotiations process and interferes with the ability to obtain the best possible settlement. A knowledge of the most common bargaining errors, and an understanding of how to avoid them, is a necessary ingredient to all districts' successful negotiations. The following, while hardly an exhaustive list, includes the most basic, at-the-table DON'Ts and suggestions to avoid falling into some of these serious bargaining pitfalls.

Don't Talk Too Much

Identifying real bargaining needs is a crucial aspect of successful negotiations. A well-prepared board team approaches negotiations with a full understanding of the board's needs and one of its first tasks at the bargaining table is to identify the union's needs. Therefore, it is generally better for the board negotiator to listen rather than to talk. If you are talking too much, you are not listening and you may miss the opportunity of understanding the union's needs.

Listening can provide you with worthwhile information; “active” listening, which is marked by open-ended questions, such as “Can you give me another example?” or “Is there anything else we should know about this issue?” is designed to elicit more information that can identify the real issue behind the proposal.

Frequently, listening is, in and of itself, sufficient to meet the union's need on several issues: to air its concerns and/or to report back to the membership that the problem has been raised in negotiations. In addition,

listening demonstrates the board's empathy for the employees' concerns and can positively influence both the progress of negotiations and the long term labor relationship. Listening costs nothing but it allows the union to reveal to you its true needs and its bargaining priorities. Talking too much, on the other hand, may give the union too much information, too soon, about your position; talking too much can reveal your position without gaining you anything in return.

A board team can avoid talking too much and can control the necessary listening-talking balance by having a single spokesperson and by maintaining team unity and discipline at the bargaining table. A prepared spokesperson will know what approach to take, what questions to ask, when to talk and how much to say. A disciplined, unified team will not inadvertently and prematurely reveal a fallback position. Team meetings and away from the table board caucuses should be used by the board team to plan its control of at-the-table communications.

Don't Become Defensive

The union team frequently challenges the board team to justify its rejection, or lack of immediate acceptance, of the union's proposals. A board team that becomes defensive will not only talk too much but may become worn down by the constant need to justify its opposition. A defensive team may eventually run out of good reasons, and concede to the proposal without obtaining a concurrent union acceptance of a board position.

Rather than assuming a defensive posture, board negotiators should keep in mind that the burden is always on the union to prove the need for its desired change in the *status quo*; it is the union that must be asked to justify and to defend the need for the change. The board does not need to defend its reaction to the union; when challenged to explain its lack of acceptance, the board need only reply “You have not persuaded us that this change represents a benefit to the district.”

Asking the union for clarification and for justification keeps the union talking; it challenges the union to set priorities, to reveal its true commitments to different proposals, to assess the board's resolve on the issue, and to realize the need for concessions to the board. It is, of course, another tactic to avoid talking too much, but refusing to become defensive also prevents unnecessary

board concessions and permits the board team to control the flow of negotiations.

Don't Negotiate from the Union Agenda

The proposals on the table, the order of their discussion and the amount of time devoted to each issue constitute the agenda of negotiations. As in any other type of meetings, the agenda can, in large measure, affect the outcome of the meeting; the setting of a negotiations agenda can similarly influence the outcome of negotiations. If much time is spent discussing union issues, with little time given to the board's concerns, it is very likely that little consideration will be given to the board's needs; the board's bargaining goals will become lost or buried in a faulty process.

To avoid losing track of the board's needs, boards cannot allow the bargaining agenda to be set by the union. There are several steps that the board team can take to assure its involvement in, and its control of, the agenda of negotiations:

Do Present Board Proposals This simple step places the board's concerns on the table. To be effective, the board must not let the union forget that it too has issues that need to be negotiated. Insist on good faith negotiations of your proposals. Don't discuss the union's issues in isolation from the board's proposals, but link your needs to their issues on which you might be willing to make concessions. For example, if the union has a proposal to increase the number of personal days and you have a proposal to increase administrative control of personal leave, discuss both proposals together. Do not fall into the trap of discussing their position and reaching agreement on an increase in days before raising the issue of additional control. Link related, acceptable issues so that any concession on your part can be matched by their concession to your proposals.

Do Present Counterproposals It is always better to work off your language than to negotiate from the union's language. Rewrite their proposals to make them acceptable to you and use your counterproposal, rather than the union's proposal, as the basis for discussion. This will ensure that the board's concerns in the issue are placed on the table; it will result in agreements which recognize the need for administrative flexibility; and may also result in union issues dropping off the table as the union team realizes the cost of that potential agreement.

However, never counterpropose in a way that is unacceptable to you; your counterproposal may surprisingly be accepted by the union. For example, if you absolutely cannot, under any conditions, accept the union's demand for six personal days, do not draft a counterproposal which conditions six days upon strict

administrative restrictions. If, against all your predictions, the union decides to accept all your limitations in exchange for the increased days, you will be in a most uncomfortable and difficult situation. Counterpropose only what could be acceptable to you and to your board.

Do Propose "Trade-offs" As you discuss issues in relationship to each other and prepare counterproposals, possible compromises or solutions may occur to you. You may, for example, quickly perceive that if you could obtain your desired control of personal leave, you could accept some increase in the number of days. You could, therefore, propose a moderate increase conditioned upon their acceptance of your procedures. This is considered a "trade-off," where you trade your concession to their willingness to accept your position. It is a simple, but often overlooked tactic, which not only helps you to control the agenda but assures that you will "get" something out of the negotiations process.

Trading is, after all, inherent in the give-and-take of negotiations. For a complete discussion of this bargaining tactic, please see the "Trade-Offs and Packaging" article in this section of *The Negotiations Advisor*.

Do Link All Economic Items Trade-offs can neutralize unions' general preference to deal with each proposal one at a time and to obtain agreement over each proposal separately. Dealing with isolated issues is never in the board's best interests, but it becomes particularly damaging to boards of education when "isolation" is applied to economic items. Separate agreements to improve cost items such as tuition reimbursement, health benefits, extracurricular stipends, and salaries, make it almost impossible to keep track of the total cost of the agreement and boards may discover, to their dismay, that the true cost of employment under the contract far exceeds their expectations and their budgets. It is to boards' advantage to link all negotiated cost items; not only does this assure an informed agreement but it also conveys to the union the relationship of all economic items to the total settlement.

Board negotiators should, therefore, insist that all economic items be discussed as a group. This not only provides the board with control of the agenda but it also conveys to the union the relationship of all cost items and establishes for the board the total cost of the settlement before it is ratified.

To obtain a sense of cost, the board team must carefully calculate the cost of each economic item proposed by the union as well as the various costs of considered counterproposals.¹ Boards should also consider the potential for hidden increases in the proposed benefit. For example, agreement to provide a full family dental plan without limiting, or "capping" the board's financial obligation, can result in a higher than anticipated cost when the second or third year premiums are announced by the carrier. Boards, therefore, should consider propos-

¹ For a detailed discussion of how to cost, please consult the NJSBA's publication *Costing Out the Labor Agreement*.

ing “caps” on all their contractual expenditures. Although this can be most difficult to obtain for existing benefits, “caps” are achievable when new benefits are considered: a “cap” can be the trade-off for the board’s agreement to a new benefit or to improvement of an existing benefit.

Do Your Own Research A lot of information and comparative data will be thrown at you by the union. In support of union proposals, the union negotiator is likely to state authoritatively “We’re the only district in the County that doesn’t provide prep time for elementary teachers” or “Every one of our colleagues in this County receives family dental—no wonder morale is low in this district.” Do not assume that the information presented by the union is accurate; the union may not be lying but it will, like any good advocate, interpret the facts in the light that best serves and supports its position. Do your own research; become familiar with the information available at *www.njsba.org* regarding Labor Relations and call comparable districts. You may find that, though the majority of the cited districts do provide family dental coverage, most do so by allowing employees to purchase the coverage and that elementary prep time is provided in a variety of ways which retain administrative flexibility. Your findings can support your position, present possible approaches to resolve the issue in a mutual acceptable manner, persuade the union that you are serious, well-informed negotiators and prevent you from proceeding on less than accurate information.

All of these approaches to bargaining increase your control of the bargaining agenda and improve your ability to reach a settlement which addresses some of your needs.

Don’t Rush

Negotiations is a time-consuming process; getting to the settlement takes time, and successful experienced negotiators recognize that the process cannot be rushed.

This is true because the union is usually not at the table simply to get the best agreement possible. (If that were true, negotiations would be “short and sweet” for both sides in 90% of the cases.) Rather, the union is interested in the best settlement possible, plus:

- the personal pleasure and ego-satisfaction of “facing down” the employer across the table. A board offer that is “fair and final,” but offered too early in negotiations, is an insult to the union negotiator who comes to the table because he or she loves to negotiate;
- the political need to prove to the membership that the union negotiators are doing a terrific job of representing their interests. Sometimes a union negotiator can spend hours defending a proposal which he or she knows will never be acceptable to the board, because the time spent on the proposal is all he needs to satisfy the person or few persons who might gain if the proposal were accepted into the contract.

In addition, negotiations is a highly ritualized process

and one of the best established ritual is that of the “give-and-take.” Movement from an initial, or an early, position is expected and anticipated. In many districts, a tentative agreement reached in February would fail to be ratified, because the union members think “if the board offers this in February, they will offer more in June.” In fact, if that same February offer had been held back and only offered in June, it would have been ratified easily. Recognize the movement of negotiations and utilize it in your bargaining tactics. Don’t rush; remember the words of an experienced professional negotiator: “the later the offer, the slower the movement, and the smaller the concession, the better the position of management in negotiations.”

The timing of an offer is acknowledged by all professional negotiators to be a key component of successful negotiations; it is, however, one of the hardest tactics to teach or to explain. When to make an offer, when to improve it and by how much and how quickly, is a sense which comes primarily with experience. However, two basic generalizations seem to govern all negotiators’ sense of timing:

Slow and Incremental Movement Concessions from a position should generally occur slowly and incrementally. You do not want to make giant or large leaps if only a minimal concession on your part will bring about the union’s agreement. Since the union’s point of acceptability may be an unknown, the slow approach holds less risk for the board. In addition, large sudden movements may reduce your ability to maneuver, within your parameters, and push you beyond your point of acceptability. For example, in your salary discussions, the union has proposed a 10% increase; you have just placed 2% on the table and their response is to drop their demands to 8%. They present their large movement as a “good faith effort to settle this before the end of school” and they urge you to make a “similar significant move.” Your board has indicated that it cannot support a settlement whose total cost exceeds 4%. If you should match the union’s move, you would have only one percent leeway for future movement on the total package, you would still be far apart on the salary increase, and you might be signaling the union that you are authorized to go well beyond 4%.

The union can afford a giant move; its initial position was unrelated to real dollars and was designed to provide much room for movement and the concurrent appearance of conciliation. Your position, however, reflects real dollars; if you do not space your offers with slow increments, you will have no room to negotiate within your parameters and will end up with a settlement which may need to be funded at the expense of other budgeted programs. Space your offers. Make them in smaller increments. Tie them to specific concessions by the union. By doing so, you draw them closer to your position; you leave yourself room to negotiate at the end.

Don’t Move Twice in a Row If the board has made the last move on a certain item or package of items, keep the burden on the union to accept or to make

a counterproposal. Don't make the error of making a counterproposal to your own offer, just because the union asks for more. If you do, you will be bidding against yourselves; you will be narrowing your range of movement without gaining any concessions from the union. You can insist on a union response; you can indicate that you are willing to continue negotiations, that you may have room for more movement on the issue if the union also demonstrates movement and/or concessions in other areas; but you should not counterpropose to your own offer.

Timing also involves the concept of when to accept a proposal. The experienced negotiator knows how to blend the right amount of hesitance with the wisdom to know that a good offer, once made, may mysteriously "disappear" if not accepted before the negotiations session adjourns. Too fast an acceptance may make the other team fear they've been had. However, unwillingness to accept a good offer may provide the other party an opportunity to reexamine its position and, through bombast or legal maneuver, change its mind by the next negotiations session. Recognize a good offer but don't rush. Take your time and move slowly and incrementally.

Don't Be Intimidated

Don't be intimidated by the union's complaints that your hesitancy to make your "best" offer is forcing the union to constantly batter you for a better offer and to engage in this exercise in haggling. These are the same union negotiators who started negotiations with a proposal for a 20% increase in salaries for the first year of the contract. Remember: if the union were sincerely interested in a swift end to bargaining, it would begin negotiations with a moderate first offer.

Similarly, don't be intimidated by a union's accusation that your refusal to agree constitutes bad faith bargaining; don't be intimidated by threats of the filing of unfair practice charges. Know your rights and understand the process; if you should question the validity of their contentions, check with your board attorney or the NJSBA Labor Relations Department, before you respond in any way to the union's threats.

Unions frequently attempt to obtain additional movement or concessions from the board team by stating that "unless things start moving" they will declare impasse. Impasse procedures are a statutory part of the process.² This stated intent should not, in and of itself, make you reconsider your position and should certainly not result in "moving twice"—you'll need room to continue to negotiate in mediation.

Bargaining is inherently filled with all kinds of pressure, including concerted activities ranging from job actions to threatened strikes. Boards must recognize that

these union tactics are designed to pressure the board to concede to union positions. Boards must be prepared to respond productively and effectively to their unions' limited concerted activities.³ Boards can also not ignore the serious possibility of a strike. If faced with the probability of a total work stoppage, boards will want to carefully scrutinize their bargaining positions to determine, calmly and rationally, whether some concessions are possible and whether the issues in dispute are worth the conflict that will follow. However, many boards that have engaged in hard bargaining have conceded on their major positions when simply faced with a job action or a threat of a strike. Capitulation in the face of a threat will only lead to future threats in order to win future concessions from the board. Do not be intimidated by any at-the-table threats.

Don't Personalize

Many board negotiators are appalled at the bargaining positions and, on occasion, by the behavior on the other side of the table. Board members may find it hard to see some of their district's well-respected teachers arguing for more money and less work rather than expressing concern for their students' needs or the welfare of the district. Board members may also be shocked at the attitudes and behavior expressed at the table by people they previously considered educated, well-mannered professionals. Sometimes board members are offended by the staff's lack of appreciation for all the steps the board has taken to demonstrate its concern for its employees. All of these things are seen at the bargaining table and can disturb the most pro-teacher board member. However, board members should keep in mind that the bargaining table is not the appropriate forum for teachers to bring their professional concerns; it is the forum to discuss hours of work, compensation, and other terms and conditions of employment; it is the forum to influence the board, through persuasion, subtle or otherwise, to agree to improvements in the working situation.

Board teams that do not recognize and do not accept this harsh reality will tend to personalize the process; they will resent the union team and the employees it represents. Frequently, this reaction leads to a response which is unrelated to the issues but is tinged with a desire for personal retaliation and a need to "show them who's boss." This attitude tends to solidify positions and to interfere with the bargaining process; it also places personal considerations over the needs of the district. Keep in mind that the union team's focus on the employees' economic well-being is legitimate in bargaining and that much of the rhetoric is part of the tactics designed to achieve the union's goals; the best, and most effective, way to respond is to remember that

² See the Impasse section of *The Negotiations Advisor*.

³ For a full discussion of this topic, please see "Responding To Concerted Activities and Limited Job Actions" in the Impasse section of *The Negotiations Advisor*.

you are there to meet the board's goals and to protect the financial and educational integrity of your school district.

Resisting the very natural urge to personalize also involves your demeanor at the table. Don't lose your temper, unless you have planned to do so to make a point; don't attack the intentions, the professionalism, the personality or the lineage of the union team. Stick to the issues.

Don't Lose Track of Negotiations

Negotiations is marked by a great deal of movement and alterations in bargaining positions over a period of time. Tracking the movement and knowing the latest position on any given issue is crucial to intelligent and well-informed negotiations. Therefore, good note-taking is essential to successful bargaining; without a good, reliable record of the flow of negotiations, you may inadvertently omit a union concession when you are ready to discuss an issue; it is highly unlikely that the union will call attention to your oversight and you will possibly concede to more than was necessary to reach agreement. For example, in February the union moved from its December proposal, to increase the number of personal days by two per year, and modified its position to seek only one additional day. As other issues were discussed, this decreased demand has been forgotten and in April you propose new personal leave language which conditions the union's original two day request upon their acceptance of your modified administrative procedures. The union accepts your language and you have granted two additional days when only one might have been necessary. Careful note-taking at every negotiation session which records and dates official movement, and which are easily retrievable, can prevent this common bargaining error.

In addition to the formal modifications of positions which are embodied in counterproposals, there will be noteworthy changes in the union's verbal defenses and justifications of particular proposals: an issue described as "an absolute must" in January may be defined as "important" in March and "of interest to some of our members" in April. Keeping track of these nuances can be most helpful to the Board's assessment of the union's priorities and real needs in negotiations.

Precise note-taking should record and date proposals, justifications, trade-offs, tentative agreements, opposition to positions, and any other important exchange which occurs during the session. Recording these transactions, however, can only be helpful if the team reviews the minutes of prior meetings before each session. It is particularly helpful to review not only what was said at the last meeting but also to summarize the movement on each issue that has been discussed; this prepares the team to know where they have been, where they are, and where they can anticipate going.

Note-taking and summarizing is an important bargaining task which cannot be left to chance. To assure that notes are taken, one team member should be assigned the primary responsibility for keeping negotiations minutes. The best note-takers manage to keep precise and accurate records, even when negotiations are heated and engrossing; however, at-the-table notes may need to be expanded by the observations and notes of other team members. There is no approved format for record keeping; each team should adopt an approach that works best for the people involved. However, all negotiations notes should be kept confidential and should be used to prepare for future sessions.

Negotiations notes assist a team to plan its movement towards settlement; however, notes serve a purpose after the agreement's ratification. Arbitrators will review negotiation notes to assess the parties' intent in negotiating a now ambiguous provision; and future board negotiators can prepare for successor negotiations by reviewing the minutes of prior negotiations. Records of negotiations belong to the board and not to individual team members. Keep copies of the records in the board office so that they can be easily retrievable.

Don't Leave the Salary Guide To the Union

In the past, many school districts had a bargaining tradition which allowed the union to distribute the agreed-upon salary increases on the guide. Boards would then check the guides to assure that they did not exceed the total settlement but would not concern themselves with the method of allocating increases within the guide or the resulting guide structure.

This tradition created some difficult problems for boards of education. Frequently, more experienced teachers were receiving disproportionately higher dollar increases than their less experienced colleagues. This approach resulted in a distorted pattern of increments, with the guide containing unusually large increments (called balloons) as well as exceptionally small increments that tended to perpetuate depressed salaries of the less experienced staff. In addition, the problems of the union-designed guide became the source of future union proposals: noncompetitive salaries on selected steps became the rationale for the union's need to obtain a larger than county average increase simply to achieve comparability, but the next union-designed guide did little to address the lower steps on the guide.

Guide development is a negotiable topic. Distribution of moneys on the guide, staff placement on the guide, guide structure, cost of increment, and entitlement to incremental movement are the board's concern as the guide is the district's salary policy. The board must administer that policy to afford, attract, retain and reward

⁴For a full discussion of salary guide construction, please consult the Salary Guides section of *The Negotiations Advisor*.

staff. Successful negotiations are not over until the board team has participated in the design of the guide.⁴

Summary: Be Prepared

This article has highlighted some of the most basic DON'Ts of bargaining and has attempted to suggest DO's which can help you to avoid common bargaining errors. Although the list of Do's and Don'ts may seem exhausting, it is far from being an exhaustive and definitive recounting

of possible bargaining problems. However, being aware of these basic errors, understanding why they damage your bargaining effectiveness and knowing what you can do to avoid these mistakes can prepare you to act and to respond effectively at the table. Being prepared for the process is the most basic DO in bargaining—solid and thorough preparation can help you avoid most of the basic errors discussed above and can assist you to respond effectively to other problems you may encounter at your bargaining table.