



# BARGAINING PARAMETERS

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**B**argaining effectiveness is often described as the ability to influence the course of negotiations. An important, but often unnoticed, aspect of effective negotiations is the determination of parameters. Board parameters define the type of settlement that can be acceptable to the board. While bargaining goals may reflect the board's general perception of the ideal contractual condition it would like to achieve, possibly after successive rounds of negotiations, parameters define the specific upper and lower limits of contractual conditions the board is willing to accept in the current set of negotiations. Thus, parameters define the settlement the board can accept and influence both the process and outcome of negotiations.

This article will discuss the influence of parameters on the effectiveness of negotiations and will suggest a systematic process for the determination of bargaining parameters which is designed to increase the board's ability to exert influence over the outcome of negotiations.

## **Influencing the Effectiveness of Negotiations**

Parameters influence every aspect of the bargaining process: they provide direction and coordination to the board's negotiations effort, enhance the team's effectiveness, and influence the outcome of negotiations.

### **Providing Direction and Coordination**

Parameters identify board priorities in negotiations. In setting its parameters, the board assesses its "wish list," ranks its goals in order of importance, and sets the limits of its positions. The board's parameters become the reference point from which it will formulate its negotiations proposals and its responses to the union's bargaining positions. The board's negotiating team can then design its strategy and tactics within the board's parameters; indeed, the team's total conduct at the bargaining table will be determined by the board's parameters. Therefore, the board's entire negotiations process is directed by the framework established by the board's parameters.

### **Enhancing the Team's Effectiveness**

Board parameters increase the bargaining team's ability to negotiate authoritatively and credibly to reach

a tentative agreement. A team that is not given board direction must either constantly seek full board approval before it can be decisive at the table, or it can reach an agreement and then discover that the settlement is objectionable to the board and cannot be ratified. Under either of these circumstances, the team will be perceived as lacking authority to carry out its function; its status and credibility will be suspect and the board's ability to conduct effective negotiations will be hampered.

On the other hand, a team that is functioning within board parameters can bargain effectively and authoritatively within the parameters established by the board; the team has the power to make proposals, offer counterproposals, and to reach tentative agreement. The team, with full knowledge of the board's position, can avoid agreeing to issues which will be unacceptable to the board and can direct its efforts to reach an agreement which will receive board ratification.

Thus, parameters connect the team's efforts to the board's priorities, and the team is able to effectively represent and protect the board's interest during negotiations. Parameters therefore influence both the process and the outcome of negotiations.

### **Influencing the Outcome of Negotiations**

Parameters identify the type of settlement that the board can accept and ratify; thus, parameters are designed to exert influence on the outcome of negotiations. In determining parameters, the board is expressing a desire to reach a settlement which will protect its interest as well as those of its employees; determining parameters implies that the board wishes to be an active participant in shaping the form of the agreement rather than passively reacting to the union's terms. However, parameters, in and of themselves, cannot assure that a board will indeed influence the outcome of negotiations.

To actually influence the outcome of negotiations, parameters must reflect a realistic appraisal of the achievable. Parameters which simply express the board's preference but ignore reality cannot exert effective influence on the parties' final agreement. In setting its parameters to influence the outcome of negotiations, the board must not only know what it seeks to achieve but must also be aware of what is achievable in the current round of negotiations.

## Determining Board Parameters

Effective parameters should result from a systematic, logical, and ongoing process which is designed to provide the board with a realistic, achievable framework for negotiations. The process involves the board and administration and includes several components: an assessment of the district's needs and the determination of the district's bargaining goals; a determination of bargaining priorities; an assessment of the achievability of the board's priorities; development of realistic parameters which establish a range of acceptable positions on both board and union proposals; and a continuous assessment and reassessment of the board's initial parameters.

### Assessing District Needs

In preparing for bargaining, board members and the district's administrators are frequently asked to review the existing contract and to identify areas which they believe should be changed to improve the administration of the contract and of the district. This initial step involves a review of the contract's language as well as the district's experience in administering the contract: grievances, arbitration awards, as well as nonchallenged, but nevertheless very real, administrative difficulties and impediments to achieving district educational and operational goals.

The board's and administration's needs assessment should thus include a review of contract language which prevented the board or the administration from taking a desired action. For example, the board's inability to deny an extension of leave of absence because the contract prevents the board from exercising discretion; the board's inability to employ a well-qualified teacher because of the contract's restrictions on initial placement on the guide; or a principal's difficulty in scheduling because of restrictive contract language.

An examination of district needs would not be complete without an assessment of the district's anticipated resources and expenditures. Costing out the existing contract and reviewing related budget line items which might have been over expended (such as substitutes or tuition reimbursement accounts) provide a good assessment of the district's experience and may possibly identify areas which need attention. Assessing the district's future resources and expenditures, in light of recent contractual costs, can assist the board to identify its economic constraints for the current round of negotiations.

### Determining District Priorities

The district's needs assessment may result in an extensive list of areas which the board and the administration may wish to change through negotiations. However, before the board decides to present these areas in the form of bargaining proposals, the board needs to carefully assess the cause and the extent of the difficulty.

Has the problem arisen from the contract's language or has the administration failed to exercise its right under the law, the contract, or past practice? The board should

not propose a contractual language definition of a right it already possesses: if the proposal is accepted, the board's right may be limited by the contractual language; if the proposal is rejected, the board may have waived its future ability to exercise its discretion in that particular negotiable area.

Is the issue significant to the district? Will a proposal result in the improvement of the district's management, become a negotiations "throw away," or provide leverage for the board's negotiations position? It is generally believed that board proposals should be related to improving the district's ability to manage its schools and to its ability to conduct its negotiations but should avoid becoming a meaningless, frivolous laundry list of desired changes.

Once the board has selected the issues to be included in the board proposals, the board should determine the relative importance of the proposals to the management of the schools. The board and the administration must determine which changes would result in a more efficient implementation of the district's educational goals, which changes would lead to needed administrative flexibility, which changes would result in administrative convenience, which changes would be "nice" and which changes are considered important or essential to the management of the schools. Based on the district's assessment of its unique needs and experience, the board's proposals are drafted to express the full extent of the changes sought by the board and are tentatively ranked in order of importance to the district. The board's bargaining proposals are a reflection of the district's bargaining goals. They express the board's most preferred outcome of negotiations.

### Assessing Achievability

Determining the district's bargaining needs prior to the onset of negotiations focuses the board and its team on the board's bargaining goals; however, since the settlement must be mutually acceptable to both parties, the board's needs should be examined from the context of the current bargaining environment. To assess achievability, the board should consider:

**The Nature of the Bargaining Process** Bargaining is a give-and-take process which involves the art of compromise and which, in New Jersey's public schools, results in a voluntary settlement acceptable to both parties. Mutual acceptance of the settlement is tied to frequent *quid pro quos* or "trade-offs." Movement from a negotiating position is usually slow and incremental; similarly, negotiated change in the status quo is also slow and incremental and it may take several rounds of negotiations to completely achieve a desired goal. In setting its parameters, the board should recognize that "a foot in the door" may be preferable to no change at all.

**Current Development in Case Law** Recent court or PERC decisions may determine the likelihood of the board's success in a particular contractual issue. Rulings as to the issues which are currently considered nonnegotiable

managerial prerogatives, and those which are negotiable terms and conditions of employment, may assist the board to assess the achievability of its proposal as well as to determine the proper method for achieving its goal: an illegal contractual provision can be ruled *ultra vires* by PERC if, during negotiations, the union disputes the board's assessment of the legality of the language.

**Settlements in Comparable Districts** Possibly the most important factor affecting acceptability in public sector bargaining is the settlement achieved in other communities. The "going rate" in other school districts seems to be influencing economic settlements far more than the traditional economic indicators such as the Cost-of-Living Index, the locality's unemployment rate, or the local district's ability to pay. Therefore, in determining economic parameters, boards of education should carefully balance their assessment of their internal economic conditions, their ability and willingness to fund a teachers' negotiated settlement with the negotiated settlements in other comparable districts, for those other settlements will affect the achievability of the board's economic offer.

In reviewing other districts' settlements, the board should try to establish district comparability in terms of enrollment grouping, community wealth and demographic profile, number of students, and ability to pay. Comparisons should be made only with districts that are considered comparable.

Since compensation is related to employees' working conditions, obtaining information as to the length of the work year and workday, length of lunch period, number and frequency of preparation periods, class size, etc. will provide a fuller understanding of other settlements.

An assessment of economic positions should include a consideration of the employees' complete compensation package and their working conditions as well as the district's own internal economic resources and needs. A review of other districts' settlements should not dictate a board's allocation of funds but should indicate the range of the union's expectations and the possible range of acceptability. (For a full discussion of comparability, please see "The Pitfalls of Comparability Research" in this section of *The Negotiations Advisor*.)

**The Union's Position** The ability to achieve board goals will be dependent upon the union's ability to be persuaded to accept the board's position. Therefore, understanding the union's position is a crucial aspect of assessing the possibility of persuasion and of the achievability of a board position. Unions' positions will vary from district to district; and each board will, with the help of its administrators, need to understand its local union's situation. (Also see "Understanding the Union" in this section of *The Negotiations Advisor*.)

However, all unions' positions are based on protecting their membership's rights as well as maintaining and increasing their benefits. Thus, any board proposal which seeks to restrict a well established employee benefit or to extend managerial discretion is likely to be opposed by the union.

Anticipating union opposition should not deter the board from making its proposal or from establishing the proposal as an important goal; rather, anticipating opposition should assist the board to frame its position and its parameters in a realistic and possibly achievable manner.

### Formulating Realistic Parameters

Having formulated its initial bargaining proposals and having determined the possibility of achieving its goals, the board is ready to develop a realistic and achievable framework for negotiations—a framework which will balance its needs with a sense of the achievable and which can effectively influence the outcome of negotiations.

**Parameters For Board Proposals** The written board proposal expresses the board's desire for a change in the parties' current agreement; the proposal usually represents the board's perception of the most ideal language to control the contractual situation.

For example, a board has identified a need to control utilization of personal leave. For many years, the contract has required that all members of the bargaining unit be granted three personal days upon request; the contract has not required administrative approval and has had no restrictions on the timing or purpose of such leave. The board's preference, at this time, is reflected in its proposal:

*Members of the bargaining unit may be granted three personal days to attend to personal business which must be handled during the normal school day. Application for such leave shall be filed with the building principal no later than five days before the requested date and shall include reasons for the request. The building principal will review the application and may approve the request if, in his judgment, the reasons are meritorious for leave under this Article. Personal leave shall not be granted, except in extreme emergencies, on days preceding or following school recesses. Personal business days shall not be granted on in-service days, parent-teacher conference days, or during the first and last week of school.*

However, the board recognizes that its proposal is a drastic change and a reduction in a well established benefit and is probably unachievable as it stands. The board's priority in this proposal is to obtain as much control of personal leave utilization as it possibly can; the board is willing to move from this proposal and accept something less than proposed as long as the new agreement provides more control than the existing contract. At this first meeting to discuss parameters, the board need not be more specific; it has established a range of acceptability for the bargaining team which express the most favorable position and the completely unacceptable.

The team knows the limits of its flexibility on the issue and can, in developing its strategies, design a series of positions within the range.

Another board proposal involves a money issue. A review of the district's contractual expenditures has revealed that the tuition reimbursement program has been very expensive and has been highly utilized by nontenured teachers. The board has proposed a cap on the district's plan and has further proposed that the benefit can only be available to tenured staff. At this first meeting, the board expresses firmness on this position; as its comparative analysis has indicated that the district spends more on this program than any other comparable district, the board determines that its initial range of acceptability is the position expressed by the proposal.

In determining parameters, the board should review all of its proposals and, wherever the board's internal needs assessment balanced by its determination of achievability has indicated the need for movement, the board should establish an initial series of positions ranging from the most preferable to the not acceptable. The board can be specific as to the interim points within the range, or can allow the bargaining team to exercise its discretion within the range, but the board should establish its maximum and minimum expectations for acceptability.

***The Board's Economic Parameters*** Probably the most crucial issue in negotiations, employee compensation, is generally the last item to be thoroughly discussed in bargaining. This negotiations pattern provides boards with time to obtain budget data, to assess internal resources, to review the union's demands, and to collect the results of other districts' settlements. The board's definition of an acceptable economic settlement will be based on its assessment of the district's economic situation and its determination of a realistic, achievable range of agreement for the total cost of employment. However, to reach the point of mutual acceptability, the team will need guidance to respond to the union's proposal. The board can provide initial guidelines for the team by setting a beginning range for its economic position with the understanding that the range will be developed further as negotiations progress.

***Parameters For Responding to Union Proposals*** After the bargaining team has received the union's bargaining proposal, the board and key administrators convene to discuss responses to the union's positions. Each union proposal should be reviewed from the district's point of reference—what is the impact of this proposed change on the efficient management of the schools? What is the economic impact of this proposal?

The board's parameters are not complete without a range of acceptable responses to union demands. Some union demands may be completely unacceptable to the board; for example, the board may feel that under no circumstances can it agree to a sabbatical leave proposal or to a provision for paid leave for the union president. Other union proposals may be acceptable if they are modified; for example, a request for an extension of the

teachers' duty-free lunch period may be acceptable if it does not interfere with the district's scheduling, if the teachers' day is correspondingly extended or if the duty-free lunch period is set at 30 minutes and the additional time does not become guaranteed free time but, in accordance with district needs, may become time that teachers may be assigned to duty.

Other union proposals may present the opportunity of a compromise position which meets one of the board's established priorities. For example, the union may have proposed an addition of two personal days to the contract's current provision; the board seeking to provide administrative control of the use of personal leave may wish to consider agreeing to four personal days if all its conditions for approval are included or to agree that two days will be granted under the old provisions, and two days under the new restrictions.

Still other union proposals may become acceptable if they are modified to meet the administration's concern and are part of a total settlement which includes some of the board's priorities. For example, an agency shop clause which includes indemnification language may be acceptable in the context of an agreement which includes a definition of the purpose of personal leave.

### **Reassessing Parameters**

At first, the board's parameters may be rather loosely defined and may include the board's opening position and the understanding that the board will agree to some modification of that position to achieve movement towards its goal. As bargaining proceeds, however, the board should get a better sense of what will be achievable in the current round of negotiations and its parameters on all issues will become more precise and may include not only positions on separate issues but also on an acceptable combination of issues.

As negotiations progress, the bargaining team reports to the board regularly. During these meetings, the team may indicate that it has reached the limits of the board's initial position on an issue but that it believes that the parameter, as it stands, cannot be acceptable to the union. The team may also have a sense of what it will take to resolve the issue. For example, in the tuition reimbursement proposal discussed earlier, the team believes that the cap will be acceptable if the board can move to include some sort of limited reimbursement for nontenured staff. Or, the team may report that a union proposal, initially rejected by the board, is emerging as a union goal of some importance, which will need to have some concession by the board to reach a settlement acceptable to the union. The board will then need to reassess its initial parameters, its initial reading of the achievable, and to decide if modification is indicated at this point in time.

Achievability and reality may change during the process of negotiations; new case law developments, new settlements, as well as the district's internal conditions, may increase or decrease the board's ability to achieve

its goals. To keep its bargaining framework realistic and achievable, the board must be sensitive to these changes and be receptive to reassessment. The ongoing process of parameter determination does not necessarily require constant board modification of its parameters; it does require, however, a constant willingness to reexamine the continued viability of the board's guidelines.

The reassessment process should also include key administrators' input to prevent a new agreement which could create an administrative problem and to assist the board to assess the impact of the board's new position to the district's overall goals.

Board parameters enhance the board's effectiveness in negotiations by unifying the board's negotiations effort, by providing coordination between the district's goals and the bargaining team's strategies and tactics, and by providing the board with the ability to influence the outcome of negotiations. To be effective, however, parameters must be grounded in reality and reflect the board's assessment of its internal needs balanced by a sense of the achievable.