



A BOARD POLICY ON NEGOTIATIONS

In recent years, boards of education have become increasingly aware that solid preparation for bargaining enhances their negotiating positions and their ability to achieve board goals at the table. However, most boards plan their negotiating process primarily in terms of their relationship with the union and give little consideration to the relationship between the board and its representatives. Yet, the internal relationship which exists among all members of the board can have a profound impact upon the board's bargaining effectiveness, the negotiated settlement, and the board's ongoing internal relationship.

An internal relationship that is not understood by all board members can lead to many unnecessary bargaining difficulties. Board members' responses to union "end-run" attempts, tentative settlements which ignore board parameters, difficulties obtaining board ratification, and information "leaks" concerning board positions are problems which stem from an ill-defined internal relationship. Interestingly, these difficulties can usually be traced to the actions of well-meaning individuals who, although anxious to reach a settlement, honestly do not understand the dynamics of negotiations, the union's divide-and-conquer strategy, nor the board's need for a coordinated bargaining structure.

Further, a board's ongoing working relationship can be seriously damaged, well after the conclusion of negotiations, if all board members do not understand the board's decision to exclude some board members from the district's negotiations efforts. Rather than perceiving the board's position as a cautious and considered approach to managing the possibility of perceived conflicts of interests, board members are likely to personalize their exclusion from the process. This reaction generally creates stressed board dynamics and contributes to divisions on the board.

Boards can avoid many of these pitfalls of misunderstanding by defining and communicating, prior to the onset of negotiations, the relationship which should exist between the board and its bargaining representatives; boards can develop policies to establish their expectations for the internal conduct of their negotiations.

Although board expectations can be stated in a variety of ways, formal policy statements are particularly well-suited to express the board's goals for its internal relationship.

- The process of policy development and adoption involves the entire board and focuses the attention of all board members on the issue. Thus, the process itself can partially accomplish the goal of providing board members with an understanding of negotiations and of their individual responsibilities in that effort.

- Policies, resulting from discussion of principles and strategies, become an expression of the consensus of the board rather than the desire of a few vocal board members; thus, policy statements are insulated from internal board politics.

- Policies and by-laws are governance statements, representing the rules the board has imposed upon itself to guide its actions; they have the force of law and are applicable to all involved. As such, policies are readily accepted by board members and administrators as legitimate, authoritative guidelines developed in response to issues and not to personalities.

- Policies are formal, written statements which are easily accessible, retrievable points of reference and sources of information. They provide a continuity of procedures to current and future boards; once a board has addressed its expectations for the internal conduct of negotiations, future boards will need to consider their internal bargaining relationship whenever readopting, revising, or deleting the policy.

In developing policies to govern the internal management of negotiations, boards need to address the components of the relationship between the board and its representatives.

Who Can Participate in Negotiations

A board of education, as a public employer in New Jersey, has a statutory obligation to negotiate in good faith with the majority representative of its employees. However, since the early 1990s, the ability of all members of the board to participate in contract negotiations has been called into question.

In administering and clarifying *N.J.S.A. 18A:12-7 et seq.* (the School Ethics Act), the School Ethics Commission has issued a number of advisory opinions and decisions regarding board members' conflict of interest

in negotiating certain contracts. The determinations of the School Ethics Commission (SEC) have resulted in the development of a body of case law which defines what circumstances preclude board members from legally participating in their boards' discussions of negotiations strategies and from voting on a collective bargaining agreement. Since the Commissioner of Education reviews the formal decisions and penalties recommended by the SEC, the definition of which board members and administrators may not participate in negotiations is an ongoing, evolving process which is highly dependent upon the particular factual patterns of each situation. A full discussion of the impact of the School Ethics Act on districts' negotiations efforts and a summary of the decisions defining the limitations on board officials' participation can be found in the article "Impact of the School Ethics Act on Negotiations" in the References section of *The Negotiations Advisor*. Board members are also urged to contact their attorneys and other labor relations resources to check on the most recent developments in this area.

Local board policies and by-laws have for years prior to the enactment of the School Ethics Act, governed exclusion of board members from participation in certain issues. However, the Act has established statewide standards of exclusions that can, at any one time, reduce the number of board members that can participate in local districts' negotiations efforts. The number of board members who can participate can be modified, at any time, by a number of factors, including: the election of new board members; the type of contract that is being negotiated; and the latest definition of what constitutes a conflict of interest with the district's negotiations. For the purposes of this article, all references to "the board" and its specific negotiations responsibilities apply only to those board members who are permitted to participate in negotiations.

The Role of the Board During Negotiations

All board members who can participate in negotiations have a specific role in the district's bargaining efforts which include:

Delegation The board may delegate its duty to negotiate to agents or representatives.

Ratification PERC has held that the board does not have the inherent right to review a tentative agreement reached by its representatives (see *Bergenfield Board of Education*, PERC No. 90, 1 *NJPER* 44). Thus, a board must explicitly retain its authority to review, and to ratify or to reject, a tentative agreement. A statement of the exclusive right of the board to ratify an agreement notifies not only the community and the union but also all board representatives of the authority of the board; it also

eliminates the possibility that the board will be bound by the actions of a minority of its membership.

Establishing Parameters The board's authority to ratify is accompanied by its responsibility to set the parameters of the settlement. The process by which the board establishes negotiations guidelines can become a learning experience for all board members and can influence the outcome of negotiations; a rational process should provide the board with a realistic, achievable framework for negotiations. The process should include: consideration of the district's needs and resources; a comparative analysis of the outcome of other districts' negotiations; an assessment of union demands; and provisions to reexamine and possibly readjust initial parameters. Negotiations committees, administrators, and consultants can be invaluable resources in providing information and advice in establishing goals and priorities. In establishing its parameters, the board should also confirm its obligation to support a tentative agreement which falls within its framework for an acceptable settlement.

Designation of Board Representatives

The Bargaining Team The rule of thumb that board committees should not constitute a majority of the membership is of extreme importance to the configuration of the bargaining team. Keep in mind that, for the purposes of bargaining, a numerical minority is based on the number of board members who can vote on ratification of a tentative agreement. (For a full discussion of how exclusions affect boards' organization for negotiations, see the article "Impact of the School Ethics Act on Negotiations" in the References section of *The Negotiations Advisor*.)

In addition, the board may appoint non-board members, such as administrators and a labor relations consultant, to serve on the bargaining team.

Continuity of the Team In selecting its bargaining team, a board must recognize that negotiations are often not completed by the date of the board election. The appointment of a completely new bargaining team, at the reorganization of the board, can seriously disturb the board's ongoing negotiations. The negotiating team should therefore be initially selected to ensure stability of representation during the continuing negotiations. Appointments of board members who are in their first and second year of their terms can provide continuity to the team and can also provide continuity of labor relations experience on the board.

Selection of the Chief Negotiator The board may, at its discretion, appoint a board member, an administrator, or a labor relations consultant to be its chief negotiator. The board's ability to utilize a consultant, either as a negotiator or as a resource person, is usually spelled out

in a board by-law on the use of consultants but it may also be included in a policy on collective negotiations.

Selection of the District's Spokesperson for Negotiations Releases The authority to release information or to respond to media inquiries concerning negotiations should reside in one individual. The designation of an official spokesperson assures that the releases are consistent with the board's intent, informs board members and administrators that there is an official channel to handle releases, and allows them to refer inquiries to the proper source.

The Responsibilities of the Board's Designated Representatives

The explicit authority reserved for all board members who can participate in negotiations implies that representatives shall have limited authority; however, to prevent misunderstanding and to reinforce the boundaries of the team's authority, the role of board representative should be explicitly stated. It should be noted that the responsibilities of the committee are applicable to all negotiating teams regardless of the identity of the chief negotiator.

The Authority of the Team Within the framework of the board's parameters, the negotiating team should have the authority to present board proposals, to respond to union proposals, to offer counterproposals, and to reach a tentative agreement. In order to engage in good faith bargaining, the team must be able to exercise the authority, without seeking board approval, to move within the board's guidelines. However, the team does not have the authority to negotiate outside or beyond the board's framework. A clear delineation of the limits of its authority should establish a clear understanding of the team's boundaries and should prevent tentative agreements which cannot be supported by the board.

The Authority of Individual Team Members The authority to negotiate rests with the entire team. Just as an individual board member does not have legal status outside the entire board, the individual team member does not have an individual authority to negotiate with union representatives. An individual team member may only negotiate independently when there is the knowledge and consent of the entire team. Defining individual authority may prevent unauthorized negotiations which can undermine the board's position.

The Responsibilities of the Superintendent In most districts, the superintendent serves as a resource person to the board at all stages of negotiations. During bargaining, the superintendent should be consulted to assess the impact of possible agreements on the administration of the district. The board's expectation for the superintendent's role should be established in policies on "Administrative Role in Collective Negotia-

tions," or "Contract Administration," or in the CSA's job description.

Interaction Between the Board and Its Representatives

The coordination of the differentiated functions of the board and its bargaining team is essential to the board's effectiveness in negotiations. The following components can assist a board and its bargaining representatives to build a productive interaction.

Training and In-service A well-defined relationship, without a basic understanding of the negotiations process, will not necessarily result in successful bargaining. A board's negotiating effort, whether headed by a professional negotiator or by a board member, is enhanced by providing labor relations training to the team and to other interested board members. Those attending training programs should report to the rest of the board in executive sessions. Reports assure that all board members develop some understanding of the process and remain informed of bargaining trends, developments and new ideas.

Communication Regularly, in executive session, the team should discuss the progress of negotiations with all board members who can participate in negotiations. Keeping the board well-informed and up-to-date on the development of negotiations should: prepare the board for the need to compromise in certain areas and for the potential for success, or failure, in other areas; determine the need to reexamine and possibly redefine parameters; prepare the board for the nature of the possible settlement; and permit the team to assess the board's reaction and to discuss alternatives with the board. Frequent communications permits a mutual, realistic assessment of the progress of negotiations; good communication between the board and its teams should prevent surprises and rejections of tentative agreements. In addition, regular communication is particularly helpful when more than one contract is being negotiated by different board teams: the teams have an opportunity to exchange information, to assess similarities, and to coordinate responses.

Respect for Assigned Roles and Responsibilities A clear designation of roles implies that delegated responsibilities will not be usurped by other board agents. However, explicit statements defining unauthorized and unacceptable behavior reaffirm the boundaries of established roles and provide board members with the ability to respond to union attempts to by-pass the established procedures; the approached board member may quote the policy and say "I do not have the authority to discuss these matters." Providing board members with an easy answer to use in a difficult and uncomfortable situation is an invaluable benefit of a formal policy statement. Board members' ability to rely on policy offers strong support in maintaining the confidentiality necessary to the board's bargaining efforts.

A Formal Board Policy The components of the board's internal negotiations relationship can then be combined to form a policy to govern the conduct of its negotiations. The policy, addressing all major aspects of a board's internal conduct of the bargaining process,¹ establishes and communicates expectations for the relationship which should exist between the board and its bargaining repre-

sentatives. The policy should result in board members' increased awareness of their responsibilities and of the board's need to maintain coordinated control of its negotiations process. The policy should therefore prevent inappropriate, unacceptable, and potentially damaging behavior during negotiations and should enhance the board's ability to meet its bargaining goals.

EXAMPLE OF A BOARD POLICY

Collective Negotiations

The Board of Education recognizes its duty to negotiate in good faith regarding terms and conditions of employment with the majority representatives of its unionized employees. To effectuate this responsibility, only board members who do not have a conflict of interest pursuant to opinions/decisions of the School Ethics Commission and/or to Board by-laws shall participate in discussions of negotiations positions and vote on ratification of the tentative agreement reached by the Board's bargaining team. For the purposes of this policy, any reference to the Board shall mean only those board members of the Board who can participate in negotiations.

The Board shall appoint a negotiations committee or committees to represent it in negotiations with employee organizations, but all board members who can participate in negotiations retain the authority to review and to accept, or to reject, any tentative agreement(s) reached by its negotiations committee(s).

The Board's negotiating committee(s) may include board members, administrators, and such outside negotiations experts as designated by the Board; however, the number of board members assigned to any negotiations committee shall not constitute a majority of all board members who can participate in negotiations. Whenever possible, the negotiations committee(s) shall include board members who are in the first and second year of their elected/appointed term. The Board, at its discretion, shall appoint one member of the committee to serve as the Board's chief spokesperson.

The Board, in consultation with administrators and the negotiations committee(s) shall set bargaining goals and parameters for any settlement. The committee(s) shall have the authority to negotiate within the parameters determined by the Board; the committee(s) shall not have the authority to make proposals, or to agree to union proposals, which are not in accord with the Board's parameters.

Members of the committee(s), other board members and administrators shall not have the authority to consult with or to negotiate with any employees or representatives of employees regarding any matters currently the subject of negotiations without the express consent of the committee.

The committee(s) shall regularly report to the Board, in executive session, the progress of negotiations and may seek additional direction or advice from the full Board, the administrative staff, or any outside negotiations expert designated by the Board.

The Board shall provide committee members and other interested board members with the opportunity to attend labor relations training programs. To keep the full Board informed of the process, members attending such programs will report to the Board at the first executive session following the program.

The Board shall designate a spokesperson for contacts with the public and the press regarding negotiations. Board members and administrators shall refer all inquiries concerning negotiations to this spokesperson. No board member or administrator other than the designated spokesperson has the authority to discuss any aspect of negotiations without the express consent of the Board.

The Board shall direct the Superintendent of Schools to establish, in consultation with the Board, the administrative staff and any labor relations consultants designated by the Board, procedures for administrative involvement in the negotiations process and for the administration of the negotiated agreement(s).

¹This policy, however, does not represent the board's involvement in all aspects of labor relations; for example, the board's expectations for the administration of the contract remains to be addressed in a separate policy.