NEGOTIATING WITH COMPREHENSIVE UNITS

Under New Jersey law, all employees of the state and of political subdivisions of the state, with the exception of those who are classified as "managerial" or "confidential" employees, are guaranteed the right to bargain collectively with their employers through representatives of their own choosing over terms and conditions of employment. This choice of representatives involves, initially, a choice as to the composition of the bargaining unit. This is not an unfettered choice. Both the employer and PERC may have a voice in it. There must be a community of interest within and among a group or groups of employees within a proposed bargaining unit. Moreover, at this late date, most employees of most public employers, and certainly most boards of education, have long since formed units which, by now, have had an extensive history of negotiations which have produced a series of collective bargaining agreements.

In the absence of some affirmative action, usually by the unions, the composition of these units will not be disturbed. The process of changing this composition, usually in the direction of consolidation of existing units, is discussed in the "Bargaining Units" article in this section of *The Negotiations Advisor*.

When groups of employees holding dissimilar kinds of jobs join together in a single bargaining unit, a comprehensive bargaining unit is formed. Obviously, there are degrees of comprehensiveness. For example, clerical and buildings and grounds employees may form a "supportive staff" bargaining unit. Such a unit may or may not include food service employees, bus drivers and teachers' aides. The ultimate comprehensive unit is one that includes all employees of a school board, except administrators and supervisors. This is a "wall-to-wall" unit. Even with such a unit, there are degrees of comprehensiveness. Does the unit include part-time employees? If so, is there a threshold of working time (i.e., 20 hours per week, or half-time), which employees must pass before being included? Does it include substitute employees of various kinds? If so, is a distinction made between medium or long-term substitutes and per diem substitutes? What about people employed by the district in such ancillary programs as adult education, summer programs or summer schools?

This article will deal with the special problems of negotiating with comprehensive bargaining units, whatever their composition. In general, we believe that boards should avoid the formation of wall-to-wall units if they can possibly do so. At the other extreme, there is a fragmentation resulting in a proliferation of bargaining units which is also to be avoided, for obvious reasons. Certainly, no public school district needs ten or eleven different sets of negotiations.

Special Problems of Negotiating With Comprehensive Units

The First Time

If the comprehensive unit has been in existence for some time, and one or more contracts have been negotiated with it, negotiations, while somewhat more complex, are not different from other public school collective bargaining. There is, in the existing contract, a framework and an agenda. However, when the first negotiations are conducted with a newly consolidated unit, a new basic contractual framework must be constructed out of preexisting separate unit contracts and other sources concurrently with negotiations over modification of terms and conditions of employment. At the conclusion of the negotiations, a single document must set forth the complete new contractual framework which includes both the continuing and the newly negotiated terms and conditions of employment covering all the employees in the unit.

Most often, a newly consolidated unit is made up of two or more preexisting units. Frequently, an existing unit grows by the accretion of hitherto unrepresented employees. Sometimes, a new unit is created by the consolidation of existing units and, at the same time, the accretion of hitherto unrepresented employees. In all of these cases, it is essential first to determine what agreements, explicit or implicit, on the terms and conditions of employment of the various groups of employees already exist. They will be found in the separate contracts of preexisting units, board policies, administrative rules and regulations, and mutually understood past practices. To a great extent, this is a process of compilation and editing. However, at every step there are judgments to be made, many of which require more or less substantive negotiations.

For example, if a new unit is composed of three former units: teachers, secretaries and custodians, each will have had a grievance procedure in their separate

contracts. If these procedures are identical in every detail, there is no problem. Merely change every reference to "teacher" or "secretary" to "employee" and transcribe any one of these procedures into the new comprehensive agreement. However, if the time limits are different, if one ends in binding arbitration and the others do not, and if the grievance definitions are different in all three, the parties must either set forth in writing the three separate complete procedures or set forth one procedure containing within it the exceptions preserved from the preexisting contracts or negotiate a single procedure applicable to all employees in the new unit.

In the event that the parties will choose the course of putting together a single grievance procedure applicable to all members out of the components of the preexisting contracts, the union can be expected to put forth the broadest grievance definition, the most favorable time limits and the adoption of binding arbitration for the entire new unit. This is natural. Where parallel contractual provisions are not similar, they will uniformly opt for those that are most generous or favorable in their view. The board should remember that the union is not entitled to have these choices embodied in the new contract any more than the board is entitled to choose a more restrictive provision from the custodian's contract and impose it on the teachers and secretaries. In the absence of agreement, the hitherto existing separate provisions remain in effect.

As a practical matter, both parties will probably want to simplify the contract and to agree upon a grievance procedure that is applicable to all unit members. The time limits would be easy to make uniform. It is not to be expected that the teachers, having binding arbitration, will give it up for the sake of uniformity, and it will be difficult for the board to agree that the other employees in the unit should have a lower standard of procedural protection than the teachers, but the board can and should insist that in return for the extension of binding arbitration to all employees, a narrow *West Windsor* grievance definition be adopted, or at the least, that arbitration be limited to grievances based solely on a claimed violation of the express written terms of the locally written agreement. (See article on "Grievance Procedures," in the Selected Contract Clauses section of *The Negotiations Advisor*.)

This kind of process will occur over and over again as each article of the old contracts is reviewed by the parties. In some cases, i.e., a separability clause, it will be apparent to both parties that it should be included in the new agreement. In others, such as provisions for vacations and holidays for custodians, it will be equally apparent to the parties that these are, by their nature, only applicable to custodians, and the parties will quickly agree to preserve the provision, clearly indicating that it is applicable only to custodians.

Any claim that dissimilar levels of benefits should be made uniform at the highest level should be firmly resisted. If the board wishes to increase lower benefits of one group to the level of the others, it should only be done as a part of an overall negotiated total money package, and clearly and explicitly charged to the package.

Definition of the Unit

It is essential that both parties clearly understand what positions are included within the bargaining unit and what positions are excluded, and that this understanding be set forth in the recognition clause of the new agreement. This seems so obvious that it should not require comment. Would that it were so.

In many, possibly a majority of unit consolidations, the recognition clauses of the preexisting units are so precisely written and the practices of the parties so clear that it is only necessary to edit and transcribe the inclusions and exclusions into the new agreement. However, it is not at all uncommon that these are not as explicit as they might be. For example, both parties to a secretaries agreement may have understood that ambiguously defined excluded positions referred to central office clerical employees, but this understanding, unless clarified and recorded in some way, is likely to get lost in the future. More commonly, one or more of the old contracts may have been silent on whether part-time employees were included. In such a case, a set of practices would probably have evolved with respect to each unit by which the parties either did or did not treat part-time employees as unit members, or treated them as unit members in some respect and not in others. To make the matter more complicated, it would not be at all unusual if part-time employees had been treated differently in all of the former units.

Here again, the union can be expected to claim that the most inclusive practices of the old units become the standard of the entire consolidated unit. Again, the board must resist such a claim and insist on the specific inclusion of only those job titles that the parties had mutually understood to have been included in the old units and the clear and comprehensive exclusion of all others. Expanded recognition should not be inadvertent. If it is to occur, it should be the result of a conscious decision by the board or of a representation proceeding before PERC.

Most of this discussion as to who is included and excluded is applicable to the first set of negotiations with a comprehensive unit, but questions of unit definition will continue to arise as new positions are created, full-time positions are reduced to part-time (or vice versa) or the union petitions the board or PERC for the accretion of hitherto unrepresented employees, such as food service employees, aides and monitors. In the latter case, most employees will be part-time, with some working as little as two hours a day. This requires a decision as to a threshold of hours worked daily or weekly as a criterion for inclusion. Conscious decisions must also be made as to what, if any, benefits provided to other unit members will be extended to them. In connection with this question,

the board should remember that in the absence of clear language setting forth exceptions and limitations, it will be assured that insurance and other benefits provided by the contract will be applicable to all unit members. It is preferable that whatever standards for inclusion and exclusion are agreed upon be explicitly stated in the recognition clause. The board, on its side, should review this clause in each successive negotiation to insure that it is both current and clear.

Appropriate Distinctions Among Disparate Groups of Employees

When other employees become members of a bargaining unit largely comprised of and dominated by teachers, there is a tendency on the part of the union to make contract provisions that were framed in the light of the special concerns of teachers as employees applicable to all members of the bargaining unit. Sometimes this extension is appropriate and sometimes it is not. The board should make conscious and well considered judgments in each case. For example, it would be difficult to understand why nonprofessional employees should be included in a curriculum advisory council, or why ill-considered existing articles related to the teachers' academic freedom would have any relevance to other employees. The same is true of tuition reimbursement provisions. The board may have a strong, enlightened and legitimate interest in the education and training of other employees and may wish to support such continuing education and training financially, but in that event, it should negotiate appropriate separate provisions tailored specifically to the needs of these employees and to the board's interest in improving job related capabilities. Also, too often, whether in comprehensive or separate units, there is a tendency to impose the format of a teacher's salary guide on the compensation of other employees. This should be resisted. It is even more irrational for other employees than it is for teachers.

This process can also work in reverse. The custodians, who generally have much less statutory protection than teachers—sometimes none at all—may have a "just cause" provision surviving from their old separate contracts. The teachers may be expected to claim that they are entitled to this procedural protection as well, notwithstanding that they already have enormous statutory protection. The fact that this may not be a logical extension of a benefit will not prevent the union from proposing it. The board must be alert and absolutely resist such a claim.

Similarly, the union may point out what they represent to be unjust and inequitable differences between benefits provided to different groups of employees. For example, they may point out that the contract provides three weeks vacation for custodians after 10 years in the district and only two weeks for secretaries after 10 years. Their concern for equity will not cause them to reduce the custodians' vacation to two weeks rather than increase the secretaries' vacation to three weeks. What they will not say (and perhaps they don't even consciously think about) is that the secretaries are also off during Christmas week, Easter week and the mid-winter vacation, and the custodians are not.

The board on its part, should remain aware of these and other distinctions and preserve them where they are appropriate.

Considerations of the Cost of Benefits

While it is tempting to conclude as the union will maintain, that equity and humanitarian concern for the welfare of all employees requires that they all receive the same benefits, the board must consider the impact of the provision of these benefits on the cost of various services. If such care is not exercised, the costs may become so burdensome that the board may have to consider alternate means of providing the service. Considerations of this kind have induced many districts to contract for transportation services.

For example, if teachers with an average salary of $23,000 also receive health insurance at an average cost of $2,000, dental insurance at $400, and prescription insurance at $250, the cost of the teachers' services is increased by $2,650, or 11.5%. If these same benefits are provided to three-hour food service workers or monitors who work for $4.00 per hour, the cost of their services is also increased by $2,650, but this $2,650 is more than 100% of their basic pay. An uncritical extension of benefits may raise the board's costs to a level at which it is more economical to contract the entire food service operation. This is not to suggest that boards should be insensitive to the welfare of their employees, but they should balance these humanitarian concerns against prudent economic considerations.

Problems of Unequal Representation

It would be most difficult for a union composed of disparate groups of employees, even if so inclined, to pay equal attention to and to represent the interests of different groups of employees with equal fervor. Most comprehensive units are dominated by teachers. Their spokesmen think like teachers and represent the interests of teachers very capably and very energetically. While their teams normally include individuals from the clerical, food service, and buildings and grounds staffs, these latter members rarely have equal weight with the teachers when push comes to shove. In fairness to the teachers, they realize this and frequently demand a higher percentage salary increase for their lower paid nonprofessional members than they do for themselves, on the logical ground that the same percentage would produce very few dollars for these people, who also have to make a living. If the board does not buy this differential, a test of the union's commitment to these employees occurs when it is determined that this will not stand in the way of a settlement.

While it is the union's duty to represent the interests

of all members of the unit, the board, as an enlightened and humane employer, should not totally abdicate its concern for their welfare or for their equitable treatment. Where there is, either purposely or inadvertently, a failure on the part of the union to attend adequately to the needs of a few employees (usually in a small subgroup), the board should remedy this oversight.

Ratification

The board must concern itself not only with reaching an agreement but also with getting it ratified. On the board side, the problem of securing ratification of an agreement with a comprehensive unit is no different from securing ratification of an agreement with any unit, except that, in reporting the agreement to the full board, the Negotiating Committee must supply more detail and spend more time in explaining it.

However, ratification by the union may be an entirely different matter. Boards assume that the union's ratification will be by a simple majority vote. Usually, this is the case. The procedures and requirements for ratification by the union are governed by the local union's constitution or bylaws. It is not uncommon in comprehensive units that the bylaws provide a different standard for ratification. It may be that a two thirds majority is required. Or, in some instances the contract ratification can be vetoed by a negative vote of any one component of the unit, for example the secretaries.

Whatever the union's internal rules are, the board cannot intervene in the union's operation and is powerless to change the system, however bizarre the results it produces. However, the board has a right to know what these procedures and standards for ratification are, and, if it does not know, it should ask the union leadership or the union's negotiator, early in the process, for this information. There is no reason why the union should refuse to give this information, particularly at the beginning of negotiations.

Summary

The prevalence of comprehensive units is gradually increasing. It is to be expected that the number of such units will continue to increase slowly. Therefore, it behooves those boards who are not yet facing them to do what they can to avoid their formation.

When and if boards must negotiate with such units, more meticulous preparation and the mastering of more detail will be required. Also, boards must be sensitive to the disparate needs and aspirations of the different groups of employees in the unit as well as to the political needs and tensions with-in the union representing the unit. The board's goals in negotiation should be clearly formulated and evaluated and kept consciously in mind. A judicious balancing of the more complex issues and interests involved in negotiating with a comprehensive unit should lead to successful bargaining and the production of agreements fair and acceptable to all parties.