



# FACTFINDING AND BEYOND

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**T**he PERC Law sets forth a system of progressive impasse procedures for public employers and their employee associations in the event the parties reach a deadlock in negotiations. For school districts, the impasse procedures include mediation, factfinding and, as of July 2003, super conciliation. (For an overview of all impasse procedures, please see that article in *The Negotiations Advisor*.)

The mediation process (fully discussed in *The Negotiations Advisor* article "Mediation") is the first and the more informal procedure designed to assist school boards and school employees' unions to resolve their negotiations disputes. Factfinding and super conciliation represent the second and third more formal impasse procedures.

The more formal procedures generally involve two stages. The first stage is an attempt by the neutral to mediate the settlement. If the mediation effort is unsuccessful, then the neutral will move the process to the second stage which is a formal hearing designed to give each party an opportunity to present relevant, objective "facts" to persuade the neutral of the validity of its positions. The neutral then issues a written report and non-binding recommendations for settlement that will be released to the parties and, eventually, to the public.

In these proceedings, the neutral's overall goal is the same as the mediator's: to promote labor peace and stability in the district by assisting the parties to reach a mutually acceptable agreement. While facts, statistics, data and information serve as a basis for the neutral's recommendation, factfinding and super conciliation are as much the finding of an acceptable settlement as they are a finding of facts. This is because the more formal impasse procedures continue to emphasize the voluntary nature of the settlement and the neutrals do not have the power or authority to impose a settlement.

Although these more formal procedures differ from the mediation process, the board's goals throughout the process remains the same: to protect the district's interests and to reach a settlement that is within the parameters established by the board. To achieve this goal, a board facing the more formal procedures must be aware of the neutrals' role and functions, the criteria that will be used in making recommendations, and the board's role in gathering the facts to present persuasive and compelling arguments at the formal hearings.

## The Factfinding Process

As a result of a July 2003 amendment to the PERC Law, parties to school district negotiations who have failed to reach agreement in mediation are required to participate in factfinding. The factfinding process begins when the parties' efforts at mediation have not resulted in a settlement and PERC receives a request to initiate the procedure.<sup>1</sup> Requests can come from one or both parties as well as from a mediator's recommendation that the parties dispute should proceed to factfinding.

### Appointment of the Factfinder

In contrast to the assignment of a mediator, the parties have an opportunity to participate in the selection of the factfinder. Upon receiving a request to invoke factfinding, PERC will send each party an identical list of the names of three factfinders. The parties will be instructed to strike one of the three names and indicate the order of preference of the remaining two names.<sup>2</sup> Based on this information, PERC will assign a mutually acceptable factfinder. PERC will notify each party- of the appointed factfinder, and the factfinder will contact the parties directly to schedule the first fact-finding session.

Unlike mediation, the factfinding process results in a direct economic cost to the parties. The parties are required to split the cost of the factfinder's per diem rate for each day or night of work performed plus any expenses incurred by the factfinder. The factfinder's per diem rate is determined by PERC and periodically adjusted. (Boards can obtain the most current cost of factfinders' services by calling the Public Employment Relations Commission or the NJSBA Labor Relations Department.)

### The Factfinder's Functions

**Mediation Effort** The factfinder's initial role may be very similar to the role of a mediator. At the first "factfinding"

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<sup>1</sup> For more information on demographic variables and other comparative data, see "Current Negotiations Data" available to NJSBA members at the Labor Relations Page on the NJSBA website [www.njsba.org](http://www.njsba.org)

<sup>2</sup> Boards who are presented with a list of factfinders may contact the NJSBA Labor Relations Department for assistance and advice in the selection process.

session, the factfinder will likely attempt to mediate a settlement rather than conduct a formal factfinding hearing. This initial “mediation” effort serves several purposes.

First, the factfinder is very often successful in mediating a mutually acceptable settlement even though a mediator was not able to do so previously. The success of the factfinder’s mediation effort is often closely linked to the effect of *timing* on the negotiations process. By the time the parties reach factfinding, there may be heightened-impatience and discontent from constituencies and changed perceptions about what is critical to the settlement; consequently, there may be increased pressure to settle. In addition to the “timing” advantage, the factfinder has a tactical advantage which was not available to the mediator. In attempting to persuade one party or the other to modify its position, the factfinder may forewarn that some of the party’s arguments or “facts” will not be persuasive to him when he dons his robes as “the factfinder” to conduct a hearing and issue recommendations. This added insight about the factfinder’s potential perspective may serve to pressure the party to reconsider its position. This tactic has often proven effective in moving the parties toward compromise and agreement.

Even if the factfinder’s mediation effort fails, it may serve additional purposes. It may resolve some of the remaining issues and further close the gap between the board’s and union’s positions so that the parties are not as far apart when the hearing begins. In addition, it provides the factfinder with an opportunity to deal more directly and openly with each party so that he or she can better assess the real issues, the real needs, and the areas of acceptability. It may also allow the factfinder to provide “reality therapy” for any party who is pursuing unrealistic or unreasonable bargaining positions.

Occasionally, one party or both parties may want to proceed directly with the hearing and bypass the mediation phase of the factfinding process. This may occur where one party, for internal political or tactical reasons, needs a factfinder’s formal recommendations. For example, where one party’s constituency has unrealistic expectations as to what is achievable in the negotiations process, the representatives or leadership can cite the “state appointed” neutral’s formal “unbiased” recommendations to gain support for the tentative agreement. In other instances, a bargaining team spokesperson may have been backed-into a corner by taking an extreme or unrelenting position and may need a factfinder’s report to be able to move off that position. If the factfinder determines that the mediation effort will only prolong the impasse and be of little value, he or she may choose to proceed directly with the hearing.

**Conducting the Hearing** The purpose of the hearing is to allow each party to present “facts,” data, and arguments in support of its positions. The factfinder has the authority- under law to subpoena witnesses, administer oaths, take testimony or deposition, and require the production of materials pertinent to issues involved in the dispute;

however, in actuality, the process usually tends to be a more informal quasi-judicial process.

The factfinder begins by bringing the parties together to explain the process and the manner in which the hearing will be conducted. The factfinder usually instructs the union to present its positions, arguments, and exhibits first, and then allows the board to proceed with its case. The factfinder may ask clarifying questions throughout the hearing and will give each party an opportunity to question, or to challenge and dispute, the other side’s “facts.” Occasionally, the factfinder may be able to mediate a settlement at the conclusion of the hearing thus obviating the need for post-hearing briefs and a formal report. More often than not, however, once the hearing has concluded, the factfinder offers the parties an opportunity to file briefs and then, based on the information gleaned from the briefs and/or hearing, will issue a report with recommendations.

**Accepting Post-Factfinding Briefs** Depending on the number and/or complexity of the issues and arguments, the parties may, or may not, submit post-hearing briefs. The post-hearing brief gives each party an opportunity to reiterate the issues in dispute, its positions, and to summarize the evidence, data, facts and arguments in support of its positions. It also provides a final opportunity to rebut the other side’s arguments, data and positions. In the absence of briefs, the factfinder will base his or her recommendations on the documentation and arguments provided at the hearing. Occasionally, only one party may choose to submit a brief and the other party may simply reserve the right to respond, if necessary, to the brief. Again, if the issues and arguments are straight-forward, both parties may waive their right to submit briefs. However, many advocates automatically choose to file a brief because it presents one last opportunity to be “heard” by the factfinder.

**Issuing the Report** After the conclusion of the hearing or after receipt of the parties’ briefs, the factfinder will write a report and forward a copy to each party. The report will usually include a list of the issues in dispute, the parties’ positions on each issue, a recitation of relevant statistics or data, recommendations for settlement, and the rationale or basis for the recommendations.

In accordance with the July 2003 amendment to the PERC Law, the report is required to be released to the public 10 days after the parties have received the factfinder’s recommendations. The new law also gives the parties the opportunity to reach a mutually acceptable settlement within 20 days of their receipt of the report. During this time, the parties are expected to review the report, determine whether the recommendations are acceptable to be mutually adopted as the parties’ negotiated agreement, or if it is necessary to continue to negotiate to reach a mutual agreement.

In reviewing the report, it is important to understand the factors that the factfinder used and relied upon in shaping a recommendation for settlement.

## The Factfinder's Recommendations: Guiding Principles and Criteria

The law does not require factfinders to apply specific criteria in shaping their recommendations for settlement. However, in order to reach their goal of assisting the parties to reach an agreement, factfinders have generally and typically been guided by the fundamental principle of issuing a report that will be sufficiently acceptable by both parties. While supporting their recommendations with facts, figures, and statistics provided by the parties, the predominant underlying factor influencing factfinders' recommendations will ultimately be their perceived point of acceptability. To achieve this end, factfinders tend to be conservative when making their recommendations and will not generally break new ground or deviate significantly from the status quo, unless unusual or mitigating circumstances exist. Although factfinders may not specifically refer to "acceptability" as a criterion to support the recommendations for settlement, it is nevertheless a critical underlying factor in each of those recommendations. The "acceptability" factor serves to shape and guide the factfinder's reliance on the other more visible and often-cited criteria. Factfinders generally utilize the following criteria in making their determinations: comparability, ability to pay, the economic climate, and the history or experience under the current agreement.

**Comparability** Comparative data is the most widely used- "evidence" during factfinding. Almost always, both parties compile statistics from "comparable" districts to support and substantiate their positions and claims. Often, each party will be citing different "comparable" districts in support of its positions. For example, the union may be citing the county average settlement rate, while the board may be pointing to the average salary increase of recently settled agreements in districts with similar demographic profiles (such as similar enrollment grouping, socioeconomic status, etc.).<sup>32</sup> Similarly, the parties may cite benefits, work time, and working conditions provided in "similar" employees' contracts in other districts.<sup>4</sup>

Traditionally, comparative data has been the most influential factor affecting the recommendations for settlement. One reason for this is that comparative data has the appearance of "objective" facts and figures. The other more important reason is that comparability has traditionally been closely related to acceptability. This is because the "going rate" or the "norm" has tended to influence the parties' underlying expectations for what is realistic and achievable. Thus, while the union may have been seriously seeking an above average settlement, and while the board may have been committed to holding the line on a below-average settlement, a settlement nearer the going rate has

often served to split the parties' differences and resulted in a mutually acceptable settlement.

Reliance on comparative data tends to restrict the rate and magnitude of change in negotiations and factfinding. For example, in recent years a major board goal in negotiations has been to obtain cost containment on insurance benefits. Because factfinders tend to rely on the widespread pattern of full board payment for insurance benefits, they have been disinclined to recommend employee contributions toward the cost of insurance coverage. However, as boards have been increasingly successful in negotiating a wide variety of cost containment measures on their various insurances (such as higher deductibles, increased co-pays, changes in levels of benefits, etc.), factfinders are now more likely to cite this trend to support their recommendations for cost containment measures.

While comparative data has generally been the most significant criterion relied upon by factfinders in the past, changing economic conditions can bring two other factors into more compelling focus: ability to pay and local economic conditions.

**Ability to Pay** Both parties will usually make arguments one way or the other about the district's ability (or inability, as the case may be) to pay. Data often considered by factfinders may include some or all of the following: the district's equalized valuation per pupil; its tax rates (school, municipal, and total); per capita income; the district's budget cap; history of budget defeats; budget surplus; high fixed costs; taxpayer opposition; loss of state aid; and so on. Some of these factors directly flow from the current economic climate.

**Economic Conditions** The local and state economy are factors which may affect the factfinder's assessment of the district's ability to pay as well as its willingness to pay. In the past, the most often cited economic indicator has been the cost of living as measured by the Consumer Price Index (CPI). During inflationary periods when costs are escalating, the union will emphasize the high cost of living to support its demand for high salary increases. When the cost of living is increasing at a lower rate, it is the board that will point to the CPI. While acknowledging the CPI as a relevant economic indicator, factfinding reports, in general, have not placed much weight on this factor.

Of greater importance to the factfinder is the economic conditions at the local level. Greater attention will be paid to documentation concerning factors such as the closing of a large company or industry in the area, the local unemployment rate, the size of the district's senior citizen population on fixed incomes, the number of foreclosures on homes and businesses, a local taxpayers' revolt, and any other indicators of the local economic climate. Such factors directly affect the public's perception of school district spending and the community's willingness to support the district's proposed budget.

**History/Experience Under the Current Contract** The parties' experience under the contract will serve to influ-

<sup>3</sup> For more information on demographic variables and other comparative data, see "Current Negotiations Data" available to NJSBA members at the Labor Relations Page on the NJSBA website [www.njsba.org](http://www.njsba.org)

<sup>4</sup> For more information about the use of comparative data and potential problems to avoid, please refer to "The Pitfalls of Comparability Data" in the Bargaining Skills section of *The Negotiations Advisor*.

ence the factfinder's recommendations on contractual language items. Because the factfinding process is a very conservative process, factfinders will often be reluctant to recommend language changes unless persuaded that the parties experience under the contract warrants the change. As a prominent factfinder stated in one of his reports:

*...he who seeks a contractual change or modification has, in factfinding, the burden of going forward and presenting "facts" to the undersigned factfinder to warrant, establish or justify its positions. Changes are not made merely for the sake of change. They must be justified. They must be warranted.*

Where one party has not demonstrated a real need or compelling reason to support its desired change, the factfinder has often denied the proposal. For example, a board's proposal to limit the use of sabbatical leaves was turned down by the factfinder because the district experience indicated little use of this benefit and no problems to warrant the change. Similarly, while a factfinder found that binding arbitration is a widely accepted method for dispute resolution, he rejected a union proposal for binding arbitration because the history showed few grievances and no problems under the current system. (He also found that comparative data did not support the Association's contention that binding arbitration is universal in teachers' contracts throughout the county, once again highlighting factfinders' reliance on comparability.) Thus, the factfinder concluded that there was no need to deviate from the present system.

As previously stated, the factfinder does not have a set of prescribed criteria that he or she must follow. But all of the above-mentioned factors will, to varying degrees, influence the factfinder's recommendations. It is therefore incumbent upon boards to skillfully utilize the above criteria in order to build convincing arguments and to present a persuasive case to best influence the factfinder. In addition, an understanding of the factfinder's rationale can provide boards with realistic benchmarks to use in post-factfinding negotiations and super conciliation.

### **Super Conciliation**

The 2003 amendment to the PERC Law established a new post-factfinding impasse procedure to be used when a school board and its local union are still unable to reach an agreement after 20 days of the issuance of the factfinder's report. In those circumstances, the law requires the parties to submit their on-going dispute to super conciliation. The law further requires PERC to appoint a super conciliator whose function is to assist the parties to reach a settlement.

The super conciliator is statutorily authorized to: schedule investigatory proceedings; investigate and acquire all relevant information regarding the dispute; discuss with the parties their differences; utilize means and mechanisms, including but not limited to requiring 24 hour negotiations, until a voluntary settlement is reached; and provide recommendations to resolve the parties' dif-

ferences. The super conciliator may also modify or amend the factfinder's report for the parties' reconsideration as one of the efforts to achieve a voluntary settlement and may institute any other non-binding procedures found to be appropriate by the neutral.

If the actions taken fail to resolve the dispute, the super conciliator will issue a final report. That report is to be made available to the public within 10 days after it has been received by the parties.

Prior to the new law, super conciliation occurred when PERC, typically in crisis situations, determined that this heightened form of dispute resolution was appropriate. However, as of the enactment of the 2003 amendment, this procedure is a mandatory requirement whenever any post-factfinding negotiations does not result in a mutually agreeable solution.

It is expected that PERC will be adopting rules to regulate the conduct of super conciliation sessions. Developments in this area will be posted at the Labor Relations page on the NJSBA web site at [www.njsba.org](http://www.njsba.org)

## **The Board's Role**

The board's overall role in factfinding and super conciliation continues to be the same as in negotiations and mediation: to protect the district's interests; to clearly communicate the board's needs; to negotiate slowly and incrementally leaving room for movement; to protect its bottom line position (yet be willing to explore compromises and alternative ways to achieve goals); and to negotiate a settlement within its parameters. However, because the these procedures are more formal and result in written public recommendations that will be released to the public, the board's preparations will be quite different.<sup>5</sup>

### **Preparing for Factfinding**

The board should begin by identifying each and every unresolved issue which was in dispute at the time the parties invoked factfinding. Proposals that were previously settled or withdrawn should not be addressed in the factfinding proceedings. Some-times the union will attempt to resurrect issues that were previously dropped or that have not been discussed in recent negotiations sessions. The board should vehemently oppose such attempts and assert to the factfinder that those issues are no longer part of the present negotiations dispute.

As discussed earlier, the first factfinding session is usually an effort on the part of the factfinder to "medi-

<sup>5</sup> A discussion of board's preparation for super conciliation will be presented by the NJSBA after PERC's adoption of its new rules provides an expected structure for the conduct of this stage of its impasse procedure. It is expected that super conciliation will follow the general structure of factfinding and that the board's materials for the factfinding session, as well as the factfinder's report itself, will be helpful in the super conciliation proceedings. New developments will be included in the online *Negotiations Advisor*, available to subscribers at the Labor Relations page of the NJSBA web site at [www.njsba.org](http://www.njsba.org)

ate” a settlement. In the past, such mediation attempts have been, more often than not, successful in resolving the negotiations dispute (either directly or because the parties decide to meet on their own and are able to reach settlement without further neutral assistance). While the factfinder’s mediation effort is the more informal stage of the process, the board should still be prepared to educate the factfinder/mediator about the issues, the district’s ability to pay, local economic conditions, comparative statistics, and so on. While specific charts, graphs, and other documentation are not necessary at this juncture, the board should be well prepared, knowledgeable, clear, specific and convincing.

In preparing for the factfinding hearing, the board should gather whatever documentation is advantageous and necessary to support its positions and to refute the union’s proposals. Depending on the issues and the board’s arguments, documentation may include: information about the district’s size, enrollment pattern, socio-economic status, wealth, and other demographic factors; budget information; state aid figures; economic statistics; community support; comparative data; and any other information or statistics that are valid, relevant, and helpful. (See listing at the end of this article for helpful sources of data.)

Sometimes, boards attempt to make comparisons among teachers and other professionals in private industry. As part of their comparability research, boards have increasingly cited settlements occurring in the private sector. However, factfinders have held that the “usual and most helpful guide” is comparisons with other school districts and that the “relevant universe for teachers is other teachers.” While factfinders have been very reluctant, in the past, to place much weight on private sector comparative data, boards should continue, where appropriate, to stress this data because it serves to highlight local economic conditions and the resultant effect on the community’s perceptions of school district spending. Boards’ comparisons with the private sector have been more persuasive where the contract negotiations affect support staff employees (such as secretaries, custodians, maintenance, etc.) because such employees do compete in the private sector job market.

The information presented by the board should not only support the board’s position, but it should also anticipate and refute the union’s arguments. If the union were claiming that this district’s teachers are among the lowest paid in the county, the board should be prepared to present any relevant and valid information that offsets that argument; for example: that teachers’ salaries are lower in this district because they are a younger, less experienced staff; or that they have a shorter work year or work day than other teachers in the county; or that their benefit package is more generous; or that this district is not representative of the rest of the county and must be compared to districts with similar size and demographic profile; or that the union’s statistics are inaccurate or -incomplete. If the board is arguing against the union’s choice of comparative data or the validity of the data, it should be prepared to

demonstrate why and how the board’s data is more appropriate, valid or accurate.

Similarly, if the union is arguing that the district has the economic resources to support the teachers’ salary demand, the board will need to present data concerning its tax rates; budget defeats; fixed costs; budget cap restrictions; loss of state aid or uncertainty about future state aid; taxpayer opposition; etc. The board may also present information about the district’s lack of economic resources needed for new textbooks, sorely needed equipment, improvements to facilities, or important educational programs. It should be prepared to show why the budget surplus cannot be used to fund the union’s salary demand. It should also cite any recent and/or potential staff reductions taken for economic reasons.

The purpose of the data is not only to convince the factfinder of the validity of the boards’ positions, but it is also to help the union hear, once again, the validity and reasonableness of the board’s position. A well-developed and well presented board case is not likely to lead to the union’s immediate willingness to move towards the board’s position. However, the board’s effective presentation can go a long way in persuading the union to accept a forthcoming factfinder’s recommendation that supports the board’s position. In addition, well-prepared, thorough board arguments and exhibits gives the factfinder easy access to relevant information to support recommendations favorable to the board. If a board presents well-developed rationale for its positions and convincing arguments against the union’s positions, it increases the chances that the factfinder will rely on and cite that rationale when he or she writes the report.

Boards should recognize that the union usually comes in armed with voluminous data and statistics and will likely know the district’s budget and finances as well as the board. However, although the union representatives often arrive with a thick binder filled with charts, graphs, exhibits, computer printouts, and statistics, the factfinder recognizes that volume and weight is not nearly as important as relevance and substance.

### **Presenting the Board’s Case**

Throughout its presentation, the board should be clear, specific, and (where appropriate) emphatic about its positions. It must communicate to the factfinder any potential recommendations that would be completely unacceptable in a final agreement. At the same time, it should recognize that the factfinder must develop a report that balances the needs of each party and gives enough to each party to maximize chances of acceptability.

The board, therefore, should ensure that it has left room for the give and take of bargaining as it enters the factfinding process. Boards that have gone into factfinding at their absolute bottom line positions have greatly frustrated the factfinding process and may have compromised their own interests. Thus, the parties should provide the factfinder with enough latitude to fashion a report that meets enough of each party’s needs to serve as a basis for

an acceptable settlement.

During the presentation of the union's case, the board team should take careful notes about the union's arguments and documentation. This will enable the board to respond to, refute, or dispute some of the union's claims and statistics. The board may ask clarifying questions or dispute the union's documentation either at the close of the union's presentation or in its post-hearing brief.

**Preparing the Brief** While the parties often file post-hearing briefs, sometimes, one party or both parties may choose to waive the right to file a brief depending on the number and complexity of the issues. However, the brief can be a very effective tool that boards should not dismiss casually.

A post-hearing brief provides an opportunity to re-state the board's arguments clearly, logically, completely-, and concisely. It provides a forum to tie together the board's arguments and documentation in support of its case, and it also provides an opportunity to more fully and completely rebut the claims and arguments made by the union during the hearing. In some instances, it may allow the board to present additional information that may become available between the close of the hearing and the submission of the brief (e.g., newly released information about state aid figures, budget cap restrictions, budget defeat, etc.). Sometimes factfinders may quote directly from one party's brief to support his or her recommendations. Thus, the brief is a valuable tool which is helpful to both the advocate and the factfinder.

Some board representatives prefer to bring a written-brief to the hearing rather than write a post-hearing brief. This approach provides an excellent method for organizing and preparing the board's case. It is also a very useful tool to the board spokesperson during the actual presentation. Further, if the parties were to choose to waive post-hearing briefs, the board may have an advantage because its documentation is supported and underscored by written text and the factfinder leaves the hearing with much more than a handful of charts and tables and his or her own handwritten notes. Some representatives choose not to write a brief prior to the hearing because it is time-consuming and may prove to be unnecessary should the factfinder settle the impasse without the formality of writing a report.<sup>6</sup>

### **After Issuance of the Report**

Upon receiving the fact-finder's report, the board must determine whether the recommendations can be accepted in whole or in part. PERC's rules require that the parties-meet within five days after they receive the report to discuss the terms of the settlement. If both parties agree to accept the factfinder's recommendations (either as is or with some modification), a tentative agreement can be reached and the parties can then seek ratification of that agreement. If, however, one party or both parties find the

recommendations unacceptable, they must continue face-to-face negotiations to reach a settlement within 20 days. The factfinder's report may not be accepted in its entirety. However, the recommendations are likely to narrow the differences between the parties and thus may facilitate the possibilities of reaching agreement. During this period, both parties need to step back to reassess their positions and parameters and to realistically assess the achievability of their goals. From there, they may need to redirect their strategy for continuing negotiations.

A factor that may have significant influence on post-factfinding negotiations is the 2003 amendment's requirement to release the factfinder's report to the public.<sup>7</sup> The public's limited perception that the neutral's recommendations represent an objective opinion, based on undeniable and irrefutable facts, may increase the pressure on both parties to find areas of possible concessions and compromise. In addition, public reaction to certain recommendations can put additional pressure on only one of the parties. For example, recommendations which seem out of line with the community's goals (such as the need for additional instructional time and reduced costs of employment) may put additional pressure on the union to concede in these areas. On the other hand, public reaction to a board's rejection of recommendations which appear to be reasonable and legitimate compromises may put additional pressure on a board of education to reconsider its position to these issues.

Under the 2003 amendments, parties who do not reach agreement after 20 days of the issuance of the factfinder's report, are to submit their disputes to super conciliation. The impact of this new required impasse procedure is yet unknown. However, past experience has shown that PERC's impasse procedures of mediation and factfinding have proven most successful in resolving an overwhelming number of negotiations deadlocks. It is expected that the new procedures will provide continued assistance in resolving negotiations impasses.

## **Summary**

The factfinding and super conciliation procedures are designed to assist the parties to reach a mutually acceptable agreement. The emphasis continues to be on the parties' self-determination of negotiated outcomes rather than on externally imposed- outcomes. The neutrals' goal is to assist the parties to reach a voluntary settlement. To accomplish this, neutrals use various skills, techniques and tools.

During the impasse process, the board must recognize its continuing responsibility to protect the district's educational, economic and operational interests. Thorough board preparation is key. The board must gather specific, accurate, relevant, and valid facts and documentation to convince the neutral. It must carefully prepare its argu-

<sup>6</sup> For copies of sample factfinding briefs, please contact the NJSBA Labor Relations Department.

<sup>7</sup> For information about communicating with the public during negotiations and impasse, please see the article entitled "Board Communications During Negotiations" in the Selected Topics Affecting Negotiations section of The Negotiations Advisor.

ments, support its positions, and be prepared to refute the union's claims. It must develop a compelling and persuasive case. It should also clearly communicate to the neutral any potential recommendations that would be completely unacceptable. Throughout the process, the board should continue to apply its negotiations skills and protect its bottom line, but should also be willing to step back and

reassess its positions to determine if they are realistic, supportable, and achievable.

Understanding the process, the neutrals' functions, and the board's ongoing role and responsibilities will greatly enhance the ability to reach a successful conclusion to negotiations.

## Preparing for Factfinding: Helpful Sources of Data

**NJSBA Labor Relations Department** For assistance in selecting the factfinder, up-to-date settlement information, copies of sample factfinding briefs, advice on preparing for factfinding, etc.

**Current Negotiations Data on NJSBA's web site at [www.njsba.org](http://www.njsba.org)** This resource contains three sets of reports containing comparative negotiations data and analysis. The reports are accessible to board members and administrators 24 hours a day, seven days a week. The first set of reports is called *Standard Settlement Reports* and contains the latest district-by-district listing of the most recently negotiated teachers' contracts received by the Labor Relations Department, including: settlement rates; settlement dates; length of contract; changes in health insurance and work time as well as other board achievements. These reports are updated on an ongoing basis.

The second set of reports is the *Negotiations Data Sourcebook* (NDS). These reports include both data and analysis pages. The data pages, periodically updated, reflect districts' salary guides, leaves of absence, health insurance plans and other negotiated contractual items. Analysis of trends in settlement rates, salaries, negotiated changes in health insurance and workday provision are available on the analysis pages, again updated periodically. These reports also include a discussion of how to use the data and explanation of the factors that should be considered in their use and analysis.

The third set of reports are contained in the *Teacher Settlement Data Base* in which the user can generate customized reports based on their own selected demographic criteria.

This information can be accessed by scrolling down on the home page of the NJSBA website to the Department sites (on the left hand side of the page) and clicking on Labor Relations. They are then available by clicking on *Current Negotiations Data*.

**NJEA Research & Economic Services Annual Statistical Publications** (currently issued on CD rom). This annual data can be found in each district's superintendent's office or can be obtained from the NJEA at 180 West State Street, Trenton. The discs include "Basic Statistical Data" as well as salary and benefits for a broad classification of school employees.

The "Basic Statistical Data" is a good source of information for equalized valuation per pupil, total day

school expenditures per pupil, teacher salary cost per pupil, tax rates, etc. However, this information may not be available every year that the discs are produced.

The NJEA salary and benefits data is based on questionnaires received from district administration offices and can be useful as a supplement to the NJSBA reports. Be aware, however, that the data is published on an annual schedule and may not be as up to date as NDS data. The NJEA discs also do not provide the same thorough breakdown of information as that presented in NDS. Nevertheless, this resource may provide some insight that will assist boards' negotiation teams anticipate the possible arguments that the association team might bring to the table.

**NJEA Basic Statistical Data** Provides equalized valuation per pupil, total day school expenditures per pupil, teacher salary cost per pupil, per pupil expenditures for instructional materials, professional staff members per 1000 pupils, district average enrollment, tax rates, etc.

**NJEA Research Bulletins** These bulletins report collective bargaining data from agreements affecting teaching staff, administrators, and support staff on salaries, benefits, working conditions, and selected language items.

**NJPSA Salary and Benefit Surveys** Contains compensation data for principals and supervisors, including salaries, benefits, experience, educational attainment, etc.

**New Jersey Legislative District Handbook, Rutgers University** Reports tax rates, budget figures, state aid, equalized valuation per pupil, population, per capita personal income, etc.

**U.S. Department of Labor, Bureau of Labor Statistics** Provides Consumer Price Index, private sector salary surveys, etc. Information may be found at [www.dol.gov](http://www.dol.gov).

### Other Sources

*N.J. Department of Education, Division of Finance  
County Superintendent's Office*

*State or Local Chamber of Commerce*

*County Planning Board*

*Department of Commerce, Bureau of the Census  
Data gathered directly from other districts*

*District's own newspaper clipping file*

