

PROFESSIONAL REPRESENTATION: BEWARE OF FALSE EXPECTATIONS*

Over the years, an increasing number of boards of education have chosen to have a professional negotiator conduct their teachers' negotiations. The reasons for these decisions vary and may include such factors as the union's introduction of their own professional; the increasing complexities of the process, the issues and the parties' expectations; the difficulties and long duration of prior negotiations; current board members' sense that they do not have the time, the temperament or the inclination to understand and to master the bargaining process, and so on. But, regardless of their reasons, boards expect that their decision will provide the board with an expert who can guide and assist the board to meet its difficult and time-consuming negotiations task. Boards who hold this expectation are rarely, if ever, disappointed or disillusioned by their decision. Occasionally, however, some boards approach their professional with unstated but very real expectations that exceed the role, function and power of even the most experienced and skillful negotiator. These false expectations can cloud the board's relationship with its professional negotiator, can add unforeseen and unnecessary complications to the bargaining process and are, therefore, to be avoided.

The most common false expectations are the professional negotiator will relieve the board of all its negotiations obligations; the professional negotiator is a mind reader; the professional negotiator is a magician; and the professional negotiator can't be trusted.

The Professional Will Relieve Us of All Our Negotiations Obligations

Boards who rely on professional representation sometimes expect the negotiator to do-it-all: set parameters, determine board proposals and counterproposals without consulting with the board. Some boards believe that hiring a professional, at a sometimes substantial fee, should mean the end of their involvement in negotiations. This may be an acceptable approach if the board also delegates its ratification role to the professional; however, most boards rightfully authorize their negotiator to reach a

tentative agreement and retain the ultimate right to approve, or disapprove, the final contract. Thus, boards must also retain the responsibility to establish bargaining goals and parameters. What the district needs to achieve through negotiations, what union positions are acceptable or unacceptable, and what increases the district can afford are decisions that must be made by the full board whether or not the board is represented by a professional. The presence of a professional does not automatically relieve the board of its responsibility to set direction for negotiations. Rather, the presence of a professional's experience and expertise can bring valuable assistance to the determination of your bargaining goals and needs. A professional can identify potential problem areas in your contract, can suggest a variety of approaches to resolve problems that you have identified, can help you obtain a realistic sense of the achievability of your desired change and can set realistic and achievable priorities. The presence of a negotiator does not mean the end of your involvement—it simply means that you have an expert resource available to meet your responsibility more effectively.

A professional is retained to assist the board to reach a settlement that can work well for the district. While the professional can offer invaluable assistance in the formulation of the board's direction, the professional's most important function is to control the at-the-table bargaining to move, most effectively, towards the board's goals. The presence of a professional allows you to perform differentiated functions; the board sets the direction and the professional steers the movement of bargaining to the board's desired destination.

The Professional Is a Mind Reader

Closely allied to the first false expectation, this assumption holds that the negotiator instinctively knows your needs and your district's operations. This expectation involves a sense that the professional will establish the ground rules that will govern your relationship, and will tell you exactly what is expected of you. While many professionals may automatically guide your working

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relationship, you retain a responsibility to communicate your expectations and your perceptions of your district's needs. Engage in ongoing, open communications with your professional. But, to be productive, these communications must be a two-way street—be open to your professional's assessment of achievability, consider his recommendations, express your concerns, listen to his advice, make your decision, and don't change your mind without informing your professional. Establishing good ongoing communications with your professional that recognizes and respects your differentiated functions will prevent incorrect assumptions, unfounded accusations of "You never told us!" and disturbing crosscurrents.

The Negotiator Is a Magician

This false expectation is based on the misconception that a professional negotiator can ply the skills of the trade to bring in a settlement that will be significantly lower than the county or state average. Boards must understand what a professional negotiator can, and cannot, accomplish. Professional negotiators are not magicians; it is highly unlikely that even the most experienced negotiator can bring you a settlement that is considerably below county average and includes your desired cap on health insurance as well as a longer work year. The professional will be as limited by the "going rate" and your union's expectations as you would be as chief spokesperson; however, the professional's experience and skills can deliver the best possible settlement given the bargaining environment, local needs and expectations.

The professional can sift through the union's rhetoric and posturing and can see and achieve trade-offs and combinations that can meet your bargaining needs. The professional's understanding of the importance of contract language and knowledge of other districts' experience under negotiated agreements can prevent your agreement to provisions that would damage your ability to manage your schools. The professional's experience and expertise brings a broad perspective of possible, protective and achievable solutions to a board's bargaining efforts. However, a negotiated agreement is based on both parties' acceptance and therefore requires compromise; even the most experienced, skillful and persuasive negotiator may not be able to deliver all of your desired bargaining goals. Understanding the inherent limitations of bargaining and of your professional's power over the process can help the board to approach negotiations more realistically and effectively.

The Professional Can't Be Trusted

Some board members approach their professionals with underlying distrust because they believe that the professional, as a paid outsider, cannot be truly committed to the board's bargaining position. This lack of trust can be magnified by the professional's frank expression of the board's unrealistic bargaining expectations during team meetings or caucuses as well as by bargaining

tactics which may appear to delay bargaining movement. However, this false expectation is generally based on a misunderstanding of both the role of the professional and of the dynamics of the bargaining process.

Professionals who represent boards in negotiations are strictly management advocates. They do not represent unions in other districts or across other bargaining tables. They therefore tend to be most sympathetic and supportive of their clients' positions. This pro-management commitment is not only genuine to their representation of your district but it is also necessary to the continuation of their profession. However, commitment to boards' interests does not mean that your professional should give you uncritical support in the privacy of board meetings; indeed, a professional who did not communicate the realities of the bargaining setting or who did not express all the implications of your position would not be serving your best interests. A commitment to your interests requires honest communication from your professional during your private meetings. Similarly, however, a commitment to your interests requires unequivocal support of your position at the bargaining table and demands that your professional use the most effective bargaining tactics.

Effective bargaining requires a sense of timing. What may sometimes appear to be delaying tactics, designed to increase the professional's billing hours, is generally a carefully planned strategy designed to obtain concessions from the union and to protect your interests. Your professional negotiator is an expert bargaining tactician who knows what, when, and how much to say at the bargaining table—that is, after all, why you retained your negotiator.

If you are concerned with or don't understand your negotiator's posture at the bargaining table, ask for an explanation at your next caucus. Remember, your negotiator is not a mind reader; you have a responsibility to initiate communications that can help you to understand how the pace of negotiations relates to your established goals. Knowing the reasons for your professional's posture at the bargaining table can help you trust your negotiator and can prevent ill-advised "end runs," those damaging unofficial attempts to reach agreement without the benefit of your professional's presence.

Boards of education who approach professional representation with a clear understanding of the bargaining process and with realistic expectations are likely to have productive and effective negotiations. While the presence of a professional can provide a board with expertise and valuable bargaining assistance, the presence of an "outsider" introduces a new dimension to the board's labor relationship—its relationship with its professional negotiator. To be successful and productive, this relationship, like any other, requires attention. It must be established on realistic expectations and developed with clear communication, understanding and trust.