

## THE FULL BOARD'S RESPONSIBILITY IN NEGOTIATIONS\*

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**N**egotiating a labor agreement that will serve the board's best interest is not easy. Bargaining is very difficult and requires a lot of time and effort. Of course, the preponderance of the required time and effort will be expended by the board's negotiations team. However, the full board<sup>1</sup> retains many extremely important bargaining responsibilities that must be fulfilled on a timely basis in order to increase the probability of the team's negotiating a favorable agreement. This article will examine the full board's negotiation responsibilities before face-to-face bargaining begins, during the period of actual bargaining, and after the settlement. First, however, it might be helpful to review why negotiation responsibilities are split between the full board and its bargaining team.

The board's team, which will actually negotiate with the union's representatives, should never comprise a majority of the board. There are two major reasons for this. Face-to-face negotiations is, by far, the most time consuming bargaining responsibility. And, during bargaining, all of the board's other, non-negotiation, responsibilities continue. It is just not feasible to burden all board members with the additional responsibility of bargaining with the union.

Second, the full board will want to retain the right to review the agreement in its entirety before officially approving any portion of it. If the board's bargaining representatives comprised a majority of the board, they could make piecemeal commitments that bind the full board. The best course of action is to delegate bargaining to a team. However, be sure that the union is notified that the full board is retaining the authority to consider the complete tentative agreement and is not delegating to its team the right to make binding commitments.

Delegating negotiations to a team does not mean that only team members need to deal with negotiations. The

full board must work with and give direction to its team. Absent such direction, how will the team know that the settlement it negotiates will have the approval of the full board? The board's bargaining team needs the full board to do its part just as much as the full board needs the team to actually negotiate the successor agreement.

### **Before Face-to-Face Bargaining Begins**

The full board has three responsibilities to fulfill before actual bargaining starts. First and foremost, the board must identify each objective which it hopes or needs to satisfy at the bargaining table. With the assistance of the administration, the board needs to assess the district's immediate and future needs and goals. Then, the board must analyze them in light of the existing terms and conditions of employment to determine necessary modifications to the labor agreement.

The board's bargaining objectives should not be broadly stated goals such as "settle for as little as possible." The need is for relatively specific objectives. It is important to note, however, that although the full board identifies the specific bargaining objectives, it does not draft the proposals which its team will advance at the bargaining table. It is the team's job to draft the actual proposals to be presented at the bargaining table. The full board should limit itself to setting the goals, preferably only in as much detail as is needed to give its team sufficient direction.

In addition to identifying the board's bargaining objectives, the full board is responsible for establishing certain "rules" relating to the negotiations process for all board members and for the board's bargaining team. Such rules should clearly delineate the team's authority. The rules should also address confidentiality and board member discussion of negotiation issues. Team members

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\* "Labor Lookout" is a regularly featured column in *School Leader*, NJSBA's bimonthly magazine. Because of its importance and continued relevance, this reprint has been included in *The Negotiations Advisor*.

<sup>1</sup> Please note that, for the purposes of the article, the term "full board" refers to those members of the board who can participate in collective bargaining. The School Ethics Commission has advised that the School Ethics Act can preclude certain members of a board of education from participating in discussion of negotiations and from voting on a negotiated agreement. For a full discussion of the Commission's opinions as to what constitutes a conflict of interest for the purposes of negotiations, please turn to the article "Impact of the School Ethics Act on Negotiations" in the References section of *The Negotiations Advisor*.

should only discuss negotiations with the full board in executive session, or while functioning as part of the team or in accord with the team's directives. Board members not on the team should refrain from discussing bargaining with any person or group except the full board in closed session. The rules addressing confidentiality should be very clear and emphatic. Confidentiality is critically important.

The board's rules also should provide for adequate communications between the team and the full board. It is important that the full board hear about any difficulties the team is having in convincing the union to agree to particular changes that the board seeks. Likewise, it is important that the full board know about any union proposals with which the team is having difficulty. Union proposals frequently are in conflict with the board's bargaining objectives or with the parameters it has established. Once a settlement has been negotiated by the teams, the board must not be surprised by the absence of some board-requested modification, by the inclusion of a particular union-requested change, or by the magnitude of any change.

Finally, the full board must decide whether to employ a professional negotiator and, if that is the board's wish, the full board must select the specific professional. Obviously, a professional can be extremely helpful to the board's team. A professional negotiator will also guide the full board in fulfilling its pre-bargaining responsibilities and throughout the course of bargaining. However, as helpful as such assistance may be, it only *lessens* the full board's work, it will not *eliminate* it. The full board will still need to identify its bargaining objectives and to provide overall direction.

### **The Actual Bargaining Period**

During the early stages of actual face-to-face bargaining, the board's team will need to review each of the union's initial proposals with the full board. This review enables the entire board to establish parameters for the union's proposals. There are secondary purposes, as well. A comprehensive review will provide the board and its team with the opportunity to assess the board's bargaining goals in the context of the union's proposals. This assessment may merely serve to underscore the board's commitment to its original goals. The review may also begin to suggest possible compromise positions or opportunities for achievements not previously considered.

After the parameters for the union's proposals have been initially established, the full board may not need to reconsider them, or its bargaining objectives, until settlement is near. More than likely the full board will reassess both its and the union's positions on all outstanding issues more than once during the period of face-to-face bargaining. An in-depth review may be prompted by either a routine full board update, in accord with the rules the board established to guide the bargaining process, or by a specific request from the bargaining team.

Generally, these occasional reassessments result in some bargaining guidelines being reaffirmed while others are modified. New compromises may be identified. Perhaps, the priority ranking of certain board goals will be changed. Reassessment will also allow the board to be aware of the difficulties its team faces.

### **After the Settlement**

Whether bargaining proceeds smoothly or is tumultuous, eventually a tentative agreement will be negotiated and the full board will be asked to ratify a new contract. A decision to approve the settlement and ratify the new agreement is a public act and it is final. It will have a major direct impact on the district for the term of the new contract and beyond. Therefore, the board must proceed carefully in fulfilling its last bargaining responsibility for this round of negotiations.

The act of ratifying the new agreement must be made in public session. But since the decision is final and has so much impact, the full board should first review the tentative agreement and discuss all of its implications. In executive session, the full board should assess the settlement in light of its most recent guidelines. If the tentative agreement is consistent with those guidelines, a decision to approve should be relatively easy to make.

On occasion, because negotiations can be an extremely difficult process, the settlement may not be in complete accord with the board's guidelines. In these circumstances, the full board must carefully assess the total tentative agreement. While the tentative agreement may exceed certain parameters set on the union's proposals and/or not include a board objective, the entire package must be carefully considered with these concerns balanced against the goals which may have been realized.

The full board's assessment of the tentative agreement must also weigh the chances of obtaining a better result if the settlement is rejected. A rejection of the tentative agreement is likely to undermine the credibility of the board's bargaining team. The credibility of the full board may also be called into question by the union, by the employees and, perhaps, by the public. Individual employees, some parents and other residents are likely to pressure the board to accept the tentative agreement. And, the union, with renewed strength and resolve, may perceive the rejection as an opportunity to improve upon the terms of the rejected settlement. If a majority of the board does not have a strong resolve to obtain an agreement that better meets its needs, a more favorable settlement is unlikely; a less favorable settlement is a possibility.

Obviously, the board does not want to be put into a position where it must seriously consider the rejection of a tentative agreement. Good communications between the full board and its bargaining team will help prevent such a situation. And, good communications is an almost automatic result of the full board and its bargaining team fulfilling their respective responsibilities.