



ANALYSIS OF NJEA SAMPLE AGREEMENT

The NJEA has prepared a new Sample Agreement for their local affiliates' use. This agreement, which covers a "wall-to-wall" unit of non-supervisory employees (including teachers and support staff employees) includes new negotiations issues and presents many new approaches to old issues. NJSBA's clause-by-clause analysis of this new agreement is presented below. NJEA's recommended provisions appear in the left column and NJSBA's commentary is presented in the right column of the document.

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PREAMBLE

The Agreement entered into this ____ day of 20____ by and between the _____, hereinafter called the “Board,” and the _____, hereinafter called the “Association.”

WITNESSETH WHEREAS, the Board and Association have an obligation, pursuant to *NJSA* 34: 13A-1 et seq. to negotiate with respect to the terms and conditions of employment; and WHEREAS, the parties have reached certain understandings which they desire to confirm in this Agreement; THEREFORE, in consideration of the following mutual covenants, it is hereby agreed as follows:

SECTION I: All Bargaining Unit Members

ARTICLE I: Recognition

A. The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiations concerning grievances and terms and conditions of employment for all regularly employed personnel whether under contract, on leave, on a per diem basis, employed or to be employed by the Board, but excluding: (List excluded employee categories as appropriate)

The first paragraph which notes the date of the agreement and the parties to the agreement is a standard and common contract provision.

The “Witnesseth” clauses are also relatively standard and common. Note, however, that the two “whereas” clauses are restatements of the law and are not necessary in a negotiated contract. However, this preamble avoids unnecessary and unwise abstract statements of goals and philosophy, which definitely do not belong in an agreement between a board and its unions.

SECTION I: All Bargaining Unit Members

ARTICLE I: RECOGNITION

A recognition clause is intended to define the scope of the bargaining unit or the classifications of employees covered by the contract. The definition of the unit is the result of either the parties’ own agreement or of a unit determination issued by the Public Employment Relations Commission (PERC). For more information see the articles “Analysis of a Recognition Clause” and the “Bargaining Unit” contained in NJSBA’s online subscription service The Negotiations Advisor. Each district may have a distinct unit structure, which will be reflected in its contract’s recognition clause. The unit defined in the NJEA Sample Agreement is a “broad based” bargaining unit which includes noncertificated and certificated employees.

The first part of the first sentence recognizes that the association is the exclusive representative of the unit. This exclusive majority status is authorized by law. A board of education cannot negotiate the unit’s terms of employment with another union nor can a board process grievances arising under this contract with another union. Unit members may select a different union to represent them during the open period of a contract, which in school districts occur from September 1 to October 15 of the last year of a negotiated agreement. The following problems exist in the last part of the first sentence: “all regularly employed personnel”. This phrase appears to provide an exceedingly broad, and potentially illegal, definition of employee classifications included in the unit. First, managerial employees (such as the Superintendent and Assistant Superintendent) are not covered by the PERC Law and cannot be included in any bargaining unit. Second, “confidential” employees (those who have advance knowledge of a board’s bargaining position) must be excluded from all bargaining units. Finally, under the law and a well-established body of PERC decisions, supervisory personnel cannot typically be included in a unit of nonsupervisory employees. Under this type of language, it is important for boards to make sure that all of these positions are clearly excluded from the unit. In addition to the legal problems, this overly broad inclusion holds some practical problems. Reference to “all” employed personnel means that any new position created by the board would automatically be included in the unit, and the burden of proving that the position was incompatible with other unit positions would fall on the board of education. The reference to “all” would also automatically include all part-time employees. Boards would then have the responsibility to carefully review all contractual terms and negotiate desired distinctions in conditions of employment for part-time staff. Otherwise, a board may inadvertently be extending full-time benefits to part-time staff. With reference to “under contract, “on leave” and “to be employed”: this language further broadens the extent of the bargaining unit and raises potential problems for a board: does a contract begin when the employee signs the document or when the employee begins to work? Is an individual who has accepted employment, but has not yet started to work as an employee, eligible for representation rights under the PERC Law? As this issue can have significant implications for boards, including the negotiability of hiring incentives, please consult with your resources, including the NJSBA Labor Relations Department, for the latest development in this area.

The inclusion of employees “on leave” raises additional concerns. Given this inclusion, boards may be obligated to extend all applicable benefits, including personal leave accumulation and tuition reimbursement, to employees on paid or unpaid leaves. If this language appears in your district’s recognition clause, and your practice here is unclear, then be sure to clearly specify in your leave articles the specific benefits that are intended to be extended to employees who are on leave. Reference to “per diem” basis can also extend the scope of the bargaining unit to include substitutes who are employed on a regular basis by the board. (Substitutes who worked for at least 30 days during a given school year and expressed a willingness to accept continued employment as substitutes have been found to be employees under the PERC law and eligible for inclusion in a bargaining unit. Bridgewater-Raritan Reg. Bd. of Ed., PERC No. 79-12, 4 NJPER 4201. Best practice would not rely on this overly broad, vague and inclusive approach. It would be far more advisable to clearly and specifically define the positions that are included in the unit. As provided in the NJEA Sample agreement, it is advisable to carefully list all the positions that are excluded.

B. Definitions

- 1. Unless otherwise indicated, the term “employee,” when used in this Agreement, shall refer to all employees represented by the Association in the negotiating unit as defined.
- 2. Unless otherwise indicated, the term “teacher,” when used in this Agreement shall refer to all those employees who are required to hold appropriate certificates issued by the State Board of Examiners.
- 3. Unless otherwise indicated, the terms “support staff,” and “educational support professionals” (“ESP”) when used in this Agreement, shall refer to all those employees who are not required to hold certificates issued by the State Board of Examiners as a term and condition of employment.
- 4. The term “he” shall refer to both males and females
- 5. The term “spouse” shall refer to domestic partners, married partners, and civil union partners.

ARTICLE II: Negotiation of Successor Agreement

- A. Consistent with *NJSA 34:13A-1 et seq.*, the Board shall not effect any change in policy concerning terms and conditions of employment except those so negotiated and included as part of this Agreement and contained herein.
- B. Not later than 120 days prior to the submission of the budget, the parties agree to initiate negotiations over a successor Agreement in accordance with the procedure set forth herein in a good-faith effort to reach continuing agreement on salaries and other terms and conditions of employment. Any Agreement so negotiated shall apply to all members of the negotiating unit and shall be reduced to writing, ratified, and signed by all the parties.
- C. During negotiations, the Board and the Association shall present relevant data, exchange points of view, and make proposals and counterproposals. Each party shall promptly make available to the other, upon request, information within its possession which is not privileged under law and which is relevant to the subject under discussion. Either party may, if it so desires, utilize the services of outside consultants and may call upon professional and lay representatives to assist in the negotiations.
- D. Whenever members of the bargaining unit are mutually scheduled by the parties hereto to participate during working hours in conferences, hearings, meetings, or in negotiations regarding the collective bargaining agreement, they will suffer no loss in pay.
- E. This Agreement shall not be modified in whole, or in part, by the parties except by an instrument in writing duly executed by both parties.

Definitions (1) (2) (3) (4) and (5) These provisions will control the interpretation of all clauses in the contract and may result in the inadvertent extension of a benefit or a term of employment to all employees within the defined category of these sections. To avoid this common mistake, be very careful in your use of these terms throughout your contract. If your intention is to grant a certain condition of employment only to full-time employees, then your clause must so reflect. If your intent is to grant prep time only to classroom teachers, then that intent must be clearly specified in the body of the contract.

ARTICLE II: NEGOTIATION OF SUCCESSOR AGREEMENT

- ▶ This is a restatement of the law and is not necessary in a labor agreement.
- ▶ The commencement date of negotiations in this clause is a partial restatement of PERC’s rules. N.J.A.C.19: 12-2.1 establishes the 120 days, but also permits the parties to agree to an alternative date. If a commencement date must be included in a contract, it is advisable to either refer to the PERC rule or to include the ability to mutually agree to another earlier or later timeframe. Boards should not agree to the last sentence as it implies that the full board must ratify the agreement reached by its team. Boards should not waive their right to ratify or reject tentative agreements. Boards should always notify the union prior to negotiations that the board team has the authority to reach a tentative agreement, but that the full board retains the right to ratify or reject any tentative agreement.
- ▶ Negotiations procedures are a mandatory topic of negotiations. Fairview Bd. of Ed., PERC No. 80-18. However, the obligation to negotiate does not mean that either party needs to concede to an agreement to any issue. The last two sentences are restatements of the law and are thus not necessary in a negotiated agreement.
- ▶ This clause is unwise. Although the clause is effective only upon mutual scheduling, it still holds negative implications. Why would a board want to schedule grievance meetings and negotiations sessions during the school day, if that scheduling results in disruptions in students’ instruction and requires additional cost of providing class coverage? Further, what kind of conferences are envisioned here?
- ▶ This is a standard contractual clause.

F. Except as this Agreement shall hereinafter otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement shall continue to be so applicable during the term of this Agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from any employee benefit existing prior to its effective date.

Boards should not agree to this clause. This is a standard “past practice” or “maintenance of benefits” clause which incorporates, by reference, unwritten binding past practices into the express terms of the negotiated agreement. Although the PERC Law prohibits employers from changing rules of employment without prior negotiations, including this clause into the contract immediately authorizes arbitrators to assess allegations of violations of unwritten past practices.

G. The Board agrees not to negotiate concerning employees in the negotiating unit as defined in the Recognition Article of this Agreement with any organization other than the Association for the duration of this Agreement.

This is a restatement of the legal rights of a duly selected majority representative and is not necessary in a negotiated agreement.

ARTICLE III: Grievance Procedure

ARTICLE III: GRIEVANCE PROCEDURE

A. Definitions

This definition of a grievance is legal and enforceable, but it goes far beyond the minimum requirements established by the N.J. Supreme Court in *West Windsor*, 18 N.J. 98 (1978). Under *West Windsor*, a grievance procedure must permit employees to file grievances, at least at the first step, over the interpretation, application, or alleged violations of negotiated agreements, board policies and administrative decisions affecting terms and conditions of employment. The Sample Agreement, however, permits anything that affects an employee to be grieved. This can increase number and types of grievances filed by employees and their union.

1. A “grievance” is a claim by an employee, employees, or the Association based upon an alleged improper interpretation, application, or violation of this Agreement, policies, or administrative decisions affecting an employee or a group of employees.
2. The term “grievant” shall refer to the employee or employees or the Association making the claim on behalf of the employee or group of employees or the Association on behalf of itself.
3. A “party in interest” shall refer to the person or persons making the claim, and any person including the Association or Board, who might be required to take action or against whom action might be taken in order to resolve the claim.

B. Purpose

1. The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to problems, which may from time to time arise affecting employees. Both parties agree that proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.
2. Nothing herein contained shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with the appropriate member of the administration and having the grievance adjusted without intervention of the Association, provided such adjustment is not inconsistent with the terms of this Agreement.

The purpose of a grievance procedure is not to achieve “equitable” solutions, but to resolve differences concerning the interpretation of the parties’ contractual rights. The sample language grants arbitrators unlimited discretion to fashion an “equitable” solution according to their own personal definition of justice. This is an overly broad authority to arbitrators who should be limited to interpreting the parties’ agreed-upon terms and conditions of agreement, whether or not those terms are equitable.

Resolving grievances informally is always good personnel/labor relations. It should be noted that the terms of this clause can not apply to “any employee” but only to those employees identified in the recognition clause as members of the bargaining unit.

C. Procedure

1. **Level One** – The grievant shall first discuss the grievance with his immediate supervisor, either directly or with the Association’s designated representative, with the objective of resolving the matter informally.

▶ **Level One:** It is typical practice for districts’ grievance procedure to start with an informal step involving the employee’s immediate supervisor. The Sample Agreement does not place a time limit for the grievant’s initiation of this meeting. A time limit at this level is in the board’s interest, since it encourages prompt and timely resolution. This delay can complicate both the informal and formal resolution of the concern. Further, the economic costs of remedying it may be greater if the infraction is allowed to stand for a long period of time.

2. **Level Two** – If the grievant is not satisfied with the disposition of the grievance at Level One, or if no decision has been rendered within (...negotiated number...) days after the discussion at Level One or (...negotiated number...) days after the grievance was presented, whichever is sooner, the grievance will be reduced to writing and presented to the Superintendent of schools.

▶ **Levels Two and Three:** This progressive procedure is typical. Boards should ensure that the number of days agreed to in this section provide the administration and the Board with sufficient time to frame appropriate responses.

3. **Level Three** – If the grievant is not satisfied with the disposition of the grievance at Level Two, or if no decision has been rendered within (...negotiated number...) days after a discussion with the Superintendent or (...negotiated number...) days after the grievance was delivered to the Superintendent, whichever is sooner, the grievance will be submitted to the Board.

4. **Level Four** – If the Association is not satisfied with the disposition of the grievance at Level Three, or if no decision has been rendered within (...negotiated number...) days after a discussion with the Board or (...negotiated number...) days after the grievance was delivered to the secretary of the Board or designee whichever is sooner, the Association may submit the grievance to arbitration by filing with the (...American Arbitration Association and/or the Public Employment Relations Commission...) and the rules of such agency shall apply.

▶ **Level Four:** The Sample Agreement allows the grievance to proceed to arbitration a number of days after the grievance was delivered to the Board Secretary or “designee.” As written it is not clear that this must be a designee of the Board. Better language would require it to be delivered to the Board Secretary. The Sample Agreement’s reference to “a discussion with the Board” suggests that after receiving the grievance, the Board must hold a discussion, presumably with the grievant and the Union. It is beneficial for boards to include language that: permits it to delegate the grievance hearing, or discussion, to a committee; and provides the Board with the discretion to determine whether a hearing is necessary. Under the Sample Agreement, the authority to initiate arbitration is reserved for the union. Therefore, arbitration cannot be pursued by an individual employee. This precludes a disgruntled employee from filing meritless grievances that would not even receive the union’s support. Both the American Arbitration Association and the Public Employment Relations Commission are well-recognized neutral agencies. Either agency is preferable than having the parties attempt to select the arbitrator. The Sample Agreement gives the union the unilateral authority to select the agency. Better language would name only one agency in the contract.

D. Authority of the Arbitrator

▶ Other than the mandate for binding arbitration over grievances challenging disciplinary determinations (see N.J.S.A. 34:13A-29), no board is required to agree to binding arbitration. Prior to doing so, you should be sure that you can operate the school system adequately with the definition of a grievance and the contract clauses to which you have agreed. Binding arbitration can prove harmful, especially where you have agreed to a “savings clause” or a “past practice clause.” If the union is intent on obtaining contractual binding grievance arbitration, they should be willing to remove any “past practice” clause. It is also advisable for boards to negotiate limits on what may be contractually arbitrated. The contract should contain an express limitation such as the following: the only grievances which can be arbitrated are those alleging that there has been a violation of the express written terms of the locally negotiated agreement. The arbitrator shall have no authority to rule on grievances which concern the interpretation, application, or alleged violation of board policies and administrative decisions affecting terms and condition of employment, or of statutes and regulations setting terms and conditions of employment. All arbitration clauses, including those affecting mandated arbitration of disciplinary grievances, should contain limits on the arbitrator’s authority. The most widely accepted limitation, found in many New Jersey contracts, provides: “the arbitrator shall be limited to the issues submitted and shall consider nothing else. The arbitrator can add nothing to nor subtract anything from the Agreement between the parties.” The importance of specific limitations on arbitrators’ authority has recently been affirmed by both the courts and the legislature. In a number of decisions (see, for example, Camden Bd. of Ed., 181 N.J. 187 (2004); Northvale Bd. of Ed., 186 N.J. 257 (2006)), courts have held that arbitration is authorized only when the locally negotiated contract specifically and expressly grant authority to arbitrators to review such issues as non-renewals and terminations based on individual. Subsequently, the legislature enacted a new amendment to the PERC Law. As of January 2006, the law requires that doubts as to the extent of a contractual authorization of binding arbitration must be resolved in favor of arbitration. Thus, D3 could be viewed as an unnecessary restatement of the law. Nonetheless, ideally that clause would not be included in the contract as it does not benefit Boards. Boards should therefore be very aware of the topics they are permitting to proceed to arbitration and of the extent of the authority granted to arbitrators under the specific language of their negotiated agreements. For more information on the new law and grievance procedures, see the appropriate article in the Selected Contract Clauses section of The Negotiations Advisor Online

1. The decision of the arbitrator shall be submitted to the Board and the Association and shall be final and binding on the parties.
2. In the event that the procedural arbitrability of a grievance is an issue between the parties, jurisdiction to resolve the issue shall rest solely with the arbitrator.
3. Disputes as to the scope of arbitration shall be resolved in favor of requiring arbitration.

E. Costs

◀ ▶ Is standard contract language.

1. The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary expenses and the cost of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurred shall be paid by the party incurring same.

F. Representation

◀ ▶ The requirement that the union be kept informed of the processing of grievances presented by individual employees is a restatement of unions' statutory rights. However, the requirement that no grievance can be considered resolved without the approval of the union may be of concern at the first step of the grievance procedure, where individuals have a constitutional right to personally present grievances to their employers. Requiring the union's approval at that step may be found to impermissibly intrude with employees' constitutional rights. Under any circumstances, agreeing to the need for the union's approval of resolutions at Level One would be inadvisable as it could interfere with employees' relationships with their supervisors and invalidate the first step's objective of resolving matters informally. (Note that if a union were dissatisfied with an informal resolution, it would have the right to file an association grievance.) The last sentence reaffirms the union's exclusive right to pursue arbitration, noted above in E.

1. Any grievant may represent himself/herself through Level Three of this procedure. When the grievant is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure. Only the Association may process grievances through arbitration.

G. Reprisals

◀ ▶ This is a paraphrase of law. These protections are guaranteed by law and need not be included in the contract. The inclusion of the clause implies that, without the clause, the board would engage in reprisals against employees for filing grievances. Agreeing to the clause indicated to your staff that the union has won for them protection against board retaliation which, in fact, wouldnt occur anyway.

1. No reprisals of any kind shall be taken by the Board or by any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation.

H. Miscellaneous

1. The number of days indicated at each level should be considered as a maximum and every effort shall be made to expedite the process. The time limits specified may, however, be extended by mutual agreement. All days referred to in this procedure shall be (...school or calendar...) days.

◀ ▶ It is common for the number of days given to process grievances to be seen as a maximum and for the parties to agree that timelines can be changed by mutual agreement. However, be careful of a contractual commitment to make "every effort to expedite the process." Management should never feel pressured to issue a response that has not been well considered and researched. It is wise to specify "school" or "calendar" days.

2. If, in the judgment of the Association, a grievance affects a group or class of employees, the Association may submit such grievance in writing to the Superintendent directly and the processing of such grievance shall commence at Level Two.

▶ This would be acceptable, with this addition at the end of the first sentence: "where the administrator handling grievances at Level One of this procedure does not have the authority to resolve the grievance."

3. All decisions rendered shall be in writing, setting forth the decision and the reasons therefore, and shall be transmitted to the Association within the specified timeframes.

▶ Again, the focus on the Association only is troubling as it ignores responses to individuals. The clause would be acceptable if it required that responses be provided to all parties in interest.

4. Any and all documents, communications, and records dealing with the grievance shall be kept in a separate grievance file. Grievance documents shall not be kept in employee personnel files.

▶ This is standard labor relations practice and common contract language.

ARTICLE IV: Employment Procedures

ARTICLE IV: EMPLOYMENT PROCEDURES

While a board has the statutory discretion to determine initial placement on the guide, New Jersey courts have held that this discretion can be exercised through negotiations with the union. (Belleville Bd. of Educ., 209 N.J.Super 93, (1986)). Boards should recognize, however, that the Sample Agreement clause is inadvisable. First, the clause mandates credit for prior job-related experience. An applicant may be willing to work at a lesser salary, or prior experience may be irrelevant to the position. Conversely, in order to attract a candidate, you may need to place her on a step of the guide which reflects more experience than actually possessed by the applicant. Thus, an agreement that links placement to experience restricts boards' ability to respond to particular district situation. In addition, this clause extends teachers' statutory entitlement for salary credit for military service to support staff. While the clause, unlike the law, permits negotiations over the number of years that can be credited, this agreement will increase the costs of employing some support staff. Credit for service in the programs listed in the last sentence is not required by law, but is negotiable. Keep in mind that agreement to the last sentence will also increase the cost of employment, whether or not the experience under these programs is relevant or related to the employees' functions in the district.

A. Salary Guide Credit Upon Initial Employment

1. Full credit on the salary schedule shall be given for previous job related experience upon initial employment. Support staff shall receive additional credit not to exceed (...negotiated number...) years for military experience or alternative civilian service required by the Selective Service System. (Teachers, pursuant to 18A:29-11, are entitled to salary credit for military service for up to four (4) years.) Credit on the salary schedule, for all employees shall not exceed (...negotiated number...) years for Peace Corps, VISTA, AmeriCorps, Teach America, or other such government sanctioned programs.

B. Association Notification

▶ The only valid reason to provide the union with this information is for verification of an employee's guide placement. Boards that have retained their initial guide placement discretion are not legally required to provide reasons for that placement to the union. While this may be a good labor relations practice, its inclusion in an agreement is unwise. Further, the requirement that this information be provided within a number of days after the hire places a possibly burdensome responsibility on the administration.

1. The Superintendent shall notify the Association in writing of the name, address, education, certificates, licenses, salary, salary placement and the reasons for the placement, for each new employee within (...negotiated number...) days of hire.

C. Notification of Contract and Salary

1. On or before (...negotiated date...) but not later than of each year, the Board shall provide to each non-tenured or fixed-term employee either:

a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment, but with such increases in salary and benefits as may be required by law or agreement between the Board and the Association;

— or —

b. written notice that such employment shall not be offered.

D. Any employee who receives a notice of non-employment may, within 10 days thereafter, in writing, request, from the Superintendent, a statement of reasons for such non-employment. Said statement shall be given to the employee in writing within 30 days of the receipt of such request.

1. Any employee resigning from his/her position shall give (...negotiated length of time...) notice, but may, upon request, be released prior to the expiration of that time period.

2. All employees upon resignation, termination, or retirement shall be paid their regular rate of pay for each day of accumulated unused vacation time. In the event of death, the employee's estate shall be paid the employee's regular rate of pay for each day of accumulated unused vacation time.

E. Employment Procedures for Coaching Positions

1. The Board agrees to make available to coaches all necessary information to comply with the rules and regulations of the New Jersey State Interscholastic Athletic Association (NJSIAA) a copy of the rules and regulations of the New Jersey State Interscholastic Athletic Association, school record cards, names and addresses, and school medical records of all team members.

2. Coaches shall have the right to use school facilities at all reasonable hours for meetings, practice, exhibition and scheduled game sessions, with the approval of the Superintendent.

3. Coaching seasons will be pursuant to the NJSIAA Constitution and By-laws.

This section addresses the nonrenewal of all unit members' fixed-term contracts. The courts have held that boards have a nonnegotiable and nonarbitrable right to not renew fixed-term contracts. However, the courts also suggest that boards can waive that right through clear and specific negotiated language that authorizes binding arbitration of those decisions. *Camden Board of Ed.*, 181 N.J. 187 (2004). Boards should carefully review their other negotiated provisions that may affect this section of the contract, such as their negotiated grievance and employment procedures to assure that those articles do not include provisions that would be seen as clear and unmistakable waivers of their rights to not renew fixed-term contracts. See analysis of Article III, Section D for further information.

This provision is also an adaptation of the statutory timelines for handling nontenured teachers' requests for reasons for their nonrenewal. The court in *East Brunswick Board of Education*, unpubl. App. Div., May 1982, has held that N.J.S.A. 18A: 27-3.2 spoke in the imperative and did not permit modification of non-tenured teachers procedures through negotiations. Therefore, you must permit your nontenured teachers up to 15 days to request a statement of reasons and up to 30 days for the Board's response. For other employees on fixed-term contracts, these procedures would be completely negotiable. Boards that extend these procedures to all their nontenured staff may find it beneficial to negotiate consistent procedures and time lines for all employees.

A notice period for resignation benefits the Board. For Boards that are inclined to include this in the contract, be mindful that the time horizon is sufficient planning and educational continuity.

Note that for some employees this is contrary to law. Under N.J.S.A. § 18A:30-9.1, Board employees, who are hired after May 21, 2010, may only carry over vacation leave for one year. As written, this would allow those hired prior to that date to accumulate virtually unlimited vacation time to be paid out upon separation. Best practice would limit the accumulation for all employees.

This clause appears to be a procedural and negotiable clause. However, before agreeing to this, check with your attorney to determine the legality of providing students' confidential medical records to a coach.

This is fine, as long as prior approval is required for the use of the facilities. However, boards will also need to decide whether the types of activities listed here are simply to be determined and scheduled by coaches or should require the involvement and approval of their Athletic Directors.

Before agreeing to this clause, boards should know the provisions of the NJSIAA documents and whether it's provisions are applicable to all district activities that are supervised by a coach.

4. Coaches shall be notified of their contract and salary status for the ensuing year no later than (...negotiated date...) for fall and winter sports, and (...negotiated date...) for spring sports.

5. The individual contracts to be issued for each coaching position shall be set forth in Schedule ___ of the Agreement. Each contract shall include the dates of the coaching season, salary, and the dates on which each coach shall receive compensation. All coaching contracts shall be subject to the terms of the collective bargaining agreement.

6. The Board agrees to officially adopt each contract and notify each coach of such official action by presenting a copy of the contract to each, duly signed and executed no later than (...negotiated date...) for fall and winter sports, and (...negotiated date...) for spring sports of the school year previous to the school year in which the individual contract is operative. Coaches shall sign and return the contract within (...negotiated number...) days of receipt. Failure to return the contract within this period shall be considered resignation.

7. Dates of Payment of Coaches' Salaries

- a. Coaches in season shall be paid in two equal payments during the season as follows:
 - i. Fall sports – October 15th and November 30th
 - ii. Winter sports - January 15th and March 15th
 - iii. Spring sports – April 15th and June 15th
- b. The salaries of all coaches shall be set forth in Schedule ____
- c. Coaching salary shall be paid by separate check.

ARTICLE V: Employee Rights And Privileges

A. Pursuant to *NJSA 34:13A-1 et seq.*, the Board hereby agrees that every employee of the Board shall have the right to freely organize, join, and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly selected body exercising governmental power under the laws of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any employee in the enjoyment of any rights conferred by *NJSA 34:13A-1 et seq.*, or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any employee with respect to hours, wages, or any terms or conditions of employment by reason of his/her membership in the Association and its affiliates, his/her participation in any activities of the Association and its affiliates, collective negotiations with the Board, or his/her institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

These sections (4 & 5) address negotiable procedural issues of coaches' assignments. Before agreeing to any negotiated dates, boards need to assure that the agreed-upon dates are related to their athletic schedules and needs. In addition, it is advisable for boards to provide flexibility in the event of emerging needs.

Salary payment procedures, (section 6 & 7), such as the dates of payment, are generally negotiable. However, PERC has held that the requirement, as provided in 7 C of the Sample Agreement, to issue separate pay checks for extracurricular activities is not enforceable when neither the date nor the amount of the payment was affected. Old Bridge Bd. of Educ., PERC No. 89-23.

ARTICLE V: EMPLOYEE RIGHTS AND PRIVILEGES

This is an example of an unnecessary commitment to a paraphrase of law. The PERC law provides: "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of reprisal, to form, join and assist any employee organization or to refrain from any such activity." Note that the Sample Agreement language does not protect employees who don't join the NJEA, although the PERC law does. School boards should also avoid the phrase beginning on the fourth line of paragraph A: "and other concerted activities for mutual aid and protection." This is not defined, but is an addition to the PERC law language, and could be used by the union to justify illegal job actions and strikes.

B. Nothing contained herein shall be construed to deny or restrict to any employee such rights as they may have under New Jersey school laws or other applicable state and federal laws, rules, and regulations. The rights granted to employees herein shall be in addition to those provided elsewhere.

C. Intellectual property is the unique and exclusive property of the employee. If any employee chooses to contract away their exclusive rights to their instructional intellectual property, the Board shall have the right of first refusal.

D. No employee shall be disciplined, reprimanded, reduced in rank, or deprived of any professional advantage without just cause. Any such action shall be subject to binding arbitration. [Note: This provision is governed by a complex legal framework. Contact your field representative for assistance before you present a proposal using this language.]

E. Upon completion of a probationary period of (...number of months/years...) custodial and maintenance staff will be tenured pursuant to *NJSA* 18A:17-3. Non-renewal of any fixed term contract shall be subject to the just cause provision contained herein and subject to binding arbitration.

Note that paragraph (A) incorporates not only the PERC Law, but also all other laws of New Jersey and the constitutions of both New Jersey and the United States. Paragraph (B) incorporates all "other applicable laws and regulations" - - in other words, all federal statutes. Boards should generally refrain from placing statutory provisions in labor agreements. Certainly, your contract shouldn't incorporate by reference federal statutes, nor the state and federal constitutions. If references must be made to law, they should be specific references, not paraphrases. Furthermore, boards should think twice before agreeing to allow arbitrators to make determinations on the meaning of statutes. An arbitration clause limited to the "terms of agreement" would probably permit an arbitrator to rule on alleged violations of statutes which are referenced in the agreement. Remember, the arbitration clause can be as narrow as the parties make it. You can exclude disputes over statutory terms and conditions of employment from arbitration with language such as the following: Alleged violations of statutes and regulations may be appealed before the Public Employment Relations Commission, the State Commissioner of Education, the State Board of Education, or other appropriate legal forums, and shall not be arbitrable under ARTICLE III of this agreement

According to the U.S. Copyright Office, work prepared by an employee within the scope of his or her employment constitute "work for hire" and, as such, the employer is considered to be the author. See Circular 9, Work-Made-For-Hire Under the 1976 Copyright Act. Teacher created material like curriculum would presumably be deemed 'works for hire' under the federal Copyright Act. Thus, absent contrary contract language, like this provision, the school would own such content. Board should be very leery of agreeing to this language as it could have significant long term consequences such as negatively affecting online curriculum sharing.

A just cause clause is totally negotiable and boards are free to reject the union's proposal, to offer counterproposals, which limit the application of just cause, or to counterproposal a completely different standard. The just cause provision of the Sample Agreement requires boards to carefully consider several aspects of the clause, such as:

- 1) the valuable omission of the term termination: Specifically note that the action of termination is not included in the procedural just cause requirement. This omission must be retained by boards of education. Boards should vigorously oppose and object to any union proposal to add this word to just cause clauses as the specific inclusion of this word could result in the arbitrability of boards' decisions to terminate a non-tenured teacher under the 60 days notice provision of an individual contract.
- 2) inclusion of illegal issues: The sample just cause provision includes actions that have been found to be not legally arbitrable. For example, reprimands that are based on evaluations of performance cannot be submitted to binding arbitration. (Holland Township Board of Education, PERC No. 87-43). Further, in accordance with N.J.S.A. 34:13A-26 and 27, the withholding of an increment for predominantly evaluative reasons is not legally arbitrable. Since these issues are not considered arbitrable discipline, they cannot proceed to arbitration and be subjected to the just cause standard.
- 3) vague, undefined terms: this clause contains broad and rather undefined situations (such as "reduced in rank" and "deprived of professional advantages") which may, or may not, constitute disciplinary determinations subject to a just cause review. Boards should not agree to language that is unclear and not understood. N.J.S.A. 18A:17-3 provides that custodial and janitorial staff members who are appointed for fixed term contracts do not have tenure protections. Those that are appointed for indefinite terms are tenured.

Note that, contrary to the sample agreement provision, skilled maintenance staff are not considered janitorial and maintenance staff as defined in N.J.S.A. 18A:17-3 and as such are not granted statutory tenure. Such employees can, however be granted tenure contractually.

Adoption of the Sample Agreement language would grant tenure protection to both groups of employees. New Jersey courts have made it clear that a board of education has the statutory right to renew, or not, a fixed-term employee for non-arbitrary and non-capricious reasons without being subject to review of that decision by an arbitrator. However, if the board explicitly waives its statutory right to renew with clear and unmistakable language under the terms of the collective negotiations agreement, then the matter may be subject to arbitration under the grievance procedure. *Mount Holly Township Bd. of Ed. v. Mount Holly Twp. Ed. Assn.*, 199 N.J. 310 (2009). The second sentence of the Sample Agreement arguably provides that explicit waiver and as such should not be agreed to.

F. Whenever any employee is required to appear before any administrator or supervisor, Board, or any committee (or member thereof) concerning any matter which could be disciplinary in nature, said employee shall be given (... amount of time...) prior written notice of the reasons for such meeting(s) or interview(s) and shall be entitled to have a Representative(s) of the Association advise and represent him/her during such meeting or interview.

PERC has held that the clause is mandatorily negotiable, as long as representation rights do not extend to evaluation conferences, which are not expected to result in discipline. Atlantic Highlands Bd. of Educ., PERC No. 93-40. Note, however, that this clause exceeds employees statutory rights of representation. For example, in accordance with *NLRB v. Weingarten*, 420 U.S. 251 (1975) an employee has a statutory right to representation in an investigatory meeting which he reasonably believes could result in discipline (also see North Warren Regional Board of Education, PERC No. 79-9). Further, N.J.S.A. 18A: 25-7 grants rights that are virtually identical to this provision to teaching staff members only.

G. Any employee suspended pending charges shall be with pay.

While somewhat unclear, it appears that this clause is intended to apply to suspensions pending tenure charges. While N.J.S.A. 18A: 6-14 requires paid suspensions of tenured individuals on the 121st day following certification of charges with the Commissioner, the law also gives boards the discretion to suspend a tenured individual, with or without pay, for the first 120 days following certification of charges with the Commissioner of Education. Thus, this clause exceeds the statutory requirement and removes the board's discretion to withhold pay for 120 days. Although it may not be wise for boards to agree to limit their statutory discretion, the issue of compensation during the pendency of tenure charges is a negotiable topic. Old Bridge Board of Education, PERC No. 88-138, 14 NJPER 19189.

H. No employee shall be prevented from wearing pins or other identification of membership in the Association or its affiliates.

This is generally part of employees constitutional freedom of speech. However, this cannot be read as an absolute right. The courts have sustained the right of a board to adopt a policy that prohibits teachers from wearing "Settle Now" buttons in the classroom. The court found that this limited a narrow intrusion, which applies only when students are present, reflected a board's educational objectives that outweighed teachers' First Amendment right to comment on matters of public concern. *Green Tp. Educ. Ass'n v. Rowe*, 328 N.J. Super. 525 (App. Div. 2000). For more information on this topic, please see The Negotiations Advisor article "Responding to Concerted Activities and Limited Job Actions" in the Impasse Procedure section.

I. Assignment of student grades

In general, student-grading policies are not mandatorily negotiable. Garfield Bd. of Educ., PERC No. 90-48. However, consultations with teachers before a grade is changed has been found to be negotiable as this procedure has been deemed to not restrict boards' right to change grades or to establish grading policies. Middletown Twp. Bd. of Educ., PERC No. 98-74. As the Sample Agreement's clause deals primarily with procedures surrounding the changing of a student grade, it would appear to be negotiable. However, this clause could not be enforced if, in any way, it would present actual and significant interference with boards' rights to change grades in a timely manner.

1. If a student's grade evaluation is changed, the person making such change shall initial the change The teacher assigning the original grade shall be notified in writing within (...negotiated number...) days of such change. No student's grade shall be changed without prior consultation with the teacher issuing that grade.

ARTICLE VI: Association Rights

ARTICLE VI: ASSOCIATION RIGHTS

A. Information to Association – Upon request, the Board shall provide the Association with all information including but not limited to budgetary, financial, and personnel records that the Association has determined are necessary to negotiate and enforce the collective bargaining agreement.

In addition to the right to information that is generally available to the public, a union has a legal right to information that it needs to negotiate and process grievances of its unit members. However, that statutory right is not absolute. For example, PERC has held that an employer's legal obligation does not extend to providing the union with: confidential information (State of New Jersey, Department of Treasury, PERC No. 97-32; the employer's budget work sheets (Union City, PERC No. 83-162), or information that is not potentially relevant (State of New Jersey, Office of Employee Relations, PERC No. 88-27). In addition, PERC has adopted the NLRB's standard that an employer's response is sufficient if the information is made available not in the exact form requested by the union, but in a manner that is not as burdensome or time-consuming. Downe Twp. Bd. of Educ., PERC No. 86-66. The Sample Agreement's clause establishes a contractual right that goes far beyond the union's legal right. It commits a board to provide "all" information that the Association deems to be necessary. Boards should be extremely aware of, and alert to, the complications that can result from their agreement to this clause.

B. Released Time for Association Business

1. Whenever any Representative of the Association, or any employee, is mutually scheduled by the parties to participate during working hours in negotiations, grievance proceedings, hearings, conferences, and/or meetings, he shall suffer no loss in pay.

As long as this clause is conditioned upon meetings that are mutually scheduled, it is acceptable for boards that are inclined to grant this benefit.

2. The Board shall release, without loss of pay, the Association President and/or designee and permit him to visit any work station, investigate working conditions, employee complaints or problems, or for any other purposes relating to terms and conditions of employment.

▶ This is another union benefit that not only does not benefit the district, but can in fact be most damaging. As written, this clause does not permit the board to deny release time, but rather requires paid release time for any purpose relating to terms and conditions of employment. There are no limitations on the number of representatives or the amount of release time that would be provided. Under a worst-case scenario, an employee could be released from all "work time" to conduct union business. Reject this proposal.

3. The Board shall release, without loss of pay, an Association Representative and/or designee(s) designated by the Association President and permit him/her/them to visit any work station, investigate working conditions, employee complaints or problems, or for any other purposes relating to terms and conditions of employment.

▶ This approach of accommodating a union president has been found to be more acceptable and appears in some teachers' contract. Your ability to agree to a clause which grants a few, limited number of paid days off for the union president should be guided by your board's philosophy and the conditions or circumstances that could make this clause acceptable.

4. The Association President and/or designee(s) designated by the Association President shall be given (... negotiated number...) days paid leave for Association business each year.

(If you negotiate full time release for any association officer, contact your UniServ Representative to make sure you follow all of the steps necessary to protect the employment rights of that officer.)

C. Released Time for Association Meetings

1. The Board shall allow all Representatives designated by the Association to leave their work assignments at (...negotiated time...) once each month to attend the Association Representative meeting.

▶ These clauses mandate the Board to release certain union officials from their professional and occupational duties to attend to union business during the workday. There is no reason why union business cannot be conducted after employees contracted work time. These provisions are benefits for the union, but do they benefit the district?

2. The Association shall be provided the opportunity to hold (...negotiated number...) general membership meetings during the work year. Said meetings shall be held during the workday and unit members may attend without loss of pay.

D. Use of School Buildings

1. Representatives of the Association shall be permitted to transact official Association business on school property at all reasonable times, provided that this shall not interfere with or interrupt normal school operations.

▶ Without specific additional language requiring prior administrative approval, the Sample Agreement's clause gives the union full discretion to determine whether the Association business has been scheduled at a reasonable time that does not interfere or interrupt normal school operations. Boards should not agree to any provisions that do not require prior administrative approval.

E. The Association or its designees shall have the right to use a school building at all reasonable hours for meetings.

▶ See comments under D.

F. Use of School Equipment

1. The Association shall have the right to use school facilities and equipment including but not limited to the public address system, computers and related technology, printers, typewriters, copy machines, other duplicating equipment, calculating machines, and all types of audiovisual equipment at reasonable times when such equipment is not otherwise in use.

▶ To assure that the union's use does not conflict with district needs, boards are strongly urged to require prior administrative approval before the union can have access to school facilities and equipment. It is also not uncommon for teachers' contracts to hold the union responsible for paying for the costs of materials, supplies and any repairs necessitated as a result of its use of district property.

2. The Association shall have the exclusive use of a bulletin Board in lounges, dining rooms, and other appropriate areas in each worksite. The Association shall also be assigned adequate space on the bulletin board in the district central office for Association notices. The Association shall designate the location of the Association bulletin Boards in each work area.

An association's ability to post notices in areas that are exclusively reserved for staff is a rather common practice. However, many boards question the appropriateness of posting union notices in the central office or other areas which are accessible to students and the public. At the very least, the administration should have the right to approve or disapprove of union's materials posted on bulletin boards in school offices.

Note that the Sample Agreement calls for the Association's "exclusive" use of these bulletin boards. However, a contract's "open period" (September 1 through October 15 of the final 12 months of the contract) provides employees with an opportunity to select a new representative. During this time, unions competing for the right to represent a bargaining unit must be given equal access to unit members. Union County Reg. Bd. of Educ., PERC No. 76-17. A clause granting exclusive use of bulletin boards to the majority representative would interfere with the rights of equal access and cannot be enforced during the "open period." PERC has held that equal access can be provided if the current majority representative waives its exclusive right during the open period. Burlington County Department of Corrections, D.R. No. 2001-3.

G. Mail Facilities, Mail Boxes and Electronic Mail — The Association shall have the right to use the school mailboxes and the district's internal mail (...including e-mail...) delivery system.

PERC has held that this mandatorily negotiable, as long as the Association's use of school mail is limited to direct placement of communications in school mail boxes. However, the Association may not use the school mail system to avoid paying postage to the United States Postal Service. Ramapo-Indian Hills Bd. of Educ., PERC No. 90-104. It would also be advisable for boards to retain their administrators' right to approve or disapprove of the Association's mailings before they are placed in building mailboxes.

H. Association Office — The Association shall be provided with adequate office space in a building at a location and of a description to be mutually agreed upon. The Association shall have the right to install separate and exclusive internet access line(s) and phone line(s) at its own expense.

Guaranteeing adequate office space to the union, without consideration of the district's facility needs, is beyond most districts' capabilities. This clause is extremely inadvisable and should be rejected.

I. Exclusivity — The rights and privileges of the Association and its Representatives as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the employees and to no other organizations.

The union's status as the bargaining unit's "majority representative" normally entitles it to exclusive rights and exclusive access to the unit members. However, during a contract's "open period" (September 1 through October 15 of the final 12 months of the contract, see discussion of Section 6 of this article), unions competing for the right to represent a bargaining unit must be given equal access to unit members. Union County Reg. Bd. of Educ., PERC No. 76-17. Boards that rely on contractual "exclusivity" clauses to deny competing unions equal access would commit an unfair labor practice.

ARTICLE VII: Seniority & Job Security

ARTICLE VII: SENIORITY AND JOB SECURITY

A. Seniority — Seniority shall be defined as continuous service in the school district without regard to time spent in a bargaining unit.

Employees, such as security, bus drivers and custodians hired on fixed-term contracts and other non-certificated employees, are not granted statutory seniority rights but can negotiate contractual seniority. In negotiating over these rights, boards should keep in mind that contractual seniority need not, and should not, be as restrictive as statutory provisions. Similarly, recall rights are negotiable for these employees and boards should also consider improving and modifying the model of school law by negotiating a limitation on the duration of employees' right to recall. This provision adopts the statutory definition of seniority that is completely based on years of service. Agreement to this approach extends the problems inherent in personnel decisions that are completely driven by years of service, without consideration of employees' appropriate qualifications, performance record and district needs. If this definition is agreed to by boards, it should then be modified as indicated throughout the analysis of this article.

This approach is also complicated by the provision's reference to employment "as a member of the bargaining unit." Given the variety of noncertificated positions covered by this contract, this commitment could result in a long term district employee who has been recently appointed to a new classification of employment and who has relatively little experience in that job, replacing an employee with far more experience in that particular job category. While possibly complicating the administration's initial creation of seniority lists, it is far more advisable to negotiate seniority in a particular job classification. For a full discussion of contractual seniority, please see the article "Special Bargaining Issues of Support Staff Employees" in the Bargaining Unit section of The Negotiations Advisor.

B. Reduction in Force

1. A seniority list shall be provided to the Association by November 1 annually and at the time of a contemplated Reduction in Force (RIF).

Providing the union with a seniority list is a standard procedure. However, before agreeing to any date for the submission of the list, boards should check the administration's needs to prepare and complete the list.

2. Any reduction of positions shall be accomplished in the following manner:

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|---|--|
| <p>a. Employees shall exercise their total employment seniority to replace a less senior employee in the same job category. If there is no less senior employee in the job category, they shall replace a less senior employee in a similar job within the unit.</p> | <p>▶ As to the first sentence: To protect the districts' interests, boards should include a requirement that layoffs will consider years of service and the employees' qualifications, performance and attendance record, as well as the ability of the employee to perform the functions of the job required by district needs. The provision should also specify that in the event the most senior employee does not possess the necessary qualifications, the district's criteria will be applied to employees who are next on the seniority list. (While these additional criteria do not affect an employee's "seniority" status, they assure that the district is able to retain employees who can best deliver the necessary services.) Again, this clause emphasizes the need to establish seniority within each job classification within the ESP staff. Boards that cannot assure their ability to create such lists, or that cannot obtain unions' agreement to this condition, should not agree to this proposal.</p> <p>As to the second sentence: This could be acceptable, with the additional language that the replacement in a similar job in the unit will occur only if the employee possesses the necessary qualifications, satisfactory employment record, and the ability to perform the similar job.</p> |
| <p>b. In the event that a vacancy occurs, a laid-off employee shall be entitled to recall thereto in the order of his seniority.</p> | <p>▶ Again, from management's perspective, recall should also be based on the employees' qualifications, performance and attendance record, as well as the ability of the employee to perform the functions of the job required by district needs. Also note that, as written, recall rights are automatically triggered by the occurrence of a vacancy. However, PERC has held that a board has the nonnegotiable right to decide whether or not to fill a vacancy. (see, for example, Hamilton Twp. Bd. of Educ., PERC No. 99-88) This recall rights can only be triggered if the Board determines to fill a vacancy.</p> |
| <p>c. Notice of recall to work shall be addressed to the employee's last known address appearing on the records of the school district, by certified mail, return receipt requested. Within (...negotiated number...) days from receipt of such notice of recall, the employee shall notify the Board of Education, in writing, whether or not he desires to return to the work involved in the recall.</p> | <p>▶ Procedures for recalling employees must be administratively feasible. In general, it is beneficial for boards to negotiate a limit on employees' ability to retain their seniority and recall rights and guarantee only preferred eligibility for employment for a limited period of time. These sections seem to attempt to place some form of limit. However, these two sections contain differences in language that could become very significant to an arbitrator. Under Section C laid-off employee's failure to respond to a recall results in the loss of both seniority and all rights of recall. This failure is then equivalent to resignation.</p> |
| <p>d. Employees on the recall list shall be permitted to reject one job offering within his/her job, shift, hours, and days category of work, and still remain on the recall list. If, after two jobs have been offered and rejected, or if said employee fails to respond, said employee shall forfeit all rights to the recall list.</p> | <p>▶ Section D, however, results only in the loss of recall rights if the laid-off employee rejects two job offers. Therefore, under these circumstances, the employee would appear to retain seniority rights that could need to be reinstated in the event the employee is subsequently hired by the district under other than a recall situation. Having parallel language in both these provisions would be advisable.</p> |
| <p>e. Job offerings not within the same job, shift, hours, and days category of work shall be offered to individuals on the recall list. Acceptance of such a position shall not affect his status on the recall list for his last position.</p> | <p>▶ This provision would be unnecessary if seniority and recall rights are established by classification of employment, rather than experience in the district.</p> |
| <p>f. Seniority shall be accumulated during the period of layoff. Upon recall, employees shall have their accumulated seniority restored to the date of layoff.</p> | <p>▶ Allowing seniority to accumulate during layoff is not to the Boards advantage, especially if seniority is based on experience in a broad job classification.</p> |
| <p>g. Recalled employees shall have all benefits restored in accordance with their accumulated seniority, including but not limited to vacation eligibility, step on guide, etc.</p> | <p>▶ Restoring benefits is again a standard approach. This provision would be acceptable if it recognized that changes in guide structure might have occurred during the layoff period. Thus, boards that are inclined to agree to this concept should seek modification that states that the step placement would be "equivalent" to the step held upon layoff.</p> |
| <p>h. An employee shall only lose school district seniority if he/she resigns or is discharged for cause, irrespective of whether he is subsequently rehired by the school district.</p> | <p>▶ See comments under G.</p> |

ARTICLE VIII: Subcontracting

ARTICLE VIII: SUBCONTRACTING

A. All aspects of and actions relating to or resulting from the Board's decision to subcontract, including but not limited to whether or not severance pay is provided, shall be mandatory subjects of negotiations.

Whether these issues are mandatorily negotiable is a function of state law and PERC rulings, not contract language. As of the 2012-2013 school year, New Jersey law authorizes boards of education to subcontract services. Under long standing case law, decisions about how services are delivered, including whether to subcontract, are managerial decisions for boards and need not be negotiated with unions. Local 195, 88 N.J. 393 (1982).

Boards' authority to subcontract is not unlimited, however. Boards' decision to subcontract may not be motivated by anti-union animus. Dennis Twp. Bd. of Educ., PERC 86-89. In addition, Boards' are obligated to negotiate over subcontracting procedures and the impact of the decision to outsource as long as such terms do not interfere with the Boards' lawful right to subcontract. Specifically, provisions for prior notification of subcontracting to the union, provisions for conferring with the union, layoff procedures and recall rights are negotiable. Old Bridge Twp. Bd. of Educ. PERC No. 88-143; Long Branch Bd. of Educ., PERC 95-6.

B. The Board agrees not to enter into a subcontracting agreement which involves or affects the bargaining unit work performed by the employees covered by this agreement during the term of this agreement.

Under current law, this provision is unenforceable as written.

C. Prior to entering into a subcontracting agreement the Board shall:

1. Provide written notice to the Association not less than 90 days before the Board requests bids, or solicits contractual proposals for the subcontracting agreement;

Note that the 90 day negotiated notice period may present significant delay, and interfere, with boards' ability to subcontract.

2. Has offered the Association the opportunity to meet and consult with the Board to discuss the decision to subcontract, and the opportunity to engage in negotiations over the impact of the subcontracting. The Board's duty to negotiate shall not preclude the board's right to subcontract upon the expiration of the existing collective agreement provided that the Board has provided the Association with the information required by this Article and provided at least 90 days for the Association to engage in the process provided by this section.

Again, note that the prohibition on subcontracting during the term of a negotiated agreement is unenforceable under current law.

D. In addition to the above requirements, the Board shall not enter a subcontracting agreement unless the other person, vendor, corporation, partnership, or entity which will provide the services included in the subcontracting agreement submits a bid or proposal which includes but is not limited to the following information.

All the provisions in D are ill advised and designed to discourage, if not make impossible, implementation of any subcontracting decision. For example, how is it possible to provide a list of contracted employees before the subcontractor has been awarded the job or how do you do criminal background checks three months before the "prior to the submission of the bid?"

1. evidence of liability insurance in scope and amount equivalent to the liability insurance that the employer maintains to cover its liability for personal injury claims made against it.

2. a list of the number of employees who will provide the subcontracted services, the job classifications of those employees, and the wages the third party will pay those employees;

3. a minimum 3-year cost projection, using generally accepted accounting principles, and which the third party is prohibited from increasing if the bid or proposal is accepted by the employer, for each and every expenditure category and account for performing the subcontracted services;

4. composite information about the criminal and disciplinary records, including alcohol or other substance abuse, Department of Children and Families complaints and investigations, traffic violations, and license revocation or any other licensure problem, of any employees who may perform the services, provided that the individual names and other identifying information of employees need not be provided with the submission of the bid, but must be made available upon request of the employer; and
5. an affidavit, notarized by the president or chief executive officer of the third party, that each of its employees has completed a criminal background check as required by 18A::6-7.1 three months prior to submission of the bid, provided that the results of such background checks need not be provided with the submission of the bid, but must be made available upon request of the employer.

E. Each employee replaced or displaced as the result of a subcontracting agreement shall retain all previously acquired seniority during that period and shall have recall rights whenever the subcontracting terminates.

F. The Board shall provide severance benefits as follows:

1. The Board shall pay all affected unit members full pay for all leave days credited to the employee's account.
2. The Board shall grant to all employees not able to vest their pensions, an amount of money equal to the total contributions made on behalf of that employee, up to the date of separation.
3. The Board shall provide that all employees who lose their positions as a result of subcontracting shall be paid one year's annual salary at separation, and shall be retained in their proper places on the district seniority recall list.
4. The Board shall provide a retraining benefit of (... negotiated dollar amount...) for each year of employment to each employee leaving his/her position.

ARTICLE IX: Job Posting Procedures

A. All district and unit vacancies shall be adequately publicized by the Superintendent in accordance with the following procedure:

1. A notice shall be posted at each worksite and on the employer's web site as far in advance as practicable, but no less than (...negotiated number...) workdays before the final date when applications must be submitted. A copy of said notice shall be given to the Association and to each employee at the time of posting.

▶ Providing recall rights and seniority protections are not unusual. Ideally, there would be time limit on recall rights. A two year limit is common.

▶ Negotiated severance benefits in the event that employees are displaced by subcontracting are not unusual in school district contracts. The Sample Agreement contains a creative and rich source of various components in this severance package. Before agreeing to any severance provision or a total severance package, boards will need to carefully cost-out the economic implications of the union's proposals. Not surprisingly, Sample Agreement's total severance package, could be so expensive and unaffordable as to completely preclude boards from proceeding to subcontract services.

ARTICLE IX: JOB POSTING PROCEDURES

▶ Note that this contractual article cannot apply to all school employees, but only to the employee classifications included in the recognition article. This is a negotiable topic. Boards that agree to posting procedures must assure that all time limits are administratively feasible. Also keep in mind that the posting of a vacancy does not in any way commit a board to fill the vacancy. An employer's right to determine whether or not to fill a vacancy is not negotiable. *Maywood Bd. of Educ., 168 N.J. Super 45 (1979).*

▶ The last clause, "and to each employee at the time of the posting" could be problematic. Districts that are agreeable to such language would be wise to specify that posting on the web site is adequate notice under the contract.

<p>2. Employees who desire to apply for such vacancies shall submit their applications in writing to the Superintendent or designee within the time limit specified in the notice, and the Superintendent or designee shall acknowledge promptly in writing the receipt of all such applications. Applications shall be kept on file in the Superintendent's office for continual consideration for future vacancies until an applicant notifies the office in writing that the application is withdrawn.</p>	<p>While this entire paragraph is negotiable, the last sentence is an extremely inadvisable personnel practice. Requiring the Superintendent to maintain a continuous file of applicants for vacancies in the district puts an unreasonable burden of identifying applicants on the administration rather than on the employee. Applications should be limited to the posted position and employees should be required to file a new application for each vacancy.</p>
<p>3. Employees who desire to apply for a vacancy which may be filled during the summer vacation period shall submit their names and addresses where they can be reached during the summer to the Superintendent or designee, together with the position(s) to which they desire to apply. The Superintendent shall notify such employees of any vacancies or new positions. Such notice shall be sent as far in advance as practicable, but no less than ...negotiated number... days before the final date when applications must be submitted.</p>	<p>This provision is also unwise as it also places an unnecessary and possibly burdensome responsibility on the Superintendent. It is also unnecessary given Section C which provides access to vacancy information to all employees.</p>
<p>4. In addition, the Superintendent or designee shall, within the same time period, post a list of promotional positions to be filled during the summer period at the administration office, at each worksite, on the employer's web site, and a copy of said notice shall be sent to the Association.</p>	<p>This notice provision is a reasonable accommodation to employees' interests and eliminates the need for 3.</p>
<p>5. The qualifications for any vacancy position, its duties, and the rate of compensation shall be clearly set forth.</p>	<p>This is an acceptable provision as long as it is clearly understood that qualifications are not negotiable.</p>
<p>6. Position Openings for Coaches</p>	
<p>a. No later than April 1st of each school year, the Board shall deliver to the Association, and post in each school building, a list of known coaching vacancies which shall occur during the following year.</p>	<p>April 1 is a very early notification date.</p>
<p>b. Such posting shall include the title of the coaching position being vacated, the contract salary offered, and the qualifications necessary. Such posting shall be in accordance with all provisions of the Agreement.</p>	<p>This is an acceptable provision as long as it is clearly understood that qualifications are not negotiable.</p>
<p>B. Procedures for filling all extracurricular positions</p>	
<p>1. All vacancies in extracurricular positions shall be adequately publicized by the Superintendent or designee in accordance with the procedure outlined in Section A of this article.</p>	<p>See comments under A.</p>
<p>2. All qualified employees shall be given adequate opportunity to make application and no position shall be filled until all properly submitted applications have been considered.</p>	<p>This ignores boards' rights to temporarily fill a vacancy while a search continues. State-Operated School District of the City of Newark, PERC No. 97-87.</p>
<p>a. The Board agrees to give due consideration to the professional background, attainments, and other relevant factors of all applicants.</p>	<p>The listed factors impermissibly addresses the criteria and qualification for a position.</p>

b. In filling such vacancies, when all other factors are substantially equal, length of service in the district shall be the deciding factor.

▶ This could not be read to interfere with the Board's ability to set the qualifications for these positions. The clause's "substantially equal" is a lower and unapproved standard for the use of seniority as a tie breaker. Further, this provision also suggests that applicants only need to be "qualified." While this is a minimum requirement under N.J.S.A. 34:13A-23, a board could, and should, negotiate the ability to select the most qualified applicant for an extracurricular position. Without this qualifier, an arbitrator will hold the statute's standard and only determine if a grievant was simply "qualified."

c. Each applicant not selected shall, upon request, receive a written explanation from the Superintendent. Announcements of appointments shall be made by posting a list in the office of the central administration and at each worksite.

▶ The first sentence is unwise as it places an unnecessary and possibly burdensome responsibility on the Superintendent.

d. The list shall be given to the Association and shall indicate which positions have been filled and by whom.

3. If the procedure set forth above fails to produce a qualified applicant from within the district, the Board shall make every effort to employ a qualified out-of-district person who is the holder of an appropriate New Jersey certificate.

▶ This essentially is a restatement of the law, but the "every effort" language suggests an unlimited search and thus should be avoided.

4. The Board's determination that no out-of-district qualified person can be found to fill an extracurricular position shall be subject to challenge by the Association under the grievance procedure contained in this Agreement.

▶ This clause impermissibly permits an arbitrator to review a board's application of its criteria for qualifications. And, it also unwisely reinforces the concept that the board is simply seeking a qualified applicant, rather than the most qualified applicant.

5. If after having made every effort, the Board is unable to employ a qualified person in accordance with the procedures set forth herein, the Board may assign a qualified employee from within the district. In district Employees shall not be involuntarily assigned to extracurricular positions for more than (...negotiated amount of time...). Any such involuntary assignment shall be made on the basis of reverse seniority among the pool of qualified personnel.

▶ It would be far wiser for boards to seek agreement to assign "the most qualified" employee from within the district. The limitations on the number of times an employee can be assigned involuntarily could present significant interference with the board's design of the extracurricular program, which after all is an educational policy determination. As such, this phrase may be found to be nonnegotiable. Under any circumstances, it could be a most unwise board agreement. The last sentence is probably negotiable, however a board's agreement to limit itself to involuntarily assign only qualified teachers rather than the most qualified, could be unwise.

ARTICLE X: Voluntary And Involuntary Transfers And Reassignments

ARTICLE X: VOLUNTARY AND INVOLUNTARY TRANSFERS AND REASSIGNMENTS

A. As soon as is practical, and no later than (...negotiated date...), the Superintendent shall deliver to the Association, a system wide schedule listing the names of all employees who have been reassigned or transferred and the nature of such reassignment or transfer.

▶ Criteria for transfers are neither negotiable nor arbitrable. However, transfer procedures are mandatorily negotiable. (Note, N.J.S.A. 34:13A-25 prohibits the transfers of school employees between work sites for disciplinary reasons). "Between work-sites" has been defined by PERC as transfers to other school buildings. Mt. Arlington Bd. of Educ., PERC No. 98-4. A, B and D are procedural and negotiable issues. If agreed to, be sure that the negotiated dates are administratively feasible.

B. Employees who desire to transfer to another worksite or seek a reassignment may file a written statement of such desire with the Superintendent or designee. Such statement shall include the worksite or worksites to which he desires to be transferred in order of preference. Such requests for transfers and reassignments for the following year shall be submitted no later than (...negotiated date...).

C. No such request shall be denied arbitrarily, capriciously, or without basis in fact provided a vacancy exists. If more than one employee has applied for the same position, the final determination shall be based on seniority.

▶ This section is illegal as it primarily addresses criteria for transfers. As written, the last sentence which establishes seniority as the deciding factor when there is more than one applicant, also implicates criteria and is not negotiable. However, using seniority to break a tie among equally qualified applicants would be negotiable as long as it does not interfere with a board's ability to assess qualifications. Trenton Bd. of Educ., PERC No. 85-62.

D. Notice of an involuntary transfer or reassignment shall be given to employees as soon as is practical, and except in cases of emergency, not later than (...negotiated date...).

E. In the event that an employee objects to the transfer or reassignment, upon the request of the employee, the Superintendent shall meet with him/her. The employee may have an Association Representative(s) present at such meeting.

F. A list of open positions in the district shall be made available to all employees being involuntarily transferred or reassigned. Said employees may request the positions, in order of preference, to which they desire to be transferred. All such employees shall be given adequate time off for the purpose of visiting worksites at which open positions exist.

G. Any employee whose assignment is changed shall be provided assistance in the following manner:

1. In cases of reassignments during the work year, the employee shall be provided (...negotiated amount of time...) to prepare for the new position.

2. In case of reassignments determined during vacation periods, the employee shall have the option of working during the vacation period. The employee shall be compensated at (...negotiated rate of pay...). The Board shall provide assistance in moving equipment and materials to the reassigned employee's new worksite.

3. In the event an employee takes course(s) related to the change in assignment, the Board shall pay the full cost of tuition, books, and materials. Such payments shall not be included in any limits otherwise required of employees as a condition for receiving tuition reimbursement.

ARTICLE XI: Personnel File

A. No material derogatory to an employee's conduct, service, character, or personality shall be placed in a personnel file unless the employee has had an opportunity to review such material and affix his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The employee shall also have the right to submit a written answer to such material, and said answer shall be attached to the file copy.

B. All employees have the right, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. Employees are entitled to have a Representative(s) of the Association accompany them during such review. Employees have the right to indicate those documents and/or other materials in his file which he/she believes to be obsolete or otherwise inappropriate to retain.

▶ An employee's right to a meeting to discuss a transfer is procedural and negotiable. However, PERC has held that "the existence of such a procedure cannot prohibit the effectuation of an assignment until after such a meeting takes place." Failure to comply with a prior meeting clause may not authorize an arbitrator to rescind the transfer. East Orange Bd. of Educ., PERC No. 81-25.

▶ The first two sentences are procedural and negotiable and may be acceptable to most boards. The third sentence is also negotiable, but may cause too many administrative problems (such as covering the assignment of the employee, scheduling the visit, and deciding what constitutes adequate time off) to be acceptable to most boards.

▶ PERC has held that the additional work caused by a transfer (packing materials, orientation to the new school) involved an increase in work load and that denied compensation for that increased work load was an arbitrable issue. South River Board of Education, PERC No. 83-15. Thus, this section would seem to be negotiable. Nevertheless, the proposed release time and additional compensation are likely to be unacceptable to most boards.

▶ The tuition reimbursement of is probably not necessary as this is probably covered in another contractual article. The blanket commitment to pay the "full cost of tuition, books and materials" and the exception of this from any tuition reimbursement limits does not provide any protection to the board.

ARTICLE XI: PERSONNEL FILE

▶ This is a negotiable topic. However, this provision cannot be used by an employee to block the administration from eventually placing materials in a personnel file. Note that the proposed language does not provide the administration with a contractual right to rebut, or clarify, the teacher's rebuttal.

▶ This is a negotiable topic, as long as management retains the right to determine what materials should or should not be retained in a personnel file. Twp. of Branchburg, PERC No. 89-20. Many districts have found it advisable to negotiate additional procedures to protect the administration from undue disturbances related to employees' frequent use of this right. These procedures may include: a requirement that files can be reviewed only at times that have been mutually scheduled by the teacher and the administration; and a limitation on the number of times an employee can review his file in any one year.

C. The Board agrees to protect the confidentiality of personal references, and other similar documents and the Board shall not establish any separate personnel file which is not available for the employee's inspection.

▶ A negotiated provision that would limit the number, type and content of personnel files that can be maintained by an employer is not negotiable or enforceable. However, employee access to those files is a procedural aspect that has been found to not interfere with any substantive managerial prerogative. Twp. of Franklin, PERC No. 85-97. Note that both Health Insurance Portability and Accountability Act of 1996 (HIPAA), and QSAC the district is required to keep a separate medical file for each employee.

ARTICLE XII: Sick Leave

ARTICLE XII: SICK LEAVE

A. All ten (10) month employees shall be entitled to (...negotiated number...) sick leave days each school year as of the first workday of said school year.

▶ N.J.S.A. 18A:30-2 grants a minimum of cumulative 10 paid sick leave days to all steadily employed school employees. The amount of sick leave granted beyond the statutory minimum is a negotiable issue. A board's willingness to agree to more days should consider the district's educational needs, economic ability as well as its ability to achieve an equivalent concession from the union at the bargaining table. It is also advisable for boards that are inclined to grant more days to specifically extend school law's definition of sick leave (as days to be used only for personal illness or exclusion from school by a school's medical authority) to the additional contractual days.

(Note: eligible staff may also be entitled to unpaid sick leave under the Federal Family and Medical Leave Act. For a full discussion of this law, please see the article "Federal Requirements Affecting New Jersey Schools Negotiations" in The Structure of Negotiations Section of The Negotiations Advisor.)

B. All eleven (11) month employees shall be entitled to (...negotiated number...) sick leave days each school year as of the first workday of each school year.

▶ Granting 11 days for 11 month employees and 12 days for 12 days is common, but see comments under Section A.

C. All twelve (12) month employees shall be entitled to (...negotiated number...) sick leave days each year as of July 1.

D. All unused sick leave days shall be accumulated from year to year with no maximum limit. The maximum number of days which may be accumulated in any one (1) year is fifteen (15).

▶ The first sentence is essentially a restatement of N.J.S.A. 18A:30-3. The second sentence is a restatement of N.J.S.A. 18A:30-7 which places a 15 day limit on the number of days that can be accumulated in any one year.

E. Whenever the Board employs an employee who has an unused accumulation of sick leave days from another school district in New Jersey, or has rehired a former employee, the Board shall credit all accumulated sick leave.

▶ Boards that are contemplating agreement to this clause should be aware that such agreement will hold district-wide implications as it will automatically apply to all individuals employed by the Board. N.J.S.A. 18A:30-3.4 requires boards that choose to grant credit for sick leave earned in another district to do so for all employees.

The Sample Agreement's clause also applies to employees who are rehired by the district. This should be read in conjunction with any payment for accumulated sick leave days provision in the contract and any severance package for employees displaced by subcontracting.

F. In the event an employee of the unit is excluded from working because of an action taken by the school district's medical or health authorities due to exposure to contagious or infectious disease, or a quarantine is imposed on the employee's household, said employee shall not be subject to loss of pay and such absences shall not be counted as sick leave.

▶ While N.J.S.A. 18A:30-1 includes exclusion or quarantine as "sick leave," school law does not mandate that such absences be credited against employees' paid sick leave time. As such, this clause is negotiable but is not likely to be acceptable to most boards.

G. All employees shall receive a perfect attendance award equal to (...negotiated number...) of their gross monthly income for each month of perfect attendance. A month's perfect attendance shall be defined as an employee attending work all days within a calendar month that the employee would normally be scheduled to work.

▶ This is a negotiable topic. However few boards have agreed to provide a bonus for each month's perfect attendance and it is unlikely to correct the behavior of employees with poor attendance. Note that providing a bonus does not "buy back" employees' unused sick days as school law grants employees the right to accumulate those days for future need of sick leave days.

H. Non-accumulative additional sick leave benefits shall be allowed to employees according to the following, schedule:

▶ PERC has held that this provision does not conflict with school law and is mandatorily negotiable. Hunterdon Central High School Bd. of Educ., PERC No. 87-83. Before agreeing to this clause, board should consider the same factors involved in extending the statutory minimum (see comments on Section (A) above). In addition, those boards may also find it advisable to include a provision requiring that accumulated sick leave days must be utilized before non-accumulative sick days.

1. All twelve (12) month employees shall receive an additional (...negotiated number...) days per year.

- 2. All eleven (11) month employees shall receive an additional (...negotiated number...) days per year.
- 3. All ten (10) month employees shall receive an additional (...negotiated number...) days per year.

I. All employees shall be given a written accounting of accumulated sick leave days no later than (...negotiated date...) of each school year.

J. Upon leaving employment for any reason, an employee shall be compensated for all unused accumulated sick leave. This compensation shall be at the daily rate of pay in effect at the time of severance.

K. In the event of the death of an employee, payment for all accumulated days as stated above shall be paid to his/her estate within (...negotiated amount of time...) of employee's death.

ARTICLE XIII - Sick Leave Bank

A. Purpose — The parties agree to establish and implement a sick leave bank utilizing a voluntary donation program to assist employees who experience a “catastrophic health condition or injury” and have exhausted their paid leave benefits. The bank shall allow employees to voluntarily donate accrued vacation, personal days and or sick leave to said bank. This bank shall be established pursuant to P.L. 2007, Chapter 223.

B. Definition — A catastrophic health condition or injury is a life threatening condition or combination of conditions or a period of disability required by his or her mental or physical health or the health of the employee's fetus and requiring the care of a physician who provides a medical verification of the need for the employee's absence.

▶ This is a negotiable procedure. The negotiated date must be administratively feasible.

▶ Payment for unused sick leave is a negotiable and prevalent school employee benefit. However, typically, boards have limited the availability of this benefit to employees who are retiring and have given significant advanced notice of their retirement and have negotiated caps on their payment obligations. For the following reasons, this clause of the Sample Agreement, should be unacceptable to boards. As written, the Sample Agreement's clause is far more generous than most (if not all) contractual benefits. First, the benefit is available upon leaving the district for “any” reason. This would mean that non-renewal staff as well as those terminated for any reason, including misconduct and tenure charges, would be equally eligible for this severance pay. In addition, basing the rate of reimbursement upon the last salary, without a cap on the total amount or on the number of days, could result in a hefty expenditure which will increase each year without additional negotiations, based on negotiated increases in salaries. Employees hired after May 21, 2010 are legally capped at \$15,000 and may only receive this benefit upon retirement. N.J.S.A. 18A:30-3.6. Note most Boards have aggregate contractual caps in place well below the \$15,000 level. Obviously, boards must reject this proposal as written.

▶ This is a negotiable topic only for employees hired before May 21, 2010. Employees hired after that date may only receive these payments upon retirement. With that caveat and with a well and carefully drafted payment for unused sick leave plan (as discussed in the “Payment for Unused Sick Leave” article cited above), this is a benefit that boards may accept in return for a union concession to a board issue.

ARTICLE XIII: SICK LEAVE BANK

▶ N.J.S.A. 18A:30-10 permits, but does not require, that school districts negotiate sick leave banks. Note that sick banks are not necessary to deal with deserving employees who are in need a extended sick leave. School employees have a plethora of leave entitlements and can accrue a substantial number of sick days over the course of their employment. However, should an employee exhaust all of his or her accumulated days and need additional sick time, that individual may request that the board provide an extension of sick leave. The board has the discretion to approve or disapprove such requests on a case-by-case basis; if it approves the request, the cost of a substitute must be deducted from the extended paid leave. Boards who are considering establishing sick leave banks need to be mindful that with the establishment of a sick leave bank, there is the possibility of double dipping under the following scenario: At the beginning of the school year an employee donates some of his 10 statutory sick days provided for under N.J.S.A. 18A:30-2, then sometime later demands to use those sick days for his own illness. Since those 10 days are statutory and to be used for the employee's own illness, it's unclear whether the employee could be prevented from making claim to those sick days.

If the Board does determine that it wishes to establish a sick leave bank for its employees, it should consider protective safeguards such as: the Board retains the final say on who is eligible to take leave; exclude review of the Board's decision from arbitration; eligibility criteria for employees to donate or use days; limitation on what days may be donated (e.g., personal days, sick days, vacation days); a requirement that employees donate leave time to be eligible to draw leave; limitations on the amount of sick bank time that may be taken; and, conditions under which the sick leave may be drawn.

▶ Boards who are open to the idea of a sick leave bank should not agree to such a board definition of eligible conditions.

C. Committee — The sick leave bank shall be administered by a committee which shall be comprised of three (3) members selected by the Board of Education and three (3) members selected by the Association. The committee shall establish standards and procedures that it deems appropriate for the operation of the sick leave bank. These shall include but not be limited to eligibility requirements for participation in the sick leave bank and the conditions under which the sick leave time may be drawn. No day of leave which is donated to the sick leave bank by an employee shall be drawn by that employee or any employee from the sick leave bank unless authorized by the committee in order to provide sick leave.

[Note: The sample language for inclusion in a collective bargaining agreement is complete as written above. For additional sample language addressing standards and procedures for use by the sick leave bank committee contact your UniServ office.]

ARTICLE XIV: Temporary Leaves Of Absence

A. Employees shall be entitled to the following temporary leaves of absence with full pay each school year:

B. Up to (...negotiated amount of time...) at any time shall be granted in the event of serious illness of an employee's immediate family members (...negotiated list of relatives...) and any other member of the immediate household. An additional (...negotiated amount of time...) per year will be granted at employee's request.

C. Any employee who is a member of a community service organization, or who is requested by any such organization to attend or participate in meetings or programs of the organization conducted during work hours, shall be granted time off with pay for such purpose upon request.

D. Time off with pay shall be granted for appearances in any legal proceeding connected with the individual's employment or in any other legal proceeding, including jury duty, if required by law to attend.

E. Up to (...negotiated amount of time...) shall be granted in the event of the death of immediate family members (spouse, child, son-in-law, daughter-in-law, parent, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law) and any other member of the immediate household. Employees shall be granted up to (...negotiated amount of time...) in the event of death of an employee's friend or relative outside the employee's immediate family as defined above. In the event of the death of an employee or student in the district, the principal or immediate supervisor of said employee or student shall grant to an appropriate number of employees sufficient time off to attend the funeral.

N.J.S.A. 18A:30-11 mandates that once a district establishes a sick leave bank, a six person committee will administer it. The sample language permits the law in that the committee is made up of three union representatives and three board representatives. Note the potential for tie votes.

ARTICLE XIV: TEMPORARY LEAVES OF ABSENCE

This article addresses negotiable topics of negotiations. Note that the article's use of the word "shall" removes board discretion and obligates the board to grant the same leave benefits to any employee in the bargaining unit who encounters the listed circumstances. However, the specificity of the conditions for the leaves provide the board with implicit authority to verify that employees are using the leave for its intended contractual purpose and, for example, to submit verification of family members' serious illness. Barneget Bd. of Educ., PERC No. 84-123.

The first part is a fairly common benefit of school employees' contracts. Many boards, however, have desired a definition of "serious illness" (such as, "requiring hospitalization") to avoid future disputes as to the meaning of the clause. The number of days and the definition of whose illness will be eligible for paid leave must be acceptable to the board. (Boards seeking changes in their current family illness leave provisions should understand that this is a sensitive issue that can provoke a strongly emotional response from the union.) Similarly, the last part's commitment of additional time simply upon the employee's request must also be acceptable. Few, if any, boards have agreed to an automatic extension of family illness days, based only upon the employee's request.

Whether a board can support this type of paid leave must depend on an analysis of its impact on administrative and educational efficiency. As written it should be rejected as it provides no board discretion and is very broadly defined. Few, if any, boards have agreed to this type of provision.

Does a board wish to provide paid leave for employees' involvement in litigation where the board and the employee are adversaries (e.g., tenure and PERC hearings)?

Bereavement leave is another commonly provided paid leave of school employees. The number of days as well as the included list of family members and friends must be acceptable to the board. In the first sentence, some boards have found it advisable to specify when the days are available (e.g., "immediately following the death" or "within _____ days of the death and encompassing the funeral.") Boards seeking changes in their current bereavement leave provisions should understand that this is a sensitive issue that can provoke a strongly emotional response from the union.

The last sentence addresses a negotiable topic and appears in many school contracts.

F. In addition to the leaves granted above and in other articles of this Agreement, each employee shall be entitled to 7 days of paid leave each calendar year to serve as a bone-marrow donor or up to 30 days of paid leave each calendar year to serve as an organ donor.

▶ The is a paraphrase of a leave provision available to federal employees. 5 U.S.C. 6327. Whether a board can support this type of paid leave must depend on an analysis of its impact on administrative and educational efficiency. Few, if any, districts provide for this as a separate contractual leave entitlement.

G. In addition to the leaves granted above and in other articles of this Agreement, each employee shall be entitled to (...negotiated amount of time...) to allow the employee to accompany one's spouse, children or elderly relatives to routine medical or dental appointments or other professional services related to the care of the child or elderly relative.

▶ Whether a board can support this type of paid leave must depend on an analysis of its impact on administrative and educational efficiency. Few districts provide for this as a separate contractual leave entitlement.

H. Up to (...negotiated number...) paid days shall be granted for representatives of the Association to attend conferences and conventions of state and national affiliated organizations.

▶ If a board is inclined to agree to grant this benefit to union representatives, it should assure that there is an acceptable limitation on both the number of days per year and the number of representatives who are eligible for this leave. As written, the Sample Clause would require boards to provide paid leaves to an unspecified number of its designated members. The clause, as written, could also be interpreted that the number of days are guaranteed for each conference held by the state and national organizations.

I. All employees covered by this Agreement may attend the NJEA Convention without loss of pay.

▶ Note that N.J.S.A. 18 A:31-2 grants this right to teaching staff members and secretaries. This clause would extend this benefit to all unit members.

J. In addition to the leaves granted above and in other articles of this Agreement, each employee is entitled to (...negotiated number...) personal leave days per year for which no reason need be given. Such leave shall be accumulative. Personal leave days not utilized during the year shall be converted to accumulated sick leave.

▶ Although personal leave days is an almost universal school employees' negotiated benefit, this clause is far more generous and provides far less administrative oversight than the typical clause. For example, there are no requirements for prior administrative approval and no restrictions on the timing of these leaves. For a full discussion of the elements of a personal leave clause that provide administrative control and flexibility, as well as an employee benefit, please see the article "Personal Leave" in the Selected Contract Clauses section of The Negotiations Advisor.

In addition, the last sentences of the Sample Agreement's clause provide a double future benefit. For example, the second sentence appears to permit unused personal days to be accumulated for use in future years as personal leave. At the same time, the last sentence would convert those days as sick leave days for the purposes of payment for unused sick leave in accordance with Section 10 of Article XV. While conversion of personal days into accumulated sick leave "banked" days is relatively common, accumulation of those days for future personal reasons is extremely rare and, to the best of our knowledge, no board has agreed to a "double dipping" approach.

ARTICLE XV: Family And Medical Leaves Of Absence

ARTICLE XV: FAMILY AND MEDICAL LEAVES OF ABSENCE

A. A leave of absence not to exceed two (2) years shall be granted to any bargaining unit member for any of the following purposes:

▶ This clause obligates a board to grant and to extend sick leave and family care leaves simply at the employee's request. This condition is not likely to be acceptable to most boards as renewals of leaves typically require board approval. Further, most contracts that provide child care leaves to nontenured employees specify that the leave will not exceed the duration of the one-year employment contract. This is far broader than typical.

1. the birth, or placement for adoption or foster care, of a child;
2. a serious health condition of a family member;
3. the bargaining unit member's own serious health condition;
4. the care of a child under age 18.

B. For the purpose of a Family and Medical Leave, a child is defined as the biological, adopted, or foster child, step-child, legal ward or individual under 18 for whom the bargaining unit member serves in loco parentis. A family member is defined as a child, spouse, domestic partner, parent, parent-in-law, stepparent, grandparent, an individual over 18 who is incapable of self-care because of a physical or mental disability for whom the bargaining unit member stands in loco parentis, or someone who stood in loco parentis to the bargaining unit member when he/she was a child.

▶ This is a restatement of the federal FMLA provisions. Note that as written Family and Medical Leave could be interpreted to include the New Jersey Family Leave Act which has a more narrow definition of family. Ideally, these definitional issues would not be included in the contract.

- C. A pregnant bargaining unit member may commence Family and Medical Leave pursuant to this Article before or after the birth of her child, at her option. The leave is available to the bargaining unit member at the termination of her paid sick leave, at the option of the bargaining unit member. The bargaining unit member may terminate the leave any time after the birth of the child or in the event of the death of the child. The rights afforded to pregnant bargaining unit members under this provision are in addition to those rights pregnant bargaining unit members are already entitled to under the Agreement's sick leave policy, as well as under federal and state civil rights laws.
- D. Whenever practicable, the bargaining unit member will provide the Employer at least thirty (30) calendar days written notice of the request for the leave. The request will include the reason for the leave, the expected beginning date, the expected ending date and whether the bargaining unit member intends to use paid leave for any part of the leave.
- E. In all cases, the 12-month leave year shall be calculated to provide the employee with the maximum benefit.
- F. A Family and Medical Leave may be taken on an intermittent or reduced schedule basis at the bargaining unit member's option.
- G. The bargaining unit member may elect to use his/her paid sick leave, personal leave, and/or vacation leave (or any combination thereof) for all, part or none of the duration of the leave.
- H. A leave of absence for childrearing shall be for a period of up to (...negotiated amount of time...), but such leave may, upon the request of the employee, be extended an additional (...negotiated amount of time...) A leave commencing after (...negotiated date...) shall not constitute the first year.
- I. The Employer shall continue all health insurance benefits during all Family and/or Medical Leaves.
- (Important Note: The legal framework surrounding family and medical leaves is very complex. Leave provisions in a collective bargaining agreement should always consider the impact of the State and Federal Family Leave Acts on those provisions. Always seek assistance from your UniServ representative when you are negotiating leave of absence provisions.)
- Family and Medical Leave is largely a matter a statute. Note that the federal FMLA permits boards of education, under certain circumstances, to modify employees' requested return date. As written this would take that discretion away from boards and make the return date entirely up to the employee and not necessarily optimal for continuity of instruction. (For more information concerning this statute, please see The Negotiations Advisor article "Federal Requirements Affecting New Jersey School Negotiations.")
- Boards must consider the need for advance approval and a workable notice date which provides the superintendent with sufficient time to fill the vacancy created by the leave.
- Board's should not agree to this. It is negotiable but vague, cumbersome and potentially expensive. Districts are better served to determine which of the several available options (calendar year, any fixed leave year, 12 month period measured forward from the beginning of leave or "roll back")
- No. Intermittent leave is a serious problem for employers as the lack of notice can result in staffing issue. Adoption of this provision would expand the ability of staff members to take such leave. For instance, under FMLA, intermittent leave can only be taken for birth or adoption with the employer's consent.
- Allowing stacking of leaves like this increases the aggregate time employees may be out with job protection.
- This clause obligates a board to grant and to extend child care leaves simply at the employee's request. This condition is not likely to be acceptable to most boards as renewals of leaves typically require board approval. Further, most contracts that provide child care leaves to nontenured employees specify that the leave will not exceed the duration of the one-year employment contract.
- This is true of FMLA and New Jersey FLA. Note that as written this would extend that obligation to the 2 years provided in A - far beyond the Board's legal obligation.
- This is good advice. State and Federal Family Leave Acts are very complicated and have evolved since their inception. Always seek the advice of your solicitor or labor relations professional when dealing with these issues.

ARTICLE XVI: Unpaid Leaves of Absence

- A. A leave of absence without pay of up to (...negotiated number...) years shall be granted to any employee who joins the Peace Corps, VISTA, AmeriCorps, National Teacher Corps, or serves as an exchange teacher or overseas teacher or some other volunteer activity, and is a full-time participant in either of such programs, or accepts a Fulbright Scholarship.
- Boards that are inclined to grant this type of paid leave, should require the employee to seek prior approval of their leave under this section in a reasonable time frame that permits the district to find adequate coverage during the teacher's absence. Note that PERC has held that while unpaid leaves are terms and condition of employment which may be submitted to binding arbitration, failure to provide for a reasonable notice provision governing requests for such leaves might render the topic nonnegotiable since the efficient operation of a district necessitates some advance notice. South River Bd. of Educ., PERC No. 81-108.

- B. A leave of absence without pay of up to (...negotiated number...) years shall be granted to any employee to teach in an accredited college, university, or other school.
 - ▶ For the same reasons as cited in Section (A) above, boards should require timely application and prior approval for these unpaid leaves. Note, however, that N.J.S.A. 18A: 36A-14 (d) provides that boards cannot unreasonably deny their teachers' requests for unpaid leaves for up to three years to teach in a charter school.
- C. A leave of absence without pay shall be granted for a period of up to (...negotiated amount of time...) to any employee to campaign for or serve in a public office, or to campaign for a candidate for a public office other than himself.
 - ▶ Boards that do not have a conceptual problem with this type of leave, and are inclined to agree in return for the union's concession to a board issue, should keep in mind that, as written, the clause holds significant problems. For example, it mandates board approval of any employee request under this section and thus eliminates any board discretion to deny leave. This leave is open to an unlimited number of employees and guarantees leave, regardless of the number of district employees who are out on other types of leaves. Few, if any, boards can find these conditions acceptable.
- D. A leave of absence without pay shall be granted for a period of up to (...negotiated amount of time...) to any employee to campaign for or serve in any NJEA or NEA office or staff position.
 - ▶ See comments under C. Also note that this, like the other provisions in this article, does not provide boards with the discretion to deny employees' requested leave. Rather, the use of the word "shall" throughout the article mandates boards to grant all leave requests that meet the listed conditions. Boards would be far better served by the use of the word "may." Further note that none of the proposed conditions consider the needs of the district or students' educational continuity.
- E. The Board for good reason may grant requests for other leaves of absence with or without pay.
 - ▶ This is the only type of leave in this article which provides boards with discretionary authority to grant or deny leave. Nevertheless, it can present serious difficulties since districts' binding past practices may limit boards' discretion. Unfortunately, a labor contract sometimes has the effect of limiting the ability of an employer to grant benefits in excess of contractual guarantees because the employer's action taken to help employees in a given situation can force the employer to grant the same benefit in all future similar cases. (For a full discussion of past practice, see the article "The Meaning and Relevance of Past Practice" in the Selected Topics Affecting Negotiations section of The Negotiations Advisor.)
- F. All extensions or renewals and requests of leave shall be applied for and granted in writing.
 - ▶ As written, this clause could be read as another reinforcement that the board has no choice but to grant the extension. It would be far clearer if the clause were separated into two sentences which said: "All applications for extensions or renewals of leaves shall be in writing. The Board response to such requests shall also be in writing."
- G. All benefits to which an employee was entitled at the time his/her leave of absence commenced, including unused accumulated sick leave, vacation eligibility, credits toward sabbatical eligibility, and seniority rights shall be restored upon the employee's return and he/she shall be assigned to the same position which he/ she held at the time said leave commenced, if available or, if not, to a substantially equivalent position.
 - ▶ Provisions to restore assignments to "the same" or "equivalent" positions upon return from leave have been found to be outside the scope of negotiations. New Milford Bd. of Educ., PERC No. 81-36.

ARTICLE XVII: Sabbatical Leaves

ARTICLE XVII: SABBATICAL LEAVES

- A. A sabbatical leave shall be granted by the Board to an employee for study in any area of specialization, professional development, for travel, or for other good reasons.
 - ▶ Sabbaticals are negotiable leaves that are typically reserved for teaching staff members. However, as presented in the Sample Agreement, this provision raises significant problems for boards. For example: the word "shall" removes any board discretion in the granting of leaves that meet the listed conditions; the reasons cited for the leave would result in teachers receiving paid sabbaticals (see Section 3 below) for travel or any field of study that may have no value to the district. Boards inclined to agree to a sabbatical provision should insist that the primary purpose of any sabbatical is to improve the teacher's value to the district. Further, conditions listed for approval should always provide discretion for the board to approve, or reject, requests based on the district's fiscal, operational and educational needs. And finally the clause does not limit the number of staff who would be eligible nor does it establish a cap on a district's total costs of funding this benefit. This could result in significant disruptions to a district's operations, both in terms of staffing and allocation of limited economic resources. For a full discussion of sabbatical leave provisions, please see the article on the topic in the Selected Contract Clauses section of The Negotiations Advisor. (Note that a number of boards have been successful in eliminating sabbatical leaves from their negotiated contracts.)
- B. Sabbatical leaves shall be granted, subject to the following conditions:
 - 1. Requests for sabbatical leave must be received by the Superintendent in writing, no later than (...negotiated date...), and action must be taken on all such requests no later than (...negotiated date...) of the school year preceding the school year for which the sabbatical leave is requested.
 - ▶ Dates for application and board action on the requests should always consider all of the following: budgetary timelines; boards' ability to assess the value of the leave to the district; district needs; the ability to find a qualified replacement; and the time the board will need to properly assess the request and its impact on the district.

- 2. An employee has completed (...negotiated number...) years of service in the district.
 - Typically, sabbaticals are based on a minimum of seven consecutive years of experience in the district. Boards that are inclined to agree to this benefit should agree to a minimum that makes sense to the district. Many contracts condition eligibility for another leave upon the conclusion of another seven years (or more) of consecutive employment.
- 3. An employee shall be granted, upon request, a sabbatical leave at either one-half (1/2) pay for a full year or one hundred percent (100%) pay for one half (1/2) year leave.
 - Pay for sabbaticals is also negotiable. Boards can negotiate unpaid sabbaticals or any portion of the teacher's annual salary. Before boards agree to any type of compensation, they should assure that the purpose of the leave will be of value to the district and to the performance of the teachers' responsibilities in the district.
- 4. Upon return from sabbatical leave, an employee shall be placed on the salary schedule at the level which he/she would have achieved had he/she remained actively employed in the system during the period of his/her absence and shall be credited with all other benefits to which he/she would have been entitled during the period of his/her leave and continuing thereafter upon his/her return.
 - Agreement to restoration of benefits is a rather typical aspect of sabbatical leave provisions. Boards, however, cannot promise that the returning teacher will be restored to the same position held before the leave. (New Milford Bd. of Educ., PERC No. 81-36.) Most sabbatical provisions agreed to by boards require that teachers who receive sabbatical leaves return to the district for one, two or more years following the sabbatical or to reimburse the board for the salary received during the leave.

ARTICLE XVIII: Protection Of Employees

ARTICLE XVIII: PROTECTION OF EMPLOYEES

- A. A certified school nurse shall be scheduled to be in each building for the entire day.
 - This clause essentially negotiates the schedules of school nurses. The Board must refuse to compromise its ability and authority to assign staff. Deploying personnel is a basic policy decision and is not an item to be included in a negotiated contract. Ridgefield Park Bd. of Educ., 78 N.J. 144 (1978). Further, N.J.S.A. 18A:40-3.2 et seq. and N.J.A.C. 6A:16-2.1(e) and (f) prescribes the board's responsibilities in scheduling school nurses.
- B. No employees, other than certified school nurses, shall be required to administer medicines and/or medical treatment, except in those cases in which the delegation of such duties to non-nursing personnel has been specifically authorized by law or regulation or as may be required in an emergency.
 - This should not be agreed to as a contract term. It should be a matter of policy and regulation. See N.J.A.C. 6A:16-2.1.
- C. An employee may use reasonable force, as is necessary, to protect himself/herself from attack, to protect another person or property, to quell a disturbance threatening physical injury to others, or to gain possession of weapons or other dangerous objects within control of a pupil.
 - This is a restatement of law and unnecessary in a labor contract.
- D. Employees shall immediately report cases of assault suffered by them in connection with their employment to their principal, immediate supervisor and school nurse
 - These sections appear to be procedural and negotiable. However, Section (1) seems to be an overly broad approach to providing information that boards should not agree to include in a contract. First, access to confidential student record is not a term and condition of employment and therefore should not be negotiated. In addition, access to other confidential information may also be limited. For example, even the union's extensive right to information necessary and relevant to its representational role is not absolute, but depends upon the circumstances of each case. Thus, a board may not be required to furnish the Association with confidential information. State of New Jersey (Office of Employee Relations), PERC No. 88-27. Individual employees' access to information may thus also be limited. Boards that have this type of clause, or are faced with this kind of request, would be well advised to check with their attorneys.
- 1. Such notification shall be immediately forwarded to the Superintendent who shall comply with any reasonable request from the employee for information relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the employee, the police, and the courts.
- 2. The affected employee shall be provided with a copy of the completed Violence and Vandalism forms required of the school district in accordance with *NJSA*_____
- E. The Board shall fully comply with all aspects of applicable Workers Compensation laws when employees are injured in the course of their employment.
 - A contractual clause committing a board to comply with its statutory obligation is, at best, unnecessary and should be rejected by boards.

F. When absence arises out of or from an assault and injury, an employee shall not forfeit any sick leave or personal leave.

▶ This clause could be acceptable if it specified that the board's support depended on a determination that the teacher was not at fault and had discharged his/her duties appropriately; and contained a cap on the board's total financial obligation. As written, the clause seems to obligate a board to provide the compensation for the life of the employee, far too costly a debt for most boards to incur.

G. Benefits derived under this or subsequent Agreements shall continue beyond the period of any worker's compensation until the complete recovery of any employee.

H. Save Harmless

1. The Board shall give full support including legal and other assistance for any assault upon the employee arising from the discharge of his/her duties.

▶ This clause could be acceptable if it defined the broad term "other assistance;" specified that the board's support depended on a determination that the teacher was not at fault and had discharged his/her duties appropriately; and contained a cap on the board's total financial obligation.

2. If criminal or civil proceedings are brought against an employee alleging that he/she committed an assault in connection with his/her employment, the Board shall pay for legal counsel to defend him/her in such proceeding.

▶ This clause should not be included in a labor contract. It is a restatement, a very employee-friendly restatement, of employees' rights under N.J.S.A. 18A:16-6 and 6.1.

3. In addition to the rights provided in 18A:16:6, whenever any action is brought against an employee before the Board, the Commissioner of Education of the State of New Jersey, or any agency thereof which may affect his/her employment or salary status, the Board shall reimburse said employee for the cost of his/her defense if the action is dismissed or results in a final decision in favor of the employee.

▶ N.J.S.A. 18A:16-6 and 6.1 protects school employees by providing indemnity against civil and certain criminal actions for any act or omission arising out of the performance of their duties. This clause extends the statutory protection and could be interpreted as an additional board obligation to reimburse employees for expenses in such cases as appeals of increment withholdings heard by the Commissioner or tenure charges in which the employee prevails. Boards should not agree to this type of additional protection.

I. Personal Effects — The Board shall reimburse employees for any loss, damage, or destruction to their automobile, clothing, or personal property while said employees is on duty in the school, on the school premises, or on a school-sponsored activity.

▶ This clause could be acceptable if it: specified that the board's support depended on a determination that the teacher was not at fault and had discharged his/her duties appropriately; and contained a cap on the board's total financial obligation.

ARTICLE XIX: Health & Safety/Facilities & Equipment

ARTICLE XIX: HEALTH & SAFETY/FACILITIES & EQUIPMENT

A. The Board of Education has the responsibility to provide a safe and healthy workplace for all employees. Employees shall not be required to work in unsafe or hazardous conditions or be required to perform tasks which could endanger their health or well being.

▶ Health and safety issues are negotiable topics, as long as the agreements do not interfere with an employer's policy determinations. Old Bridge Twp. Bd. of Educ., PERC No. 95-15. Nevertheless, this clause is so broadly undefined that it should raise concerns for all boards. For example, what is meant by "healthy?" Could an outbreak of student flu be seen as an unhealthy environment for employees? Could an arbitrator award monetary damages against the board because employees were exposed to the flu while at work? Note that PERC has held that refusing an assignment cannot be based upon speculation or subjective beliefs, but only on a compelling threat to personal welfare. (Maurice River Twp. Bd. of Educ., PERC No. 87-91) In addition, boards' concerns for student safety and educational needs may require certain employee duties and outweigh employees' interests in avoiding certain tasks. Sussex Co. Educ. Services Commission, PERC No. 90-23.

B. The Board shall be bound by all applicable local, state and federal statutes and regulations and shall make available personal protective equipment as required by such laws. Prevailing occupational health and safety standards shall be used in determining the presence of health hazards or unsafe conditions in the workplace.

▶ Providing employees with clothing and safety equipment is a negotiable topic that implicates employees' health and safety. A board's willingness to agree to one, some or all of these provisions will depend on the board's assessment of employees' job functions, the relevance of the proposal to those duties. Specifically, the first sentence is unnecessary. The second is vague and therefore troubling. What is meant by "prevailing occupational health and safety standards"?

1. The Board shall be responsible to ensure and maintain conditions of employment that are free of hazards that are causing or are likely to cause accident, injury or illness to employees. The Board's occupational health and safety program shall comply with the requirements of (regulatory agency).

▶ Again the first sentence is so broadly defined that it ought to cause concerns. The second sentence is a restatement of law and, at best, is unnecessary.

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|---|---|
| <p>2. Employees will be informed immediately when they have been or may be exposed to contagious diseases, illnesses or environmental hazards. Employees shall be instructed as to proper prevention and protection from diseases, illnesses or environmental hazards.</p> | <p>▶ Health and safety issues are negotiable topics. Again the concern here is the vagueness.</p> |
| <p>3. Every employee shall have access to a “Work Environment Concern” form located in the main office of each worksite. Written responses to each concern submitted must be returned to the originator of the concern in a timely manner.</p> | <p>▶ This may be good policy, but the Board will need to weigh any administrative burden this may create by including this in the collective bargaining agreement.</p> |
| <p>4. No reprisals or discrimination shall be taken against any employee who makes disclosures of unsafe or unhealthy working conditions.</p> | |
| <p>C. A Joint Health and Safety Committee shall be established and will consist of (...negotiated number...) members appointed by the Association President and (...negotiated number...) members appointed by the Superintendent. The President and Superintendent (or their designees) shall serve as Co-Chairs of the committee. The committee shall meet (...negotiated frequency...) and an agenda shall be prepared and distributed at least (...negotiated number of days...) in advance of the meeting. Such meetings shall occur during the normal work day and association members on the committee shall be released from work without loss of pay for the purpose of attending such meetings.</p> | <p>▶ The establishment of advisory committees is negotiable. Matawan Regional Board of Education, PERC No. 80-153. While employees' advisory input into training program is negotiable and may be a good practice, the design of training programs is a nonnegotiable function of management. Franklin Twp., PERC No. 85-97. Monroe Twp. Bd. of Educ., PERC No. 93-9. As written, this clause makes the union an equal partner to the board in the “development” of training.</p> |
| <p>D. A training program for the committee, and subsequent training programs for all employees, shall be developed by the parties and will be provided by outside consultants who are jointly selected by the committee. The district shall bear all costs associated with this training.</p> | <p>▶ The requirement that such training be provided by outside consultants is likely not negotiable. See Kingwood, PERC No. 82-20.</p> |
| <p>E. A notice shall be posted on Association bulletin boards whenever building renovations are scheduled. Whenever possible, such renovations shall take place during hours when the school is not occupied. When not possible, all necessary steps shall be taken to assure that employees are not exposed to any hazardous materials or substances, including relocation of employees to other areas of the building, substituting less toxic materials, sealing off the work area of the building, and other steps as may be required.</p> | <p>▶ The first sentence can cause administrative difficulties when unexpected problems arise. The second sentence may limit the Board's ability to have the work done and increase costs. The third sentence is undefined and vague. (What does “necessary steps mean”?) The Board is bound by OSHA and PEOSHA regulations and to incorporate more that the law requires is not beneficial. Generally, this is beyond the scope of a collective bargaining agreement.</p> |
| <p>F. The district agrees to share with the Association information related to the health and safety of association members including, but not limited to: accident and injury statistics, reports on workplace accidents, environmental test results, reports and citations from PEOSHA or other government agencies, and medical information on individual members who have authorized such release to the association.</p> | <p>▶ Much of this is public information. In terms of the last sentence, you should always consult your attorney about Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other law prior to releasing medical information.</p> |
| <p>G. When environmental testing is to be performed by an outside consultant, the selection of the consultant will be made jointly by the health and safety committee. The board shall be responsible for all costs related to the testing and consultant.</p> | <p>▶ The Board should not agree to this. The Board decides who to hire. Kingwood, PERC No. 82-31; Rutgers, PERC No. 76-13.</p> |
| <p>H. The Board shall provide all fire safety and evacuation plans to the Association. A school safety plan shall be developed in consultation with the Association and provided to the staff at the start of the school year.</p> | <p>▶ This first sentence makes sense as the union may play a role in disseminating this vital information, as long as there are not administrative problems. In the second sentence, it should be clear that the development of any safety plan is an educational policy determination to be made by the Board. Consultation may be necessary and helpful, but any final decisions rest with the Board.</p> |

ARTICLE XX: Extracurricular Activities

A. Extracurricular activities include those activities not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year as defined in this Agreement or as established by past practice. Said extracurricular activities, and the compensation for same, are set forth in Schedule ___ attached hereto and made a part hereof.

B. The salary and other terms and conditions of employment for any extracurricular activities not currently set forth in Schedule ___ shall be subject to negotiations between the Board and the Association.

ARTICLE XXI: Insurance Protection

A. The Board shall provide insurance protection for all employees and their eligible dependents for all insurance listed in this section. The Board shall pay the cost of all premiums.

B. Health Insurance – Employees may enroll in one of the following medical plans according to the procedures provided throughout this Article. A summary of the benefits is outlined in Appendix ____.

1. Traditional Indemnity Plan
2. Health Maintenance Organization (HMO)
3. Preferred Provider Organization (PPO)
4. Point of Service Plan (POS)

ARTICLE XX: EXTRACURRICULAR ACTIVITIES

This definition of “extra curricular activities” parallels the definition found in N.J.S.A. 34:13A-22. Except the Sample agreement references “past practice.” Generally, boards should avoid any reference to past practice in the contract.

This is standard.

ARTICLE XXI: INSURANCE PROTECTION

This introductory paragraph expresses the union’s desire to continue to have boards pay the full cost of insurance coverage for all employees and their families. It completely ignores today’s realities, including the 2010 and 2011 public sector health reforms (P.L. 2011 c.78) and the cost containment achieved by many Boards of Education. There has been a substantial shift away from the benefits approach that dated back to the 1960s, when the relatively low salaries of school employees were set-off by a generous health insurance benefit package, which at that time was relatively inexpensive. For information on the legally required employee contributions please see the article entitled Benefits Sharing and Premium Sharing found at <http://www.njsba.org/resources/labor-relations/pdfs/njsba-guidance-health-contributions-201208.pdf>. For information on the continued trend of limiting boards’ insurance costs (including employee contributions , limitations on coverage, and/or caps on the board’s financial obligation and coverage, etc.), please go to www.njsba.org then click on Services then Labor Relations Assistance, then Current Negotiations Data, then Standard Settlement Reports and Health Insurance Cost Containments.

In addition, a full discussion of boards’ options in containing their insurance costs can be found in the article on the topic in the Selected Topics Affecting Negotiations Section of The Negotiations Advisor.

As proposed, this clause would obligate the board to pay the full premium for full-time and part-time employees (regardless of the number of hours worked in the district), permanent and probationary employees. In some instances (such as certain cafeteria workers and bus drivers), a board’s cost of paying for insurance coverage may exceed the employees’ actual salaries. In addition, this clause would also commit a board to paying the full increase in all premium rates.

Boards should always strive to cap their financial obligations, including those associated with insurance costs. Boards should never agree to a new component of their health insurance package without obtaining a significant and meaningful cap.

This clause is correct in not attempting to define the identity of the carrier. (The identity of the insurance carrier is not negotiable. What is negotiated is the level of benefits. A board, then, has the discretion to choose and to change carriers, without negotiations, as long as the level of benefits remains substantially equal.) Accordingly, a board must carefully examine the levels of benefits that it currently provides or that it is negotiating (and that are intended by the Sample Agreement as attachments to the contract.) Unusually high or generous benefits may not only cost a great deal, but may also become unavailable in the market place. Limitations of the options offered by insurance companies can create expensive dilemmas for boards: they are contractually obligated to offer all the options designated in 1. through 4., but finding an insurance plan that offers all the options (and the levels of benefits) can carry extremely high price tags. For example, the traditional plans designated in Section 1 are hard to find now.

Rather than contractually delineating all the various plans that the Board is committed to provide, it would be far better for boards to state that “employees may enroll in the plans available in the insurance carrier’s program.” This language may offer better protection to boards as it is linking the availability of plans to the rules of insurance contract, rather than those of the negotiated agreement. While boards cannot realistically expect that their unions will immediately embrace the board’s proposals, they may, after a number of rounds of negotiations, become willing to consider these modifications, particularly if few or none of their members are selecting coverage under a traditional plan. And, this is essentially the approach taken by many Boards who are participants in the School Employees Health Benefits Plan, which as of 2013 had thirteen options in the plan.

<p>C. Dental Insurance – Employees may enroll in one of the following dental plans according to the procedures provided throughout this Article. A summary of the benefits is outlined in Appendix ____.</p>	<p>▶ See comments above. Under Chapter 78 (P.L. 2011 c.78), employee contributions are required for employees whose districts have private insurance carriers. Regardless, many districts have caps on dental premiums or require employees to pay for any dependent coverage.</p>
<p>1. Dental Reimbursement Plans</p>	
<p>2. Dental Maintenance Organization (DMO)</p>	
<p>D. Prescription Insurance — Employees may enroll in the prescription plan according to the procedures provided throughout this Article. A summary of the benefits is outlined in Appendix ____.</p>	<p>▶ Under Chapter 78 (P.L. 2011 c.78), employee contributions are required for employees regardless of the identity of the insurance carrier.</p>
<p>E. Vision Insurance Plan — Employees may enroll in the optical plan according to the procedures provided throughout this Article. A summary of the benefits is outlined in Appendix ____.</p>	<p>▶ Vision Insurance plans are not a common benefit.</p>
<p>F. Workers Compensation — The Board shall purchase worker’s compensation insurance. Employees shall be reimbursed for medical, surgical, or hospital services eligible under the policy and incurred as the result of an injury sustained in the course of the employee’s employment.</p>	<p>▶ Boards should not agree to this provision. Current law requires boards of education to “make sufficient provision for the complete payment of obligation” which may be incurred by employees’ job related injury. N.J.S.A. 34:15-72. Most boards have arrangements which involve a requirement that the injured employee receive treatment from an approved panel of health care providers. This approach provides uniform standards for determining whether the injury was job related, the nature, level and extent of medical services, as well as the costs affiliated with job related injuries. However, this approach also means that to be eligible for these benefits, employees cannot be treated by physicians of their own choice.</p> <p>Acceptance of this would create a whole new approach which would permit an employee who is injured on the job to be treated by any provider selected by the employee. Without oversight of the standards used by the providers, or the costs of such services, the board would then be obligated to reimburse the employee for an unregulated level and costs of any services that resulted from the injury. This is an excellent example of “blank checks” agreements that should be avoided by boards of education.</p>
<p>G. The provisions of all insurance programs provided for in this Agreement shall be detailed in the master policies and contracts agreed upon and signed by representatives of the Board and the Association.</p>	<p>▶ There is absolutely no need for the union to sign contracts between the board and insurance carriers. This appears to be a not-so-subtle approach to involve the union in the selection of the district’s insurance carriers. While it may be good practice for the union to understand the details of a new carrier’s plans, boards should not agree to include this clause in their negotiated contracts.</p>
<p>H. All disputes arising out of an employee’s use of an insurance plan will be resolved through the grievance procedure.</p>	<p>▶ Boards should not agree to this. See above comment.</p>
<p>I. Any inconsistency between the collective bargaining agreement and the insurance contracts will be resolved in favor of the collective bargaining agreement.</p>	<p>▶ PERC has generally held that disputes over the level of insurance benefits are not violations of the Act and that the parties should use their grievance procedures to resolve the dispute, rather than unfair practice proceedings. However, not all disputes need to become grievances. Many employee and board concerns are handled quickly and nonadversarially as a result of discussions between the board and the carrier. Boards, therefore, should not agree to this provision either.</p>
<p>J. The Board will provide each employee with a description of the insurance plans in this article not later than October 1 of each year.</p>	<p>▶ This is common. Make sure the date is administratively feasible.</p>
<p>K. All new employees and employees returning from unpaid leave of absence will be deemed covered under the insurance plans effective their first compensable day of employment.</p>	<p>▶ K Through O: All of these sections address the negotiable issue of conditions of coverage. However, these provisions also implicate “levels of benefits” and the rules of any insurance carrier considered by the board would need to permit the continuation of these agreements. Boards that are inclined to agree to these seemingly “procedural” issues would be well served to add language to each section, such as “if permitted by the rules of the insurance carrier,” or any other clause, that would condition the administration of these clauses on the rules of the carrier.</p>

L. All employees going on unpaid leave of absence will maintain full insurance protection at Board expense until the first day of the second full month off the payroll. Notwithstanding this, all employees on disability leave will maintain full benefits at Board expense for the entire period of disability.

M. All employees who terminate their employment will continue to maintain full insurance protection at Board expense until the first day of the second full month off the payroll. Notwithstanding this, employees who are laid off will be provided full benefits at Board expense for up to one year.

N. For the purpose of this Article and any other references to insurance, the term “dependent child” shall apply to unmarried children until the end of the calendar year in which the child reaches age 23. In the case of a dependent child who is totally disabled prior to age 23 and dependent on the employee, the age limit will not apply.

O. There will be an open enrollment period each year. Employees will be able to make any changes in coverage at this time. All changes will be effective July 1. If the employee has a change in coverage status (i.e., marriage, birth, divorce, death, etc.) the employee may obtain a change in coverage immediately, provided the request for change is made within (...negotiated time period...) before or after the event giving rise to the changed coverage status.

P. Medicaid Reimbursement — Employees who are requested or required to participate in an eligibility or IEP meeting and/or the Special Education Medicaid Initiative (SEMI) program will receive training at district expense in a sufficient amount to assure the employee will be successful given this responsibility.

[Please note the legal framework, in particular issues related to taxation and employee benefits, is subject to change. Please contact your UniServ office for assistance if either the association or the board seeks to modify the negotiated benefit program.]

ARTICLE XXII: Deductions From Salary

All School Employees

▶ The federal Patient Protection and Affordable Care Act, requires that dependent children be covered under group and individual plans at least until age 26, If dependent children are covered at all. DU31 is a New Jersey law that allows children older than the child-dependent age in a parent’s coverage to elect to remain covered until age 31, if certain other eligibility standards are met. This is a complicated area with evolving interpretations, you should consult with your Board Attorney.

▶ This may be good policy, but the Board will need to weigh any administrative burden including this in the collective bargaining agreement this may create.

▶ Good advice, seek the advice of insurance consultants and the Board attorney in this area.

ARTICLE XXII: DEDUCTIONS FROM SALARY

▶ Contrary to the implication here, the terms of this Article, in fact the entire agreement, can only apply to members of the bargaining unit (as determined by law and the recognition clause).

A. The Board agrees to deduct from the salaries of its employees' dues for (...local Association name...) Association, the _____ County Education Association, the New Jersey Education Association, and the National Education Association as said employees individually and voluntarily authorize the Board to deduct. Such deductions shall be made in compliance with Chapter 233, NJ. Public Laws of 1969 (*NJSA* 52:14-15.9e) and under rules established by the State Department of Education. Said moneys, together with current records of any corrections, shall be transmitted to such person as may from time to time be designated by the Association by the 15th of each month following the monthly pay period in which deductions were made. The person designated shall disburse such moneys to the appropriate Association or Associations.

▶ This is basically a restatement of law.

B. Each of the Associations named above shall certify to the Board, in writing, the current rate of its membership dues. Any Association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.

▶ This is a common procedural clause.

C. The Board agrees to deduct from employees' salaries money for services and other programs as said employees individually and voluntarily authorize the Board to deduct and to transmit the moneys within (...negotiated amount of time...) days of deduction, to such agencies. Any employee may have such deductions discontinued at any time upon (...negotiated amount of time...) written notice to the Board and the appropriate agency.

▶ C through F. These sections are mandatorily negotiable. Agreement to one, some or all of these provisions, however, could create burdensome payroll procedures and difficulties for boards.

D. All employees shall be permitted to utilize Automatic Payroll Deductions for participation in (...negotiated credit union...). This participation shall be for either savings or loan repayment. Deductions shall be made (...negotiated frequency...). Monies deducted, together with records of any corrections shall be transmitted to the Treasurer of the Credit Union by the (...negotiated date...) of each month in which deductions are made. Any employee may have deductions started or discontinued at any time upon (...negotiated number...) days written notice to the Board Secretary/Business Administrator.

E. All employees shall be permitted to utilize the Automatic Payroll Deduction program for electronic transfer of funds. Monies shall be transferred to the employee's banking institution no later than the close of business the same day. If the bank selected by the employee cannot or will not accept the distributions, the Board will not be in violation of this provision.

F. All employees may individually elect to have any percent of their monthly salary deducted from their pay. These funds shall be paid to the staff member on the final workday in June or deposited monthly into an account of their bank or credit union. The Board shall provide an authorization form to be completed by each participating employee. Once the percentage or dollar amount has been elected, and the repository for these funds has been chosen, there can be no changes made for the duration of the current school year.

G. Deferred Compensation Plans

- 1. The Board and the Association agree that employees shall have the right to utilize automatic payroll deduction for participation in tax-advantaged products under a 403(b) and/or a 457 plan.
- 2. The Board shall adopt and make available to its employees a written Plan consistent with IRS regulations. The Plan shall include a listing of companies approved by the Board and shall provide a broad array of investment choices [including 403(b)(7) no-load mutual funds]. The Plan shall include a Roth account for receipt of after-tax deposits that grow tax-free into retirement.
- 3. The Plan shall include all of the material provisions regarding eligibility, benefits, applicable limitations, and contracts available under the Plan, and the time and form under which benefits and distributions would be made.
- 4. The Board agrees that no administrative costs will be passed on to the employees.
- 5. Employees shall be provided with information regarding the various approved vendors, including contact information and investment vehicles. The vendors selected by the Board shall make available to employees in written form the investment vehicles they market with a clear breakdown of all fees, surrender penalties, and performance data.
- 6. Employees shall be responsible for their own investment choices, and the Board and the Association shall be held harmless from any risks associated with such employee selections.

[As of January 1, 2010, most school districts with 403(b) plans will have to be in compliance with IRS regulations which place new responsibilities on Boards. Compliance with these regulations is essential to safeguard the tax-favored status of all funds that are held within these 403(b) products. While local associations may want to memorialize this benefit, caution must be taken to avoid reducing the options for members or being perceived as guiding members to a specific investment vehicle. Please contact your UniServ Office for assistance when negotiating deferred compensation issues.]

ARTICLE XXIII: Representation Fee

- A. Purpose of Fee – If an employee does not become a member of the Association during any membership year (i.e., September 1 to August 31) which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the Association for that membership year. The purpose of this fee will be to offset the employee’s per capita cost of services rendered by the Association as majority representative.

G. Deferred Compensation Plans

These sections are mandatorily negotiable. Agreement to one, some or all of these provisions, however, could create burdensome payroll procedures and difficulties for boards. The specific requirements like, ROTH options and on administrative pass through may make administration of the plan more expensive. Again, it is important to consult an attorney prior to entering into any specific contractual language in this area.

There are extensive record keeping and plan option IRS requirements for 403(b) plans.

ARTICLE XXIII: REPRESENTATION FEE

The difference between a "membership" year, a "work" year and a year that the contract is in effect could lead to confusion. It may be far clearer to specify that representation fees deductions will begin either on July 1 or September 1.

Note: Boards should not agree to a negotiated representation fee arrangement that does not include a clause indemnifying the board for any financial liability that may arise from the administration of this clause. An example of this type of clause can be found in The Negotiations Advisor article on agency shop.

- B. Amount of Fee/Notification – At the onset of each membership year, the Association will notify the Board in writing of the amount of the regular membership dues, initiation fees, and assessments charged by the Association to its own members for that membership year. The representation fee to be paid by nonmembers/fee-payers will be determined by an impartial arbitrator in accordance with the law. ▶ The last sentence is unclear, confusing and seems to conflict with legal requirements. Case law requires that the representation fee must be based on the union’s actual expenditures for legitimate bargaining expenditures in the prior year. For a fuller discussion see the article referenced above.
- C. Notification – Deduction and Transmission of Fee On or about (...negotiated date...) of each year, the Board will submit to the Association a list of all employees in the bargaining unit. On or about January 1st of each year, the Association shall provide the Board with the names of those employees who are required to pay the representation fee. ▶ Standard, but make sure the date is feasible.
- D. Payroll Deduction Schedule — The Board will deduct from the salaries of the employees referred to in Section ____ the full amount of the yearly representation fee in equal installments beginning with the first paycheck in February. ▶ N.J.S.A. 34:13A-5.5 et seq. states that no representation fee deduction can be made unless the union first establishes a “demand-and-return” system. This system provides non-union members with a process by which to appeal the amount of the representation fee. Boards of education cannot legally deduct representation fees without first obtaining evidence that the union has such a system in place.
- E. Mechanics — Except as otherwise provided in this Article, the mechanics for the transmission of such fees to the Association will, as nearly as possible, be the same as those used for the transmission of regular membership dues to the Association. ▶ Standard, but make sure that the procedures are not administratively burdensome.
- F. Changes — The Association will notify the Board in writing of any changes in the list provided for in Paragraph ____ above, and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than (...negotiated amount of time...) after the Board received said notice. ▶ Standard, but make sure that the procedures are not administratively burdensome.
- G. New Employees — On or about the last day of each month, the Board will submit to the Association a list of all employees who began their employment in a bargaining unit position during the preceding (...negotiated amount of time...) period. The list will include names, Social Security numbers, job titles, dates of employment, and places of assignment for all such employees. The Board will also notify the Association of any change in the status of an employee regarding transfer, leave of absence, return from leave, retirement, resignation, separation from employment, or death. ▶ PERC has held that a union’s right to information necessary to carry out its representative obligations outweighs fee payers’ rights of privacy. Burlington County Bd. of Chosen Freeholders, PERC No. 88-101. That case, however, only addressed the union’s right of access to non-members’ names and addresses. Whether this ruling would be applicable to all the other information included in this clause remains an unresolved question. That resolution is also likely to hinge on a determination of whether the union’s need for information to carry out its statutory responsibility overly intrudes into individuals’ privacy right. Before accepting all the information required by this provision, please check with your legal resources.

ARTICLE XXIV: Miscellaneous Provisions

ARTICLE XXIV: MISCELLANEOUS PROVISIONS

- A. The Board and the Association agree that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer or discipline of employees or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, marital status, age, or sexual orientation. ▶ Very common, but unnecessary, restatement of the law. Note: The courts have held that claims alleging racial discrimination are not legally arbitrable. Teaneck Bd. of Educ., (94 N.J. 9, 1983). However, PERC has held that these decisions apply to the arbitrability of discrimination claims involving the exercise of managerial rights only and that claims arising from alleged discrimination in the application of terms and conditions of employment are legally arbitrable. Hopewell Valley Reg. Bd. of Educ., PERC No. 99-87.
- B. This Agreement constitutes Board policy for the term of said Agreement, and the Board shall carry out the commitments contained herein and give them full force and effect as Board policy. ▶ This is a superfluous clause that simply restates the obvious: boards must carry out the commitments contained in the contract and give them the effect of board policy.

C. If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

▶ This is a standard "severability" clause that appears in virtually all school employee contracts.

D. Any individual contract or annual salary between the Board and an individual, theretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract notification contains any language inconsistent with this Agreement, this Agreement shall be controlling.

▶ The concept that provisions of an agreement negotiated with the union takes precedence over any conflicting provisions of an individual employment contract is a common labor relations principle.

E. Copies of this Agreement shall be printed at the expense of the Board after agreement with the Association on format within (...negotiated amount of time...) after the Agreement is signed. The Agreement shall be presented to all employees now employed, hereafter employed, or considered for employment by the Board.

▶ The cost of printing the agreement is a negotiable issue. Many contracts provide that the costs will be split equally between the board and the union. In addition, this proposal raises other concerns. Some contracts now provide that the contract will be made available on-line rather than printed. And, finally, the board's responsibility to provide a copy of the contract to individuals "considered for employment" reinforces the concept that candidates or applicants are members of the bargaining unit and are covered by the terms of the contract.

F. Whenever any notice is required to be given by either of the parties of this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so in writing to the following addresses:

▶ Standard.

If by Association, to Board at: _____

If by Board, to Association at: _____

ARTICLE XXV: Duration Of Agreement

ARTICLE XXV: DURATION OF AGREEMENT

This Agreement shall be implemented between the period _____ to _____ as of ...date of implementation... and shall continue in effect until ...date of

▶ The length of a negotiated agreement is negotiable. However, school law prohibits boards from entering into salary policies affecting teaching staff members that extend beyond three years. Thus, boards are prohibited from paying automatic increments to teaching staff members at the expiration of a three year contract. Neptune Twp. Bd. of Educ., 144 N.J. 16 (1996). PERC has held that this prohibition also applies to the payment of new longevity increments based on additional years of experience, and to increases based on horizontal movement on columns of the guide due to the attainment of additional educational experience after the expiration of a three-year contract. Middletown Bd. of Educ., PERC No. 99-72, 25. Furthermore, the Appellate Division recently upheld a Commissioner of Education decision invalidating the final year of a memorandum of agreement between the Ramsey Board of Education and the Ramsey Teachers Association. This calls into question any teacher collective negotiations agreement that is longer than three years in duration. The agreement in question, contained lump-sum retroactive adjustments for two years and a prospective salary schedule for two years. The Court found that the agreement violated the three-year limitation on the duration of salary schedules found in N.J.S.A. 18A:29-4.1. Check njsba.org for updates on this case as it may be appealed to the Supreme Court of New Jersey.

Lastly, PERC has also extended Neptune's prohibition to noncertificated employees included in a teachers' bargaining unit and covered by the same three-year contract. (East Hanover Bd. of Educ., PERC No. 99-71,25, aff'd App. Div., April 10, 2000.)

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon.

Board of Education

By _____

President

By _____

Secretary

SECTION II: Certified Staff Only

ARTICLE XXVI: Teaching Hours And Load

Association

By _____

President

By _____

Secretary

SECTION II: CERTIFIED STAFF ONLY

ARTICLE XXVI: TEACHING HOURS AND LOAD

All of the provisions of this article address generally negotiable issues of work load. Keep in mind that the obligation to bargain in good faith over negotiable issues does not include the obligation to agree to provisions that are unwise or otherwise unacceptable to a board of education. In negotiating these issues, each board must consult with its district's administrative staff and carefully identify and assess the needs of the district and of each school building. When boards negotiate over the number of hours (and minutes) of work and time for notice provisions, they should be particularly careful that the contractual time is adequate and administratively feasible.

Further, although these issues are negotiable, they may not be enforceable (legally arbitrable) under specific circumstances that arise during the duration of the contract. For example, none of these terms and conditions of employment can present significant interference with a board's ability to implement educational policies. Therefore, PERC may restrain arbitration of a grievance challenging a board's decision. However, compensation for alleged increases in workload would be severable from the implementation decision and would be mandatorily negotiable. (See, for example, South Brunswick Bd. of Educ., PERC No. 97-117 and Atlantic City Bd. of Educ. v. Atlantic City Educ. Assoc. Dkt. No. A-2549-11T1, Decided April 9, 2013) Specific comments and cites will be given as they apply to the particular clauses of the Sample Agreement.

Note, that economic considerations are not generally considered educational policy decisions and are not sufficient to warrant deviations from negotiated agreements. (See, for example, Bloomfield Bd. of Educ., PERC No. 98-84)

Also note that this article contains proposals for numerous circumstances that would require additional compensation. The price tag of agreements to these issues may, individually, appear to be minimal. However, these forms of additional compensation can add up to a significant but hidden increases in the costs of employment. Boards must keep track of their economic commitments and recognize that dollars spent in these areas reduce the amount available for salaries and health benefits.

A. Length of Day — The regular work day for certificated employees shall not exceed (...negotiated number...) hours and (...negotiated number...) minutes, except on Friday or the last working day before a holiday or vacation period in which case the work day shall be (...negotiated number...) hours and (...negotiated number...) minutes.

Defining the work day in terms of total time provides the administration with greater flexibility than provisions that specify starting and ending time of the teachers' day. Simply defining teachers' total daily work time can authorize the administration to initiate "staggered" schedules where certain teachers are scheduled to start and end their work days at different times. Negotiating differing lengths of the work day for different school buildings is also a good approach that recognizes the particular needs of various buildings in the district. The second part of the first sentence could be troubling. It is clearly intended to shorten (and not lengthen) the normal work day on days preceding holidays/vacations. Is it acceptable to the board to shorten teachers' work time on the days listed in this clause? What teaching services would be lost as a result of agreement to this clause? How much of a reduction in daily work hours could be acceptable? And what could the Board obtain in exchange for agreement to this union approach?

B. Duty-Free Lunch Period — Teachers shall have a daily duty-free lunch period of (...negotiated number...) minutes. Teachers may leave the building during this time.

As to the first sentence: The length of duty-free lunch time is generally negotiable. However, this type of provision cannot preclude a board from deviating from this contractual provision to guarantee student safety and supervision. Boards' decisions to assign staff during their duty-free lunch time to assure student safety and supervision is not negotiable; however, compensation for the reduced lunch time and additional student contact time will be a severable negotiable issue. (Byram Twp. Bd. of Educ. 152 N.J. Super. 12 (1977); Salem City Bd. of Educ., PERC No. 82-115, aff'd unpub. App. Div. decision, June 1983.)

Also note that, this lunch time guarantee would apply to all part-time teachers and Para educators. This guarantee would thus increase the hours of employment (and compensation) for these employees. Is this acceptable to the board?

As to the second sentence: Since the definition of "teacher" in this agreement's Recognition Clause includes all certificated staff, this sentence is overly broad to the degree that it applies to school nurses. PERC has held that a Board decision to require school nurses to remain on the school premises during their lunch time is nonnegotiable since it involves students' health and safety. Salem City Board of Education, supra. Further, some boards are likely to want the ability to require notice and/or prior administrative approval before a teacher can leave the building.

C. Teaching Preparations — Teachers shall not be required to teach more than (...negotiated number...) subject area(s), nor more than a total of (...negotiated number...) teaching preparations.

While these provisions are technically negotiable, they should not be agreed to. Acceptance of these provisions robs your administration of scheduling flexibility, potentially greatly increases your instructional expenses and has a strong negative impact on a district's ability to design and deliver its curriculum. This could be especially problematic in the administration of elementary education. It could also be said to have a strong negative impact on a district's ability to design and deliver its curriculum. (Also see comments in all sections above.)

D. Planning Periods

1. Teachers shall have (...negotiated number...) daily duty-free preparation period of (...negotiated number...) minutes. In the event teachers are required to perform any assignment during their preparation period, they shall receive additional compensation of (...negotiated percent...) of their daily rate of pay.

Many boards have moved away from defining their districts' prep time as "duty-free." Rather, they have preferred to define the purpose of prep time and/or to provide their administrators with the negotiated authority to assign certain duties, such as conferences and meetings, during this time. Further, some boards have negotiated provisions that permit a number of administrative assignments during prep time and provide additional compensation only when that number is exceeded.

Also keep in mind that this section guarantees prep time to all full-time certificated staff (including nurses, librarians, and members of the child study team) whether or not their duties require the availability of prep time. The prep time guarantee in this clause would also apply to part-time certificated staff and therefore would increase the number of hours (and compensation) of employment in these positions. Is this acceptable to the Board?

2. Teachers who are requested or required to develop written reports, documentation, or research educational records in preparation for eligibility or IEP meetings and/or the SEMI program shall be given an adequate amount of release time to complete the task. It is understood that this release time will be in addition to the teacher's daily planning time. When a teacher is required to work beyond the regular workday to complete this documentation, said teacher shall be compensated at the (...negotiated amount...) hourly salary for all time worked beyond the regular work day.

This is a negotiable issues of work load. Before agreeing to this provision the board must consult with its district's administrative staff and carefully identify and assess the impact this would have on the delivery of educational services. What is meant by "adequate amount of release time" in the second sentence. As written, the teacher assigned to such duties may be eligible for release time as well as the hourly rate contemplated in the last sentence.

3. Teachers who deliver distance education courses shall receive an additional preparation period per day.

It is unclear why special dispensation would be given for distance learning. This is clearly intended to reduce the working hours of staff and, possibly, to discourage distance learning.

E. Student Contact Periods

1. The daily workload in the middle, junior, and senior high schools shall be (...negotiated number...) teaching periods and (...negotiated number...) student supervision periods per day, but shall not exceed (...negotiated number...) hours per day.

See comments under A.

2. Teachers instructing a distance learning course shall not be assigned a duty period or homeroom.

It is unclear why special dispensation would be given for distance learning. This is clearly intended to reduce the working hours of staff and, possibly, to discourage distance learning.

F. Additional Students - When teachers receive additional students on a temporary basis, they shall be compensated at the rate of (...negotiations amount...) per student, or any part of a day.

G. Teaching Stations

1. Teachers in the middle, junior, and senior high schools shall not be required to change subject area teaching stations more than (...negotiated number...) time(s) during the school day and shall not be required to teach continuously for more than (...negotiated number...) periods.

1. and 2. Although limitations on teachers' instructional load are mandatorily negotiable, certain unique circumstances arising during the life of a contract may authorize a board to deviate from stated contractual provisions. For example, PERC restrained arbitration of a grievance challenging a board's assignments that did not comply with contractual terms as it found that the "extraordinary circumstances where an external State mandate to provide bilingual education coupled with the impossibility of finding qualified teachers necessitated temporarily assigning" certain teachers to additional teaching periods. Perth Amboy Bd. of Educ., PERC No. 94-123.

Boards that have this type of restrictive language in their contract and are faced with "extraordinary circumstances" should consult with their labor relations resources so that they are aware of their rights and appropriate means of processing any grievance that may claim a violation of contractual provisions. However, the wisest approach for boards is to avoid agreements to this type of scheduling restrictions.

2. Teachers in the elementary schools shall not be required to change teaching stations and shall not be required to teach continuously for more than (...negotiated number...) periods.

(Important note: NJEA recognizes that an important segment of its membership does not work in the same way as a classroom teacher. Certain certified employees such as athletic trainers, child Study team members, guidance counselors, media specialists, school nurses and speech language specialists do not have a work day that is defined by periods or student contact time. Negotiators are encouraged to review the working conditions of these members and make proposals that are responsive to the actual working conditions in your school district. Contact your local UniServ representative for assistance in crafting specific proposals for these categories of employees.)

Excellence advice. Boards too must evaluate potential contract language in terms of its impact on non-instructional professional staff.

H. School Leadership Committees

1. Teachers serving on the School Leadership Committee (SLC) or other such school based collaborative councils or coordination activities related to Secondary Education Initiative (SEI) shall have an additional duty free time of (...negotiated number...) periods/minutes each day to fulfill the team's obligations.
2. Teachers serving on the SLC (or other such school based collaborative councils or coordination of activities related to SEI) shall not be required to teach more than (...negotiated number...) periods/ minutes each day.
3. Teachers serving as the chairperson of the school's School Leadership Committee (SLC) (or other such school based collaborative councils) shall not be required to teach more than (...negotiated number...) periods/minutes.
4. Teachers serving in any position created pursuant to state regulations shall be released from all other teaching/work responsibilities and other duties in order to carry out the responsibilities of that position.
5. Teachers serving on School Leadership Committees (SLC) (or other such school based councils) shall not be assigned a homeroom or duty period.
6. Teachers required to attend meetings or workshops required by the School Leadership Committee (SLC), or as part of training for compliance with Secondary Education Initiative (SEI), which extend beyond the workday/work year shall be compensated at the following rates.
7. Teachers required to attend School Leadership Committee (SLC)(or other such school based council) meetings or training for compliance with Secondary Education Initiative (SEI), which extend beyond the workday/work year shall be compensated at (...negotiated number...) the following rates.

Regulatory provisions for Secondary Education Initiatives can be found at N.J.A.C. 6A:13-2.2. There is a requirement for a "school level planning team to to guide the development and implementation of the... reforms..." It is good to have an open line of communication between the Board and the Association. However, in some districts, these types of committees have resulted in attempts to foster unending negotiations or as a forum to attack the Board and/or the administration. The district's experience should continue to be assessed. The provisions for release time, additional compensation or restricted duty time seem excessive. The district must carefully assess whether such provisions for team members is appropriate and/or cost effective.

Half-day or evening events (...negotiated rate of pay...)

Full-day events (...negotiated rate of pay...)

Full-day and evening events (...negotiated rate of pay...)

Weekends or holidays (...negotiated rate of pay...)

8. Hours served as an SLC member (or member of other such school and/or district-wide council or activities) shall be applied to a teacher's required 100 hours of Professional Development.

9. Teachers attending meetings or workshops required by the SLC, or responsibilities related to SEI or other similar duties, shall be reimbursed for all expenses related to said activities.

10. Compensation and/or release time shall be provided for increased student contact time as a result of student advisories duties or work beyond the school day.

11. Teachers in multi-grade academies or small learning communities shall be compensated and/or released from existing duties for increased class/lesson preparation.

I. Teachers and Coaching

1. Coaches shall be provided with:

a. adequate team equipment and supplies;

b. a separate, private locker room for the exclusive use of coaches;

c. a complete copy of the rules and regulations of NJSIAA;

d. (...negotiated rate...) for in-county scouting and (...negotiated rate...) for out-of-county scouting as the need arises, and with the approval of the athletic director and the Superintendent.

2. No coach shall be required to attend a practice, exhibition, or officially scheduled game session if he/she was excused from school that same day because of sick leave or a temporary leave of absence as cited in this Agreement.

3. Coaching Development and Improvement

a. With the approval of the Superintendent and/or the Board, coaches who attend clinics or general coaching sessions of an extended nature outside of their athletic training season, shall be reimbursed for expenses incurred as a result of their attendance. The coach shall be reimbursed for mileage at the current IRS allowable rate.

9 - 11, if adopted, could prove very expensive, especially given that the SLC, not district administration, may be in a position to "give work" to teachers that the district would be on the hook to pay. It is never a good idea to agree to pay for services when the extent of the expense entered into is not within the control of the district.

This is fine, as long as the decision as to what constitutes adequate equipment and supplies belongs to school management.

This clause raises the question of space allocation and existing facilities in specific schools. It must be examined by the board in light of flexibility in the use of space, now and in the future. As presented, the clause could require a board to provide these locker rooms regardless of the district's existing facilities and changing district needs.

This is fine.

Does this reflect the district's goals? If so, it becomes strictly an economic issue and a board needs to consider if this activity is already reflected in the coaching stipend or/and if additional compensation is warranted.

This provision is reasonable as it relates to sick days. However, some of the temporary leaves of absence listed in the Agreement (such as jury duty) may not automatically result in the coach's unavailability after school hours.

This section addresses negotiable topics, but nevertheless create sufficient problems as presented to warrant a board's refusal to agree to this proposal.

Prior approval in this section is limited to reimbursement of costs attached to extended clinics or general coaching sessions. Approval for attendance at these activities is not required. There are also no limitation on the number of such activities, the type of costs that will be eligible for reimbursement, nor on the total amount that the board will be obligated to pay. (Also note that these "extended" sessions could last a number of days and also interfere with coaches' availability to perform their normal duties as school employees during the school day. Thus, this provision may also result in the cost of substitutes.) Lastly, note that under current law, the district is prohibited from paying mileage at the IRS rate. The maximum payout is the lower New Jersey OMB rate.

b. Each coach may attend (...negotiated number...) clinics, meets, or conferences of his/her choice. Expenses incurred as a result of attendance shall be reimbursed by the Board. Mileage shall be reimbursed at the current IRS allowable rate.

While this section establishes a number of other types of activities (meets, conferences), these activities are chosen by the coach, without the required approval of the Athletic Director, other administrators, or the board. Reimbursement of expenses do not appear to require the prior approval. In addition, this clause also does not establish limitations on the extent of a board's reimbursement obligation. See note above regarding IRS mileage rate.

4. Coaches' Protection

a. The Board agrees to protect and save harmless every coach from any financial loss resulting from errors and omissions arising out of and in the course of the performance of his coaching duties.

This clause is far too broad to be acceptable to any board. First, the question of whether or not this situation falls under the board's insurance coverage must be answered. Even if an insurance policy covers some of the situations that can arise under this clause, a board must be aware that a coach's "act of omission" can involve a failure to properly supervise students or to otherwise perform his/her responsibilities in an acceptable manner. Under these circumstances, this clause would present such significant interference with a board's ability to monitor coaching performance and to initiate appropriate disciplinary action as to probably be found to not be negotiable. Regardless of its negotiability, agreement to this clause, as written, is incredibly unwise and should be avoided by all boards.

b. No coach shall be required to drive students to activities which take place away from the school building.

If driving students is related to coaches' primary responsibilities, then a prohibition on assignments is not negotiable. Garfield Bd. of Educ., PERC No. 90-48. If the responsibility is not related, then the clause is negotiable, but raises the following additional questions. Does this clause comport with district policies? Note that this clause does not prevent a coach from volunteering to drive students. Is that permitted by district policies? Does the board's insurance policy cover situations where school employees (other than bus drivers) volunteer or are assigned to drive students?

ARTICLE XXVII: Mentor And Provisional Teachers

ARTICLE XXVII: MENTOR AND PROVISIONAL TEACHERS

As written these mentoring provisions do not distinguish between the mentorships required under TEACHNJ and those designed to address the mentoring program, as defined by N.J.A.C. 6: 11-14.1 et seq. The following comments presuppose that these provisions address the mentoring program, as defined by N.J.A.C. 6: 11-14.1 et seq.

A. All teaching staff members shall have the opportunity to apply for the position of a mentor. The district shall not request or require any employee to apply for a mentor position.

The first sentence is fine. The second should not be agreed to by the Board. The prohibition on the district requesting teachers to apply for mentoring positions is counter productive.

1. All vacancies for mentoring positions shall be posted as early as the district is aware of its needs. The postings shall be conducted as set forth in Article _____ of this agreement. The postings shall include the qualifications and salary for the position.

Posting procedures are negotiable. Requiring that the posting includes qualifications for a position is typical contract language and a good personnel practice. However, normally negotiable procedural issues may not be applicable to mentoring under the provisions of N.J.A.C. 6:11-14.1 et seq. The Code requires that the local mentoring plan developed by districts' Professional Development Committees for the approval of local boards include an "application process for selecting mentor teachers." It would therefore seem that the procedures recommended by these committees could preclude a negotiations over this issue.

In addition, this Sample clause could be interpreted to obligate the administration to post mentoring positions, whenever the administration becomes aware that a novice teacher will be expected to begin employment with the district. This could result in a piece-meal approach which could place an unnecessary burden on your administrators at times which typically involve the hiring of new staff. Boards should consult with their administrative staff to assure that posting procedures are practical and realistic.

2. No employee shall be assigned to serve as a mentor if there are qualified volunteers available. If an employee is involuntarily assigned to a mentoring position, said employee shall not be involuntarily assigned again until other qualified employees have been assigned.

Procedures for the assignment of equally qualified employees are normally negotiable. However, as noted above, these procedures may be preempted by the application process developed by local Professional Development Committees.

Further, even if this procedure is not preempted, it would be most inadvisable for boards to agree to it. It does not preserve the board's right to select the most qualified teacher to serve as mentors and could reduce the number of available mentors. As such the clause would interfere with implementation of educational policy and staffing decisions, and could lead to litigation before PERC over the issue of negotiability and arbitrability.

B. Mentor teachers shall receive an annual stipend of (... negotiated \$ amount...), in addition to compensation provided through state Mentor Regulations.	<p>Stipends for mentor teachers is mandatorily negotiable. According to the provisions of the Code, state funds provided for the mentoring program must be used by boards for the costs affiliated with the mentoring program. Further, the Commissioner of Education has clarified that novice teachers cannot be assessed mentoring fees and that boards must use state funds to pay stipends of mentor teachers. State funds that remain can then be used for other mentoring activities such as training, release time, and substitutes for both novice and mentor teachers. The code further requires negotiations over the terms and conditions of the employment of novice and mentor teachers.</p> <p>Therefore, the first sentence is negotiable. However, before a board agrees to a specifically defined stipend, it must consider that state funds will vary from year to year, based on the state's budget and the number of new teachers anticipated in any one year. It would therefore be wise for boards to link their stipends to the amount that the state funds per teacher in a specific year. Otherwise, the district will find that it is obligated to use local funds to meet its contractual obligation. (For a full discussion of this topic, please see the article on mentoring in the Selected Topics Affecting Negotiations in The Negotiations Advisor.)</p>
C. Additional days required for mentor training beyond the contracted year shall be compensated as work completed outside the normal school day/school year and compensated at the rate of (...negotiated amount...) by the district. The district shall pay for all costs connected with said training, including travel to any out-of- district training site.	<p>Training for mentors is required by N.J.A.C. 11-14.5 (a) 2. Further, the Code's list of minimum required criteria for the selection of mentor teachers, includes the teacher's agreement to complete a comprehensive training program. (N.J.A.C. 11-14.5 (a) 1.viii.) The Code does not specify when the training will occur, but according to City of Newark, PERC No. 86-52, 11 NJPER 16242, the decision of when training will occur is a nonnegotiable responsibility of the employer. Additional compensation for the training is, however, negotiable. Boards should keep in mind that mentors receive additional compensation for their role and that training is a required aspect of their function and responsibilities.</p> <p>In addition, note that the last sentence commits the board to pay for all sorts of uncontrolled expenses. Boards who are inclined to reimburse mentors for expenses incurred as a result of the required training should consider limitations, including "caps" on their financial obligations.</p>
D. Mentor teachers and participating novice teacher shall be provided (...negotiated number...) days of release time to be used at their discretion to facilitate the mentor program. Release time for the mentor and mentee shall be covered by substitutes.	<p>See comments above.</p>
E. Mentor/mentee shall not be subject to any additional evaluation procedure. A Mentor teacher shall not in any way participate in, or contribute to, the performance evaluation of a novice teacher.	<p>See comments above.</p>
F. Mentor Work Load	<p>The sample provisions appear to be designed to address the mentoring program, as defined by N.J.A.C. 6: 11-14.1 et seq, not the mentoring program required to implement TEACHNJ. The TEACHNJ tasks the School Improvement Panel with overseeing the mentoring of teachers. Those regulations, to be found at N.J.A.C. 6A:10-3.2(a), have not been finalized as of this writing.</p>
1. All teachers serving as mentors shall not be assigned to duty periods.	<p>Any contractual agreement to a modified daily schedule for mentor teachers must reflect the staffing resources and needs of each building as well as the district's goals. Note that the Sample Agreement appears to propose a daily modification of teachers' general workday schedule. Further, even if at this point in time, your mentors need this amount of time on a daily basis, this agreement would be too inflexible. Mentors' needs may change in future years of the contract, but as long as this daily guarantee is in your contract, you would be committed to providing the time even if it was not needed to meet mentoring responsibility. Mentors' adjusted schedules should reflect the actual responsibilities of a mentor in any year of the contract and provide sufficient flexibility to be modified each year to reflect current needs.</p>
2. All teachers serving as mentors shall not be assigned to a homeroom period.	<p>See above.</p>
3. In addition to preparation time stipulated in this Agreement, staff members who perform mentoring duties shall be provided (...negotiated number...) daily joint planning sessions with their assigned provisional/ alternate route teacher.	<p>See above.</p>
4. In addition to preparation time provided in this Agreement, teachers serving as mentors shall have a daily period of not less than (...negotiated amount of time...) to perform duties associated with mentoring.	<p>See above.</p>

5. Provisional/Alternate Route teachers shall be provided (...negotiated number...) period(s) per day to meet with their mentors.

▶ See above.

6. No teacher shall serve as a mentor to more than (...negotiated number...) Provisional/Alternate Route teachers per year.

▶ See above.

G. Professional Development

1. The Board shall provide training for all teachers who serve as mentors before the start of their assignments, and shall provide ongoing training throughout the Mentoring period. Whenever possible, such training shall be scheduled during the regular workday. If training is scheduled for hours outside the regular workday/work year, the teacher shall be compensated for time worked based upon the teachers hourly rate of pay. The district shall pay all costs connected with said training, including travel to any out-of-district training site, meals, lodging, and miscellaneous fees.

▶ Pay and expenses for professional development is negotiable. Note that this language was developed prior to the implementation of TEACHNJ. Under TEACHNJ, the district mentoring program is developed by the School Improvement Panel. Thus, for additional information on this topic, please see the article "An Analysis of Professional Development Clauses" in The Negotiations Advisor.

2. All mentor training will accrue time toward Professional Development hours as set forth by statute.

▶ These provision are unnecessary and potentially problematic. What if the districts offers professional development that does not qualify, under the statute, for professional development credit.

3. All mentor teachers shall accrue time toward Professional Development for serving as a mentor, as set forth by statute.

ARTICLE XXVIII: Employee Evaluation

ARTICLE XXVIII: EMPLOYEE EVALUATION

A. Teachers shall be evaluated consistent with N.J.A.C. 6A:32-4.4, 4.5, and 4.6.

▶ Note as of July 2013, the current proposed evaluation regulations will be located at N.J.A.C. 6A:10.2.1 et. seq. The proposed effective date is October 2013. In general, best language would simply reference the law - TEACHNJ. However, evaluation procedures that do not address evaluation content or contradict legal requirements are negotiable. The existing language should also be reviewed in terms of any practical difficulties. Boards must be aware of a number of conditions that will affect their negotiations of evaluations of employee performance. First, criteria or standards for evaluating employees are not negotiable. Negotiation is limited to procedural aspects of evaluations as long as those procedures do not significantly affect the substance of the evaluation process. Further, aspects of teacher evaluations are preempted from negotiations by the specific provisions of the Administrative Code.

Evaluations for teachers are required and structured by the provisions of the Administrative Code cited in section A above. While the Code requires the evaluation of teachers, the procedures and requirements for tenured and nontenured teachers vary and are in the process of being redone. In negotiating over the issue of employee evaluations, boards must be aware that certain issues involving teachers are set by the Code and cannot be changed through negotiations. Again, best language would simply reference the law - TEACHNJ.

B. Each employee shall be observed (...negotiated number...) times during each work year. Each observation shall consist of a (...negotiated number...) minute observation of the employee at his/her worksite.

▶ Evaluations of noncertificated employees is not required by the Administrative Code. Thus, all procedural aspects of evaluations for these employees is subject to negotiations.

C. All monitoring or observation of the work performance of an employee shall be conducted openly and with full knowledge of the employee. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices is strictly prohibited.

▶ This is a negotiable procedure for all classifications of employees. Contractual provisions prohibiting surveillance devices are not unusual. These provisions, however, do not preclude a mutually acceptable video taping of the employee for the purposes of assisting the employee to assess his performance.

D. An employee shall be given a copy of any visit, observation, or evaluation report prepared by his evaluator(s) (...negotiated amount of time...) before any conference. No such report shall be submitted to the central office, placed in the employee's file, or otherwise acted upon without prior conference with the employee.

▶ The first sentence seems to be duplicative of the first part of Section C, above, and the same comments would apply. The second sentence is mandated for tenured teachers and negotiable for all other classifications of employees.

1. Evaluation reports shall be presented to each employee in accordance with the following procedures:

2. Such reports shall be addressed to the employee.

3. Such reports shall be written in narrative form and shall include:

4. Strengths of the employee as evidenced during the period since the previous report.

5. Specific suggestions as to measures which the employee might take to improve his/her performance in each of the areas wherein weaknesses have been indicated.

6. No employee shall be required to sign a blank or incomplete evaluation form. An employee's signature indicates only that an employee has reviewed a copy of the evaluation.

7. Each observation cycle shall be completed before another cycle begins.

8. Each employee shall have the right to attach a written statement of rebuttal to all written evaluations.

Note: Specific contract language regarding tenured, non-tenured, certificated, and non-certificated staff may be necessary to include in your collective bargaining agreement. Contact your NJEA UniServ office for assistance.

E. Criticism — Any question or criticism by a supervisor, administrator, or Board member of an employee's performance/instructional methodology shall be made in confidence and not in the presence of students, parents, co-workers, or members of the public.

ARTICLE XXIX: Evaluations Procedures- Extracurricular Positions

A. Employees holding any extracurricular position shall be evaluated consistent with NJAC 6A:32-4.4, 4.5, and 4.6.

B. Each employee shall be observed (...negotiated number...) times during each work year. Each observation shall consist of a (...negotiated number...) minute observation of the employee at his/her worksite.

C. Within (...negotiated number...) days of each observation, the employee shall receive a written report, and within (...negotiated number...) days shall have a conference with the author of the report. Each observation cycle shall be completed before another cycle begins.

D. Annually, each employee shall receive a written evaluation (...negotiated number...) days prior to a meeting with his/her supervisor to review the content of the evaluation.

The format and contents of an evaluation report are generally not negotiable. (see, for example, Union City Bd. of Educ., PERC No. 84-79) However, PERC has held that the specifics listed in 4 and 5 are negotiable. Englewood Bd. of Educ., PERC No 98-75. But again, since much of this may be superseded by what ever the TEACHNJ evaluation model is (i.e. Danielson, Strong, etc.), best language for teacher evaluations is just to cite the law.

This clause, which establishes a blanket prohibition against public criticism, is nonnegotiable, as it has been found to intrude upon management's right to initiate discipline. Flemington-Raritan Bd. of Educ., PERC No. 90-58. However, a clause, which would prohibit public criticism "without justifiable, substantive reasons", has been found to provide sufficient accommodation of both parties' interests to be mandatorily negotiable. Monroe Twp. Bd. of Educ., PERC No. 93-9.

ARTICLE XXIX: EVALUATIONS PROCEDURES- EXTRACURRICULAR POSITIONS

Note as of July 2013, the current proposed evaluation regulations will be located at N.J.A.C. 6A:10.2.1 et. seq. They have a proposed effective date of October 2013. While assignment to, retention in and dismissal from extracurricular activities are negotiable, this is very rarely negotiated language. Most district have these provisions in policy.

For the remainder of this article see comments under previous article.

- E. Each employee shall have the right to attach a written statement of rebuttal to all written evaluations.
- F. All monitoring or observation of the work performance of an employee shall be conducted openly and with full knowledge of the employee. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.
- G. Every employee shall be given a copy of any visit, observation, or evaluation report prepared by his/her evaluator(s) (...negotiated number...) before any conference. No such report shall be submitted to the central office, placed in the employee's file, or otherwise acted upon without prior conference with the employee. No employee shall be required to sign a blank or incomplete evaluation form.
- H. Evaluation reports shall be presented to each employee in accordance with the following procedures:
 - 1. Such reports shall be addressed to the employee.
 - 2. Such reports shall be written in narrative form and shall include:
 - a. Strengths of the employee as evidenced during the period since the previous report.
 - b. Specific suggestions as to measures which the employee might take to improve his/her performance in each of the areas wherein weaknesses have been indicated

ARTICLE XXX: Professional Development And Educational Improvement

- A. The Board of Education shall pay the registration fee, tuition and textbook costs for all courses the Board requires a teacher to take or the parties mutually agree the teacher shall take. When required by the Board to take any coursework, the teacher shall be given either compensatory time, additional pay at their individual per hour rate, or release time during their contractual workday.
- B. Educational improvement eligible for reimbursement and horizontal movement on the salary guide shall include but not be limited to:
 - 1. Under-graduate and graduate courses at an accredited college or university or county college
 - 2. On-line courses provided by an accredited college or university or county college.

ARTICLE XXX: PROFESSIONAL DEVELOPMENT AND EDUCATIONAL IMPROVEMENT

- ▶ Pay and expenses for professional development is negotiable. As proposed, however, this section holds the following problems for the board:
 - ◀ In the first sentence, only paying when the "Board requires" is far better than "or when the parties mutually agree." The inclusion of the second phrase may engender disagreements and could possibly encourage past practice based claims. The last sentence is unacceptable. While most districts have some form of tuition reimbursement, few, if any, have agreed to also pay for the time a teacher spends after school hours in pursuing a higher academic degree desired by the teacher. Further, linking payment to the employee's regular rate of pay means that this rate will automatically increase, without additional negotiations, as salaries increase.
 - ◀ Finally, even though there is a requirement for Board consent, ideally, for budgeting purposes, there would be limits on the board's financial obligation to the unit as a whole or to each individual employee.
- ▶ Note that any payment for horizontal movement on the guide, must be consistent with N.J.S.A. 18A:6-8.5. Under the law, in order for additional education to be eligible for horizontal movement on the guide the coursework must be taken at an institution of higher education that is duly authorized as defined in N.J.S.A. 18A:3-15.3 and must be for a course or degree related to the employee's current or future job responsibilities.
- ▶ Boards should not agree to this as written. There has been great concern recently with teachers taking many on-line courses (of dubious quality) in short period of time to move quickly across the salary guide. Note some accredited institutions allow private third parties to offer quickie courses under the name plate of accredited institution. Whether credit for such courses is given should be based on the SOLE discretion of the administration.

3. In class or on-line training provided by a technical training institution.	▶ Depending on the institution offering the course and its content, it is not clear that allowing guide credit for such training is legal under N.J.S.A. 18A:6-8.5. Again, better language would preserve board discretion to make individualized determinations.
4. Any studies, training or coursework leading to the issuance of a National Board Teacher Certificate.	▶ This provision is not common. Whether or not your district wants to pay for this certification is a philosophical decision for the Board. For more information see www.nbpts.org .
C. Application for professional development and educational improvement shall be made to _____ for approval. Such approval shall not be unreasonably withheld.	▶ The last sentence is unnecessary and could generate grievances. It is wise to have schedules in policy for movement on the guide. Most districts only have one or two application deadlines.
D. The following schedule for submitting application for under-graduate and graduate courses shall be:	▶ Check with administration to ascertain the best schedule for submission. Most districts only allow submission once or twice per year.
1. Fall Semester _____	
2. Winter Semester _____	
3. Spring Semester _____	
4. Summer Semester _____	
E. Professional development provided by an institution other than a college or university shall require application to be submitted to the district within (...negotiated number...) days/weeks) of the commencement of the instruction.	▶ Read in conjunction with A, this language is unclear. This points to why it is preferable not to have the "or the parties mutually agree" language in A.
F. The Board shall make (...negotiated number...) of professional leave days available to every teacher in each year for attendance at workshops, seminars, or visits to other schools for the express purpose of self professional improvement.	▶ Whether a board can support this type of paid leave must depend on an analysis of its impact on administrative and educational efficiency. This is not a typical provision.
G. Board required attendance at a professional workshop, seminar, school visit, online seminar or other related educational improvement experiences shall require the Board to pay all expenses attached to the assignment. Further, this time shall be in addition to the professional development days provided in Section F above.	▶ Pay and expenses for continuing education is negotiable. As proposed, however, this section holds many potential problems for the board. It is, in fact, a blank check which can be predicted to result in significant and totally unacceptable expenditures for a board. First, there obviously is no cap on the board's financial obligation to the unit as a whole or to each individual teacher. Secondly, payment is not limited to continuing education activities, but is applicable to any workshop (does it also apply to formal courses and thus supplement the possible restrictions of your tuition reimbursement article?) that the teacher may attend. Further, the kind of expenses that are included, but not limited by the third sentence is incredibly broad and could apply to all sorts of expenses, no matter how frivolous (such as first-class air travel and hotel accommodations) that are incurred by the teacher. Not only should these expenses be capped, but they should also require prior approval of the administration. Further, it is unwise for a board to agree to any expense that does not comply with the board's goals. Boards may want to check their existing policies for possibly existing reimbursement procedures and exclusions to reimbursable expenses, such as: required receipts; caps on meal reimbursement; no coverage of liquor costs or costs incurred by a companion; etc. Boards that are inclined to agree to reimbursement for expenses may want to assure that their contractual agreement is consistent with their policy limitations.
H. Reimbursement and Salary Adjustments	
1. Reimbursement for the cost of all educational improvement shall be in accordance with normal accounting procedures and paid at such time as said procedures provide but not later than (...negotiated number) calendar days after the teacher submits their documentation.	▶ This is unnecessary. Boards that are inclined to agree to reimbursement for expenses may want to assure that their contractual agreement is consistent with their policy limitations.
2. Salary adjustments shall become effective July 1 and/or January 1 immediately following completion of eligible coursework.	▶ This is typical. Some district have September 1 and February 1 as these dates may be easier administratively.

<p>I. Teachers required to provide turn-key training to their colleagues shall be given release time to prepare for the training. The amount of release time required shall be determined by the teacher presenter. Any materials, supplies, office equipment and/or audio visual needs shall be provided by the Board. The teacher presenter shall receive additional compensation at their individual per hour rate for all actual hours spent in the final presentation.</p>	<p>▶ Another blank check: “amount of release time shall be determined by the teacher” and “any material, supplies office equipment and/or audio visual needs shall be provided by the Board” are wide open and invite abuse. Lastly, linking payment to the employee’s regular rate of pay means that this rate will automatically increase, without additional negotiations, as salaries increase.</p>
<p>J. Teacher Mentors</p>	
<p>1. The position of teacher mentor shall be posted to all teachers both electronically and by hard copy to the Association President. The posting shall include qualifications and application deadlines. No teacher shall be assigned to be a mentor.</p>	<p>▶ This is an older provision in the NJEA Sample Agreement, designed to address the mentoring program, as defined by N.J.A.C. 6: 11-14.1 et seq. This clause can present serious difficulties for administrators’ ability to schedule teachers’ daily assignments. Boards should not begin discussing this proposal with the union until they have consulted with their administrators and have obtained a full understanding of each building’s staffing resources and scheduling needs. Note that in October 2013, the regulations to implement TEACHNJ Act, and its first year mentorship requirements, will be effectuated at N.J.A.C. 6A:10.2.1 et. seq.</p>
<p>2. Mentors shall receive (...negotiated number...) duty free periods per day to meet with and assist their mentees.</p>	<p>▶ This is virtually unheard of.</p>
<p>3. Mentors shall receive professional development hours toward the State required 100 hours as per the state guidelines. Mentors shall be paid a stipend in the amount of (...negotiated dollar amount...) per mentee.</p>	<p>▶ For the pre-TEACHNJ mentorships, most districts do not pay the mentor, rather the mentee pays.</p>
<p>4. Mentors shall be provided with training from the district. All training shall be done during the contractual workday.</p>	<p>▶ This clause implicates teachers’ schedules and boards must consult with their administrators to fully understand the districts’ needs in this area. While some mentor responsibilities must occur during the work day, others can easily be performed after school hours.</p>
<p>5. Mentors shall be held harmless by the district regarding any complaints made by a mentee.</p>	<p>▶ This blanket protection could prove problematic. Better language would limit the indemnification to when the mentor is performing within the scope of employment.</p>
<p>6. No mentor shall have more than one (1) mentee at a time unless the teacher mentor agrees to do so.</p>	<p>▶ This clause implicates teachers scheduling and boards must consult with their administrators to fully understand the districts’ needs in this area.</p>
<p>K. Continuing Education Units (CEU’s)</p>	
<p>1. Continuing Education Units shall be awarded to a teacher for approved professional development activities not college credit eligible. This includes any studies, training or coursework leading to the issuance of a National Board Teacher Certificate. The standard shall be one (1) college credit for each (...negotiated number...) hours of professional development. Accumulation of CEU’s shall be eligible for horizontal guide movement.</p>	<p>▶ Depending on the institution offering the course and its content, it is not clear that allowing guide credit for such training is legal under N.J.S.A. 18A:6-8.5. Again, better language would preserve board discretion to make individualized determinations.</p>
<p>2. Eligible reimbursements shall be done as per Section H above.</p>	<p>▶ See comments in H above.</p>
<p>3. Salary adjustments shall become effective July 1 and/ or January 1 immediately following completion of the eligible coursework.</p>	<p>▶ See comments in H above.</p>
<p>L. Licensure Positions</p>	

<p>1. The Board shall pay all fees and costs associated with state required professional licenses. These would include, but are not limited to, physical and occupational therapists, athletic trainers, nurses, pool instructors, vocational education instructors.</p>	<p>▶ This reimbursement is negotiable. But note this does not have a cap nor a provision that limits this to requirement of the position in the school district.</p>
<p>2. The Board shall provide release time and pay all expenses for these certified employees to attend seminars and training required for license renewal and/or re-certification.</p>	<p>▶ This is atypical. This can easily be done during non-school hours.</p>
<p>3. For those re-certification and/or licensure programs not offered during the contractual workday, the Board shall provide compensatory time equal to the hours spent in the program. These hours shall be computed as those required portal to portal.</p>	<p>▶ This is an unheard of contractual provision.</p>
<p>4. The Board shall assume all costs associated with obtaining and maintaining any special license or certificate it requires of a teacher. Said teacher shall receive additional pensionable compensation of (...to be negotiated...)</p>	<p>▶ Another unheard of contractual provision. If it is a requirement of the job, why would the district pay a stipend for it?</p>
<p>M. School Professional Development Committee (SPDC) Service And Local Professional Development Committee (LPDC) Service</p>	
<p>1. Teacher members of the SPDC and/or the LPDC shall be provided with (...negotiated number...) duty free periods per week to assess and recommend current professional development opportunities and needs.</p>	<p>▶ This clause implicates teachers scheduling and boards must consult with their administrators to fully understand the districts' needs in this area. It is not a common provision.</p>
<p>2. All district in-service programs under the direction of the LPDC shall be eligible for the state required 100 hours of professional development and be counted as CEU's eligible for horizontal salary guide movement.</p>	<p>▶ See comments above.</p>
<p>3. Any hours required by members of the SPDC and/or the LPDC to accomplish its charge which must be served after the contractual workday shall be reimbursed at each member's individual per hour rate. Reimbursement and salary adjustments shall be made in accordance with Section H of this article.</p>	<p>▶ This reimbursement is negotiable. But note this does not have a cap nor a provision that limits this to requirement of the position in the school district. Moreover, tying the pay to the individuals rate of pay is an auto escalation clause. This is not a common provision.</p>
<p>4. The Board shall pay the full costs for SPDC and/or the LPDC members who must attend any workshops, seminars, conferences or other such sessions required in connection with their duties as LPDC members.</p>	<p>▶ See comment above.</p>
<p>5. Service on the SPDC and/or the LPDC shall entitle members to Professional Development hours in accordance with the regulations.</p>	<p>▶ See comments above.</p>
<p>N. Other approved professional activities consistent with the state professional development standards and guidelines including, but not limited to, collaborative time, out of district teaching and instruction, participation in professional associations and preparation of professional materials for publication shall be subject to the terms in Section M above.</p>	<p>▶ This is so undefined that it could result in teachers meeting for dinner to discuss professional development and then charging the district their hourly rate. This should not be agreed to.</p>

SECTION III: Educational Support Professionals Only

ARTICLE XXXI: Support Staff Work Schedule

A. Work schedules indicating support staff shifts, workdays, and work hours shall be posted in each building in a prominent location.

B. Established work shifts, work days, and work hours shall not be changed except through negotiations between the Board and the Association.

C. The workweek shall be five (5) consecutive days from Monday through Friday and shall not exceed the daily work hours as listed above in (...note paragraph...), unless otherwise agreed to in this Agreement.

D. SECRETARIAL

1. SCHOOL YEAR - During the school year, the secretaries' workday shall be (...negotiated number...) consecutive hours per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building.

2. SUMMER HOURS - During the summer, the regular work schedule shall be reduced (...negotiated number...) hour(s) per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building.. Summer work hours shall commence upon the closing of school in June and continue through to the reopening of school in September.

3. BREAKS - Employees shall be provided with a minimum of (...negotiated number...) minute breaks each day. When an employee's work day is extended, an additional break of (...negotiated amount of time...) shall be provided.

E. CUSTODIAL/MAINTENANCE

1. SCHOOL YEAR - During the school year, the custodial/maintenance staff workday shall be (...negotiated number...) consecutive hours per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building.

SECTION III: EDUCATIONAL SUPPORT PROFESSIONALS ONLY

ARTICLE XXXI: SUPPORT STAFF WORK SCHEDULE

All of the provisions of this article address generally negotiable issues of work load. Keep in mind that the obligation to bargain in good faith over negotiable issues does not include the obligation to agree to provisions that are unwise or otherwise unacceptable to a board of education. In negotiating these issues, each board must consult with its district's administrative staff and carefully identify and assess the needs of the district and of each school building. When boards negotiate over the number of hours (and minutes) of work and time for notice provisions, they should be particularly careful that the contractual time is adequate and administratively feasible.

Also note that this article contains proposals for numerous circumstances that would require additional compensation. The price tag of agreements to these issues may, individually, appear to be minimal. However, these forms of additional compensation can add up to a significant but hidden increases in the costs of employment. Boards must keep track of their economic commitments and recognize that dollars spent in these areas reduce the amount available for salaries and health benefits.

Although these issues are negotiable, they may not be enforceable (legally arbitrable) under specific circumstances that arise during the duration of the contract. For example, none of these terms and conditions of employment can present significant interference with a board's ability to implement educational policies. Therefore, PERC may restrain arbitration of a grievance challenging a board's decision. However, compensation for alleged increases in workload would be severable from the implementation decision and would be mandatorily negotiable. (See, for example, South Brunswick Bd. of Educ., PERC No. 97-117) Specific comments and cites will be given as they apply to the particular clauses of the Sample Agreement.

Note, that economic considerations are not generally considered educational policy decisions and are not sufficient to warrant deviations from negotiated agreements. (See, for example, Bloomfield Bd. of Educ., PERC No. 98-84)

See comments under A & B.

See comments under A & B.

See comments under A & B. While reduced hours are common for support staff in the summer, it is important that you check with administration to ensure that the contractual provision does not interfere with adequate summer coverage.

This is not a common contractual provision, is intrusive and is not required under the Fair Labor Standards Act (FLSA).

See comments above.

- 2. SUMMER HOURS - During the summer, the regular work schedule shall be reduced (...negotiated number...) hour(s) per day inclusive of a ...negotiated number... minute duty free lunch/dinner period wherein the employee may leave the building. Summer work hours shall commence upon the closing of school in June and continue through to the reopening of school in September. ▶ See comment above.

- 3. BREAKS - Employees shall be provided with a minimum of (...negotiated number...) minute breaks each day. When an employee's work day is extended, an additional break of (...negotiated amount of time...) shall be provided. ▶ See comment above in D3.

- 4. CLEAN-UP TIME - Employees shall be granted (...negotiated amount of time...) prior to the end of the work shift in order to put away equipment and supplies and for personal clean up. ▶ While it is good policy to allow for some accommodation for clean up time, it is not typically in the contract. Be mindful that not providing time for such employees to clean up can result in FLSA charges if workers do such duties after they are "off the clock."

F. PARAPROFESSIONAL

- 1. SCHOOL YEAR - During the school year, the paraprofessional's workday shall be (...negotiated number...) consecutive hours per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building. ▶ See comment above.

- 2. BREAKS - Employees shall be provided with a minimum of (...negotiated number...) minute breaks each day. When an employee's work day is extended, an additional break of (...negotiated amount of time...) shall be provided. ▶ See comment above in D3.

G. BUS DRIVERS

- 1. SCHOOL YEAR - During the school year, the bus driver's workday shall be (...negotiated number...) consecutive hours per day inclusive of a (...negotiated number...) minute duty free lunch/dinner period wherein the employee may leave the building. ▶ See comments above.

- 2. BREAKS - Employees shall be provided with a minimum of (...negotiated number...) minute breaks each day. When an employee's work day is extended, an additional break of (...negotiated amount of time...) shall be provided. ▶ See comment above in D3. This could be particularly problematic for staff that are off-campus like bus drivers.

- 3. CLEAN-UP TIME - Employees shall be granted (...negotiated amount of time...) prior to the end of the work shift in order to put away equipment and supplies and for personal clean up. ▶ See comment above in E4.

- 4. ALL SCHOOL VEHICLES shall be equipped with a district communications system monitored by the police. ▶ It is not clear that this is a negotiable topic. Employees are entitled to negotiate safety issues but not specific facilities or equipment. Moreover, this is potentially very expensive. Lastly, the police are not party to a collective negotiations agreement between a school and its unions and thus cannot be bound to do anything as a result in language in such an agreement.

- 5. ASSIGNMENT OF BUS RUNS – Field trip and extra duty runs shall be given to volunteers on a rotating seniority basis. If there are no volunteers, the district may assign in order of reverse seniority. ▶ This is common, but check with the supervisor of transportation to see if there are any scheduling issues.

6. ACTIVITY BUS RUNS – An activity bus run which is completed after (...negotiated hour...) prevailing time shall entitle the driver to a meal allowance of (...negotiated dollar amount...).

▶ Another common bus driver provision.

H. DRIVERS, MAINTENANCE, CUSTODIANS, GROUND-SKEEPERS

1. The Board shall provide all safety equipment such as, but not limited to, protective clothing and footwear. The Board shall provide (...negotiated number...) coveralls per year for employees on the boiler cleaning detail. The Board shall provide (...negotiated number...) uniforms and tee shirts to all custodians during the school year.

▶ Providing employees with clothing and safety equipment is a negotiable topic that implicates employees' health and safety. A board's willingness to agree to one, some or all of these provisions will depend on the board's assessment of employees' job functions, the relevance of the proposal to those duties. Boards must also keep track of the total costs of these proposals and avoid language which could result in an obligation to continuously replace lost or damaged through employee negligence. Agreed upon limitations on all aspects of the board's obligation, including the expenditure for the items, is always advisable and beneficial for a board.

2. The Board shall maintain ...negotiated number... sets of foul-weather gear for each worksite and (... negotiated number...) sets of foul-weather gear for the garage.

▶ See comments in 1.

3. The Board shall provide each custodian with rubber gloves.

▶ See comments in 1.

4. The Board shall provide each custodian/maintenance employee with respiratory equipment for work on boilers or when necessary to prevent respiratory infections.

▶ See comments in 1.

5. The Board shall provide safety glasses for employees required to work on boilers or whenever necessary.

▶ See comments in 1.

6. No custodian shall be required to ascend ladders higher than (...negotiated height...) while working a shift alone.

▶ This appears to be an issue of employee safety and would generally appear to be negotiable, if the height requirement actually poses a safety concern. However, this clause could not be interpreted to require the board to have a minimum of two custodians on each shift, because that would implicate the nonnegotiable issue of minimum staffing. Kingwood Bd. of Educ., PERC No. 82-31. Further, this clause could probably not be enforceable in situations that threaten student safety.

7. The Board shall provide all necessary equipment and supplies to be used by employees in fulfilling their obligations under the job descriptions contained in this Agreement

▶ As long as the board retains the right to determine what equipment and supplies are necessary, this clause is negotiable.

8. The Board shall furnish maintenance employees assigned to work outside on a regular basis with insulated outerwear (jumpsuit), the cost of which shall not exceed (...negotiated amount...). This item shall remain the property of the Board and will be replaced as the Board deems necessary.

▶ See comments in 1.

I. SECURITY PERSONNEL

1. The Board shall provide uniforms and badges for all security personnel.

▶ To the extent that it involves a policy determination, a decision that employees should wear uniforms is not negotiable. However, if the issue predominantly involves employee safety, then it would become mandatorily negotiable. Under any circumstances, the cost of obtaining and replacing uniforms would be mandatorily negotiable. Twp. of Saddle Brook, PERC No. 91-95. City of Newark, PERC No. 97-153. Thus, the negotiability and arbitrability of this clause will depend on the particular facts in each district.

2. The Board shall provide a public telephone at all worksites within ready access to all employees during work hours. All employees scheduled to work on the evening shift/night shift shall be provided with a communication system — radio, cellular phone, etc., for emergency use. A joint Health & Safety Committee shall be established and consist of (...negotiated number...) members appointed by the Association President and (...negotiated number) members appointed by the Superintendent. The Committee shall meet at least (...negotiated number...) times each year to develop, review, and implement training programs and procedures in areas of concern to the parties. Training for the Committee shall be jointly developed and the Board shall pay all costs.

Is a public phone necessary with the advent of cell phones? To the extent that this involves employee safety, providing a communication system is mandatorily negotiable. County of Middlesex, PERC No. 79-80.

J. EDUCATIONAL SUPPORT PROFESSIONALS AND COACHING

1. Coaches shall be provided with:

- a. adequate team equipment and supplies;
- b. a separate, private locker room for the exclusive use of coaches;
- c. a complete copy of the rules and regulations of NJSIAA;
- d. (...negotiated rate...) for in-county scouting and (...negotiated rate...) for out-of-county scouting as the need arises, and with the approval of the athletic director and the Superintendent.

This is fine, as long as the decision as to what constitutes adequate equipment and supplies belongs to school management.

This clause raises the question of space allocation and existing facilities in specific schools. It must be examined by the board in light of flexibility in the use of space, now and in the future. As presented, the clause could require a board to provide these locker rooms regardless of the district's existing facilities and changing district needs.

This is fine.

Does this reflect the district's goals? If so, it becomes strictly an economic issue and a board needs to consider if this activity is already reflected in the coaching stipend or/and if additional compensation is warranted.

2. No coach shall be required to attend a practice, exhibition, or officially scheduled game session if he/ she was excused from school that same day because of sick leave or a temporary leave of absence as cited in this Agreement.

This provision is reasonable as it relates to sick days. However, some of the temporary leaves of absence listed in the Agreement (such as jury duty) may not automatically result in the coach's unavailability after school hours.

3. Coaching Development and Improvement

- a. With the approval of the Superintendent and/or the Board, coaches who attend clinics or general coaching sessions of an extended nature outside of their athletic training season, shall be reimbursed for expenses incurred as a result of their attendance. The coach shall be reimbursed for mileage at the current IRS allowable rate.
- b. Each coach may attend (...negotiated number...) clinics, meets, or conferences of his/her choice. Expenses incurred as a result of attendance shall be reimbursed by the Board. Mileage shall be reimbursed at the current IRS allowable rate.

This section addresses negotiable topics, but nevertheless create sufficient problems as presented to warrant a board's refusal to agree to this proposal.

Prior approval in this section is limited to reimbursement of costs attached to extended clinics or general coaching sessions. Approval for attendance at these activities is not required. There are also no limitation on the number of such activities, the type of costs that will be eligible for reimbursement, nor on the total amount that the board will be obligated to pay. (Also note that these "extended" sessions could last a number of days and also interfere with coaches' availability to perform their normal duties as school employees during the school day. Thus, this provision may also result in the cost of substitutes.) Lastly, note that under current law, the district is prohibited from paying mileage at the IRS rate. The maximum payout is the lower New Jersey OMB rate.

4. Coaches' Protection

a. The Board agrees to protect and save harmless every coach from any financial loss resulting from errors and omissions arising out of and in the course of the performance of his coaching duties.

b. No coach shall be required to drive students to activities which take place away from the school building.

ARTICLE XXXII: Support Staff Work Year

A. TEN MONTH EMPLOYEES - The work year for ten- (10) month employees shall be between (...negotiated dates...) and shall include (...negotiated number...) days for orientation and inservice training, opening and closing of school. The maximum number of work days in the work year shall be as follows (...negotiated number...).

B. ELEVEN MONTH EMPLOYEES - The work year for all eleven (11) month employees listed below shall be from (...negotiated dates...) and shall include (...negotiated number...) days for orientation and inservice training, opening, and closing of school. The maximum number of work days in the work year shall be as follows (...negotiated number...).

C. TWELVE MONTH EMPLOYEES - The work year for all twelve (12) month employees listed below shall be from (...negotiated dates...) and shall include (...negotiated number...) days for orientation and inservice training, opening and closing of school. The maximum number of work days in the work year shall be as follows (...negotiated number...).

This clause is far too broad to be acceptable to any board. First, the question of whether or not this situation falls under the board's insurance coverage must be answered. Even if an insurance policy covers some of the situations that can arise under this clause, a board must be aware that a coach's "act of omission" can involve a failure to properly supervise students or to otherwise perform his/her responsibilities in an acceptable manner. Under these circumstances, this clause would present such significant interference with a board's ability to monitor coaching performance and to initiate appropriate disciplinary action as to probably be found to not be negotiable. Regardless of its negotiability, agreement to this clause, as written, is incredibly unwise and should be avoided by all boards.

If driving students is related to coaches' primary responsibilities, then a prohibition on assignments is not negotiable. Garfield Bd. of Educ., PERC No. 90-48. If the responsibility is not related, then the clause is negotiable, but raises the following additional questions. Does this clause comport with district policies? Note that this clause does not prevent a coach from volunteering to drive students. Is that permitted by district policies? Does the board's insurance policy cover situations where school employees (other than bus drivers) volunteer or are assigned to drive students?

ARTICLE XXXII: SUPPORT STAFF WORK YEAR

The length of the work year is a negotiable topic. The design of the calendar, and the placement of days within the calendar, is not a topic for bargaining. Burlington Co. College, 64 NJ 10 (1973). (For a full discussion of the calendar, please see the article on that topic in the Selected Topics Affecting Negotiations, of The Negotiations Advisor.)

The Sample Agreement's approach to designating specific dates for the beginning and ending of 10 month employees' work year is therefore legally questionable as it is intricately connected with the establishment of the school calendar. Under any circumstances, agreement to a specific starting and ending date of a work year would be extremely unwise for boards of education. Such an agreement would complicate boards' ability to respond to circumstances which may require an earlier or later start of the school year. While boards could presumably decide to change those dates without prior negotiations, the impact of that change on employees' terms and conditions of employment could require midcontract negotiations. Piscataway Bd. of Educ., 307 N.J. Super 263 (1998). Boards should thus not agree to contractually established dates for the beginning and ending of employees' work year. The number of work days is a negotiable topic. While a board has the right to require its teaching staff to be available for the state's mandated minimum of 180 days of student instructions, days in excess of that number are a required topic for bargaining. Bd. of Educ. of the Borough of Old Tappan, PERC No. 80-74. The number of work days in the Sample Agreement is defined through starting and ending dates. As stated above, boards would be better served by agreeing to a total number of the length of the work year, boards must carefully consider their curricular and students' needs, and the need for staff availability for in-service and other noninstructional duties. The Sample Agreement's agreement approach to the work year is to reserve a number of days during the work year for specifically defined activities, such as orientation and in-service. Typically, rather than including orientation in the negotiated number of work days, boards have negotiated additional days for orientation of new employees. Further, a contractually defined number of in-service days could reduce school management's flexibility to schedule more desired or necessary training time. Also, if less in-service days are indicated, the Sample Agreement's language would preclude the conversion of unused in-service days for another purpose. Therefore, greater flexibility can be obtained by rejecting the Sample Agreement's approach. If a guaranteed limitation on the number of instructional days is a priority for the union, boards could agree that student contact days "will not exceed ____ days." Boards must carefully assess their student and curricular needs.

The same concerns noted in Section (A) are applicable here. Given the first sentence in these sections, the last sentence appears redundant. However, if the last sentence stood alone, it could give a board great flexibility — as long as the board gave careful consideration to the number of work days required for these positions.

The same concerns noted in Section (A) are applicable here. Given the first sentence in these sections, the last sentence appears redundant. However, if the last sentence stood alone, it could give a board great flexibility — as long as the board gave careful consideration to the number of work days required for these positions.

D. HOLIDAYS - The holiday schedule for all eleven (11) or twelve (12) month employees shall be according to the school calendar and shall include but not be limited to the following.

1. July 4th

Labor Day

Columbus Day

Election Day

Veteran's Day

NJEA Convention Days (2)

Thanksgiving Day

Friday after Thanksgiving Day

Christmas Eve Day

Christmas Day

New Year's Eve Day

New Year's Day

President's Day

Martin Luther King's Birthday

Lincoln's Birthday

Good Friday

Memorial Day

Other _____

2. If a holiday falls on a weekend, it shall be observed on either the last working day prior to the holiday or the first working day after the weekend.

Eleven and twelve month teaching staff members, whose work is based on the student calendar, are rarely provided with holidays during the school year. (Note, however, that N.J.S.A. 18 A:25-3 grants teaching staff members a statutory right to not work on a legal holiday, without loss of pay. For a full discussion of this issue, please see the article "The School Calendar and Statutory Holidays" in the Selected Topics Affecting Negotiations section in The Negotiations Advisor.)

The issue of paid holidays is usually a support staff issue. Rather than identifying the specific days that will be paid holidays, a number of districts guarantee a number of paid holidays to their support staff and, on a case-by-case basis, designate specific days off for each employee. This approach guarantees that a desired number of employees will be at work when school is opened on legal holidays, without incurring the cost of premium compensation addressed in Section (7) below. For more information on this approach, please see the article "Issues of Support Staff Employees" in Bargaining Unit Section of The Negotiations Advisor.

If these employees' responsibilities are based on assistance to students and teachers, it would seem illogical and unwise to guarantee days off when school is in session.

A. Vacations

- 1. All eleven (11) or twelve (12) month employees shall be entitled to the following vacation days per year:

Less than one year of service: 1 day per month

1-3 years of service: 15 days

4-5 years of service: 20 days

More than 5 years of service: 25 days

- 2. A year or any part of a year worked shall count as a full work year of employment when calculating vacation allowance, with the exception of the initial employment year, which shall be prorated.
3. Any ten (10) month employee who accepts an eleven (11) or twelve (12) month position shall receive full vacation allowance from the date of initial employment in the district.
4. An employee's vacation schedule shall be submitted to the immediate supervisor no later than (...negotiated date...) and shall not be denied without just cause. Vacation scheduling shall be granted in order of seniority.
5. Each employee shall receive his/her vacation pay prior to the start of his/her vacation.
6. All unused vacation time shall be cumulative.

- 7. All years of employment in the district shall be used when calculating vacation allowances.

ARTICLE XXXIII: Salary

A. Salary Guides

- 1. Salary guides for various categories of employees are attached hereto and made apart hereof.

The issue of vacation for 11 and 12 month employees (including the number of days and procedures for obtaining vacation) is a negotiable topic. Boards' review of other similar districts' vacation allotments for similar classification of employees can help put the Sample Agreement's proposals in perspective. Boards must also be careful of their negotiated procedures for scheduling vacations. Agreement to Section (4) would be unwise as this procedure does not require prior administrative approval. Further, the burden of denying vacation time, and justifying the denial, falls on the administration. (What is "just cause" in this context? Surely, it is not the typical "just cause" standard that is used to assess the imposition of discipline.) In scheduling vacation time, it is always advisable for the administration to retain the right to deny vacation requests, based on the needs of the district. In addition, boards should not agree to a blanket use of seniority in scheduling vacation time. There may be many occasions when a district project will require the presence of employees who have special skills or qualifications. The administration must assure that those employees are available at those times, regardless of their level of seniority.

This provision permits employees to accumulate an unlimited amount of vacation time that could be eligible for reimbursement. Boards will want to consider capping the number of vacation days that can be accumulated. Board members will also want to consider whether they philosophically support an incentive for employees to not use their vacation time. Be aware that, pursuant to N.J.S.A. 18A:30-9, employees hired after May 21, 2010 are prohibited from carrying over vacation time for more than one year.

This is negotiable and standard.

ARTICLE XXXIII: SALARY

Boards should not forget that guide development is a negotiable topic. Boards should therefore be prepared to negotiate changes in the structure of their guides to better serve the needs of the district. For a full discussion of this issue, please see the articles on the topic in The Salary Guides section of The Negotiations Advisor.

<p>2. School employees must work (...negotiated number of months/days...) of their work year to receive one year's credit toward their next salary increment. "Work" shall include sick days, paid personal leave, and any other day when compensation is provided.</p>	<p>▶ This type of clause perpetuates the outdated belief that each year of service entitles school employees to annual guide advancement. Annual movement of teaching staff members is no longer required by school law and many districts, particularly after implementation of the 2 percent tax levy cap, have negotiated an alternate type of guide advancement. Agreement to the first sentence is therefore unwise.</p> <p>▶ In addition, the definition of what will count as "work" days is also unwise, particularly if this definition is applied to other situations such as entitlement to overtime. In defining a 40-hour base work week, the federal Fair Labor Standards Act (FLSA) does not count paid absences such as sick leave, personal days or holidays.</p>
<p>3. Each employee shall be placed on his/her proper step of the appropriate salary schedule at the beginning of the work year.</p>	<p>▶ This language suggests that the Board and the Association have a mutual understanding of what constitutes "proper" step placement. However, disputes over guide placement are not rare and frequently employees and their unions seek retroactive adjustments that reimburse employees for many years of "improper" placement. To assure that disputes over step placement are resolved quickly and arbitrators' awards are contained, boards could seek additional language requiring grievances over this topic to be filed within a certain number of days following the beginning of the work year and limiting an arbitrator's remedial authority to prevent awards that include retroactive adjustments for many years of "improper" placement. Moreover, to avoid confusion the final contract ought to include an advancement/ placement chart to illustrate guide placement bargaining unit members during the term of the contract.</p>
<p>B. Longevity — All employees will receive longevity payments at the start of (...negotiated number...) years of service with the district. Such payment shall be (...negotiated rate of pay...) of the regular salary.</p>	<p>▶ While some districts provide longevity regardless of the employee's placement on the guide, the majority of districts condition eligibility for this additional form of compensation to years of service and placement at the maximum step of a column on the guide for at least one year. For good reasons, it is also unusual for districts to agree to base longevity on a percentage of employees' base salary. Defining longevity as a percentage of "the regular salary" means that longevity payments automatically, without additional negotiations, and without limitations increase with each year of employment. This could not only become most expensive, but it would also place the burden on the board to try to change this extremely beneficial employee benefit to a more controllable and predictable expenditure. There has been a trend recently to curtail longevity payments.</p>
<p>C. Shift Change — Any custodial/maintenance employee with a temporary change of shift shall receive a (...negotiated amount...) bonus for each day assigned to said shift.</p>	<p>▶ C and D are not required by law. The clauses provide opportunities for additional compensation for this classification of employees. Again, boards' ability to agree to this approach will depend on their ability to accept the concept as well as the additional costs of employment.</p>
<p>D. Shift Differential — Any employee working the second shift, (...negotiated times...), shall be paid (...negotiated rate of pay...) extra for the year on a pro rated basis.</p>	
<p>E. Out of Title Work</p>	
<p>1. In no case shall any support staff be requested or required to perform the duties normally assigned to a teacher.</p>	
<p>2. Any employee required to perform the duties in a job category higher than his/her own shall be compensated at the rate of the higher job category for the duration of assignment.</p>	
<p>3. Notwithstanding A.2 above, any educational support professional assigned to provide class coverage in any emergency situation shall be reimbursed at (...negotiated rate of pay...) per period.</p>	<p>▶ This section is presumably intended to provide additional compensation when a Para educator covers for an absent teacher during the Para educators' negotiated work day. Boards that are inclined to accept the concept of differentiated compensation for these differentiated duties must clarify whether the "negotiated rate of pay" is in addition to, or instead of, the Para educators' regular rate of pay. Understanding and clarifying the intent will permit boards to assess their conceptual acceptance, to avoid midcontract difficulties and will certainly make a difference to the Board's financial commitment.</p>
<p>4. Educational Support Professionals who hold substitute or teacher certification shall be eligible for appointment as substitute teachers. Such determination shall be made by the Superintendent or designee and the staff member shall serve wherever required. Employees assigned to work as substitute teachers shall be paid 1/200 at a teacher's salary on Step 1 of the salary guide.</p>	<p>▶ The last sentence, which reserves the Superintendent's discretion over the assignment, makes this section legal. Before agreeing, however, boards should make sure that the designated compensation is also acceptable.</p>

F. Overtime — Overtime assignments shall be made available on a rotating seniority basis. Overtime assignments shall be voluntary.

▶ This section extends to all noncertificated employees the benefit provided to custodial/maintenance employees in Section (8) of this article. Guaranteeing a minimum number of hours for overtime assignments is another way of increasing employees' extra pay, even if the required work takes less time than the minimum guarantee.

G. Call Back Pay — The following job categories (...negotiated list...) shall receive a minimum of (...negotiated number...) hours pay at the overtime rate if called back to work at a time not contiguous with the regular work day.

▶ This section extends to all listed employee groups the benefit provided to custodial/maintenance employees in Section (8) of this article. Guaranteeing a minimum number of hours for overtime assignments is another way of increasing employees' extra pay, even if the required work takes less time than the minimum guarantee.

H. Holiday Pay — Support Staff required to work on a day designated as a holiday shall be paid at (...negotiated rate of pay...).

▶ Your legal obligation to pay overtime to support staff employees are defined in the federal Fair Labor Standards Act (FLSA). That law establishes minimum requirements that can be expanded (but not reduced) by negotiated agreements. The FLSA requires a time and half rate of pay for hours worked in excess of 40 hours per week, or the substitution of premium pay with compensatory time to a maximum of 240 compensatory hours. It does not require overtime on holidays. The Sample Agreement's contractual benefit, while common, does exceed the Board's legal obligation to pay overtime.

I. Transportation Expenses

1. Employees using their vehicles to travel between work sites for work related business shall be compensated at their regular rate of pay for the time involved. Mileage and insurance remuneration shall be computed at the highest current IRS allowable rate, or at (...negotiated rate...), whichever is greater.

▶ While references to the IRS mileage reimbursement rate were historically the usual, under the accountability regulations the rate cannot be higher than the State rate, which is set by the OMB circular (currently 31¢ per mile). This is a non-negotiable topic.

2. The Board shall cover all damages, losses and expenses incurred by an employee arising out of the authorized use of his automobile in the performance of his duties.

▶ This clause could be acceptable if it: specified that the board's support depended on a determination that the teacher was not at fault and had discharged his/her duties appropriately; and contained a cap on the board's total financial obligation.

ARTICLE XXXIV: School Functions Beyond The Normal School Day/Year

ARTICLE XXXIV: SCHOOL FUNCTIONS BEYOND THE NORMAL SCHOOL DAY/YEAR

A. Early Release — Any employee required to attend night meetings/parent conferences/back-to-school nights or other evening activities will be released at ...negotiated time

▶ A. & B. Compensation for attendance at functions occurring after the normal work day is negotiable and not unusual in teachers' contracts. This clause, however, involves double compensation: early dismissal and an additional stipend. To the best of our knowledge, no board has agreed to this unusual double payment. In fact, the trend has been for boards to negotiate provisions that require attendance, without additional compensation, for a specified number of after-school events with stipends becoming a factor only in assignments that exceed the negotiated minimum requirement.

B. Compensation — If required to work extracurricular activities such as banquets, dinners, or other school events, employees shall be compensated at (...negotiated rate of pay...) the hourly wage. If an activity occurs on a holiday, employees shall be compensated at (...negotiated rate...).

▶

C. Expenses - All expenses normally incurred for a field trip, (i.e., lodgings, tolls, gas, etc.) will be provided to the employee prior to the start of the trip.

▶ The Board should not agree to this as written. The lack of definition and control is an invitation to abuse. And, C & D appear to be redundant.

D. Meal Allowance — Employees shall be paid a meal allowance of (...negotiated rate...) for every (...negotiated number...) hours worked due to a field trip

▶ If the Board is inclined to agree to this concept, it should again carefully consider the jobs that are eligible for this benefit and the potential total costs of this agreement. Boards that agree to this type of provision must keep track of its costs, as well as all other forms of additional compensation, when it calculates its bottom-line cost of employment. All of the "minimal" additional costs can add up to a significant amount.

E. Chaparone Duty - Education Support Professionals who are required to perform chaperone duty at extracurricular activities shall be paid at the same rate as teachers who perform chaperone duty.

▶ This is negotiable. The Board will need to evaluate the function of staff members taking this assignment to determine if the parity makes sense.

F. Cancellation of Field Trips

1. NOTICE - Employees scheduled to participate a field trip or event shall receive twenty-four (24) hours notice of its cancellation.

The scheduling and implementation of field trips is not negotiable. Union City Bd. of Educ., PERC No. 84-79. If this is intended to prevent last minute cancellation, then it would be a nonnegotiable significant interference with boards' authority regarding field trips. Boards should not, and cannot, accept limitations on their ability to cancel any field trip or event at any time. The second sentence, addressing compensation for cancelled trips, is negotiable since it does not interfere with the decision itself. Boards that are prepared to support the concept of some reimbursement for time reserved but not worked should nevertheless consider another approach to compensation, such as a flat dollar rate. Linking compensation to an employee's overtime rate results in automatic increases based on increases in salaries.

2. Compensation - The Board will compensate employees scheduled to participate a field trip (...negotiated number...) hours at their overtime rate or (...negotiated amount...) for such cancellation.

Addressing compensation for cancelled trips, is negotiable since it does not interfere with the decision itself. Boards that are prepared to support the concept of some reimbursement for time reserved but not worked should nevertheless consider another approach to compensation, such as a flat dollar rate. Linking compensation to an employee's overtime rate results in automatic increases based on increases in salaries.

ARTICLE XXXV: School Closings

ARTICLE XXXV: SCHOOL CLOSINGS

A. Employees shall not be required to work on days school is closed for reasons of safety such as weather conditions. If school should dismiss early for such reasons, employees will be permitted to leave. The day will be considered as a full day worked.

As written this would prevent maintenance staff from working on such days.

B. In the event the normal opening of school is delayed for employees will not be required to report more than (...negotiated number...) minutes before pupils.

Is the Board comfortable with this level of detail in the contract. If the Board is considering this it is imperative that it be discussed with supervisory and administrative staff to ascertain the impact on school operations.

C. All support staff shall receive a full day's pay when they are required to work at least one (1) hour of a particular workday and are then required to leave school because of an emergency school closing.

As written this would apply to hourly workers. This is still another opportunity to obtain additional compensation. Does it make sense to the board?

D. If certain employees are needed to remedy the situation which caused the delay, those employees will be paid at (...negotiated amount...) for that period of time when all other employees are not required to be present.

This is still another opportunity to obtain additional compensation. Does it make sense to the board?

ARTICLE XXXVI: Employee Evaluation

ARTICLE XXXVI: EMPLOYEE EVALUATION

A. All employees shall be evaluated consistent with N.J.A.C. 6A:32-4.4, 4.5, and 4.6.

Note these code provisions speak to teaching staff members not other school employees. (And as of July 2013, the current proposed evaluation regulations will be located at N.J.A.C. 6A:10.2.1 et. seq.) Agreeing to this as written would extend the procedural web of requirements and its elaborate infrastructure to support staff. This would, in most cases greatly increase the administrative effort and time involved. For support staff, evaluation procedures that do not address evaluation content or contradict legal requirements are negotiable. The existing language should be reviewed in terms of any practical difficulties. Boards must be aware of a number of conditions that will affect their negotiations of evaluations of employee performance. First, criteria or standards for evaluating employees are not negotiable. Negotiation is limited to procedural aspects of evaluations as long as those procedures do not significantly affect the substance of the evaluation process.

B. Each employee shall be observed (...negotiated number...) times during each work year. Each observation shall consist of a (...negotiated number...) minute observation of the employee at his/her worksite.

Evaluations of noncertificated employees is not required by the Administrative Code. Thus, all procedural aspects of evaluations for these employees is subject to negotiations.

C. All monitoring or observation of the work performance of an employee shall be conducted openly and with full knowledge of the employee. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices is strictly prohibited.

This is a negotiable procedure for all classifications of employees. Contractual provisions prohibiting surveillance devices are not unusual. These provisions, however, do not preclude a mutually acceptable video taping of the employee for the purposes of assisting the employee to assess his performance.

D. An employee shall be given a copy of any visit, observation, or evaluation report prepared by his evaluator(s) (...negotiated amount of time...) before any conference. No such report shall be submitted to the central office, placed in the employee's file, or otherwise acted upon without prior conference with the employee.

▶ The first sentence seems to be duplicative of the first part of Section C above, and the same comments would apply. The second sentence is mandated for tenured teachers and negotiable for all other classifications of employees.

1. Evaluation reports shall be presented to each employee in accordance with the following procedures:

▶ The format and contents of an evaluation report are generally not negotiable. (see, for example, Union City Bd. of Educ., PERC No. 84-79) However, PERC has held that the specifics listed in 4 and 5 are negotiable. Englewood Bd. of Educ., PERC No 98-75. But again, since much of this may be superseded by whatever the TEACHNJ evaluation model is (i.e. Danielson, Strong, etc.), best language for teacher evaluations is just to cite the law.

2. Such reports shall be addressed to the employee.

3. Such reports shall be written in narrative form and shall include:

4. Strengths of the employee as evidenced during the period since the previous report.

5. Specific suggestions as to measures which the employee might take to improve his/her performance in each of the areas wherein weaknesses have been indicated.

6. No employee shall be required to sign a blank or incomplete evaluation form. An employee's signature indicates only that an employee has reviewed a copy of the evaluation.

7. Each observation cycle shall be completed before another cycle begins.

8. Each employee shall have the right to attach a written statement of rebuttal to all written evaluations.

[Note: Specific contract language regarding tenured, non-tenured, certificated, and non-certificated staff may be necessary to include in your collective bargaining agreement. Contact your NJEA UniServ office for assistance.]

E. Criticism — Any question or criticism by a supervisor, administrator, or board member of an employee's performance/instructional methodology shall be made in confidence and not in the presence of students, parents, co-workers, or members of the public.

ARTICLE XXXVII: Evaluations Procedures- Extracurricular Positions

ARTICLE XXXVII: EVALUATIONS PROCEDURES- EXTRACURRICULAR POSITIONS

A. Employees holding any extracurricular position shall be evaluated consistent with NJAC 6:1.19-6:1.21.

▶ See comments under Article XXIX.

B. Each employee shall be observed (...negotiated number...) times during each work year. Each observation shall consist of a (...negotiated number...) minute observation of the employee at his/her worksite.

C. Within (...negotiated number...) days of each observation, the employee shall receive a written report, and within (...negotiated number...) days shall have a conference with the author of the report. Each observation cycle shall be completed before another cycle begins.

- D. Annually, each employee shall receive a written evaluation (...negotiated number...) days prior to a meeting with his/her supervisor to review the content of the evaluation.
- E. Each employee shall have the right to attach a written statement of rebuttal to all written evaluations.
- F. All monitoring or observation of the work performance of an employee shall be conducted openly and with full knowledge of the employee. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.
- G. Every employee shall be given a copy of any visit, observation, or evaluation report prepared by his/her evaluator(s) (...negotiated number...) before any conference. No such report shall be submitted to the central office, placed in the employee's file, or otherwise acted upon without prior conference with the employee. No employee shall be required to sign a blank or incomplete evaluation form.
- H. Evaluation reports shall be presented to each employee in accordance with the following procedures:
 - 1. Such reports shall be addressed to the employee.
 - 2. Such reports shall be written in narrative form and shall include:
 - a. Strengths of the employee as evidenced during the period since the previous report.
 - b. Specific suggestions as to measures which the employee might take to improve his/her performance in each of the areas wherein weaknesses have been indicated.

ARTICLE XXXVIII: Professional Development And Educational Improvement

- A. The Board of Education shall pay the registration fee, tuition and textbook costs for all courses the Board requires an educational support professional to take or the parties mutually agree the educational support professional shall take. When required by the Board to take any coursework, the educational support professional shall be given either compensatory time, additional pay at their individual per hour rate, or release time during their contractual workday.
- B. Educational improvement eligible for reimbursement and horizontal movement (or negotiated stipend) on the salary guide shall include but not be limited to:
 - 1. Under-graduate and graduate courses at an accredited college or university or county college

ARTICLE XXXVIII: PROFESSIONAL DEVELOPMENT AND EDUCATIONAL IMPROVEMENT

- ▶ Pay and expenses for professional development is negotiable. As proposed, however, this section holds the following problems for the board:
 - ◀ In the first sentence, only paying when the "Board requires" is far better than "or when the parties mutually agree." The inclusion of the second phrase may engender disagreements and could possibly encourage past practice based claims. The last sentence is unacceptable. While most districts have some form of tuition reimbursement, few, if any, have agreed to also pay for the time a teacher spends after school hours in pursuing a higher academic degree desired by the teacher. Further, linking payment to the employee's regular rate of pay means that this rate will automatically increase, without additional negotiations, as salaries increase.
 - ◀ Finally, even though there is a requirement for Board consent, ideally, for budgeting purposes, there would be limits on the board's financial obligation to the unit as a whole or to each individual employee.
- ▶ Note that any payment for horizontal movement on the guide, must be consistent with N.J.S.A. 18A:6-8.5. Under the law, in order for additional education to be eligible for horizontal movement on the guide the coursework must be taken at an institution of higher education that is duly authorized as defined in N.J.S.A. 18A:3-15.3 and must be for a course or degree related to the employee's current or future job responsibilities.

<p>2. On-line courses provided by an accredited county college, college or university</p>	▶	Boards should not agree to this as written. There has been great concern recently with teachers taking many on-line courses (of dubious quality) in short period of time to move quickly across the salary guide. Note some accredited institutions allow private third parties to offer quickie courses under the name plate of accredited institution. Whether credit for such courses is given should be based on the SOLE discretion of the administration.
<p>3. In class or on-line training provided by a technical training institution</p>	▶	Depending on the institution offering the course and its content, it is not clear that allowing guide credit for such training is legal under N.J.S.A. 18A:6-8.5. Again, better language would preserve board discretion to make individualized determinations.
<p>4. Any studies, training or coursework leading to the issuance of a National Board Teacher Certificate.</p>	▶	This provision is not common. Whether or not your district wants to pay for this certification is a philosophical decision for the Board. For more information see www.nbpts.org .
<p>C. Application for professional development and educational improvement shall be made to _____ for approval. Such approval shall not be unreasonably withheld.</p>	▶	The last sentence is unnecessary and could generate grievances. It is wise to have schedules in policy for movement on the guide. Most districts only have one or two application deadlines.
<p>D. The following schedule for submitting application for under-graduate and graduate courses shall be:</p>	▶	Check with administration to ascertain the best schedule for submission. Most district only allow submission once or twice per year.
<p>1. Fall Semester _____</p>		
<p>2. Winter Semester _____</p>		
<p>3. Spring Semester _____</p>		
<p>4. Summer Semester _____</p>		
<p>E. Professional development provided by an institution other than a college or university shall require application to be submitted to the district within (...negotiated number...) days/weeks) of the commencement of the instruction.</p>	▶	Read in conjunction with A, this language is unclear. This points to why it is preferable not to have the "or the parties mutually agree" language in A.
<p>F. The Board shall make (...negotiated number...) of professional leave days available to every educational support professional in each year for attendance at workshops, seminars, or visits to other schools for the express purpose of self professional improvement.</p>	▶	Whether a board can support this type of paid leave must depend on an analysis of its impact on administrative and educational efficiency. This is not a typical provision.
<p>G. Board required attendance at a professional workshop, seminar, school visit, online seminar or other related educational improvement experience shall require the Board to pay all expenses attached to the assignment. Further, this time shall be in addition to the professional development days provided in Section F above.</p>	▶	<p>Pay and expenses for continuing education is negotiable. As proposed, however, this section holds many potential problems for the board. It is, in fact, a blank check which can be predicted to result in significant and totally unacceptable expenditures for a board. First, there obviously is no cap on the board's financial obligation to the unit as a whole or to each individual teacher. Secondly, payment is not limited to continuing education activities, but is applicable to any workshop (does it also apply to formal courses and thus supplement the possible restrictions of your tuition reimbursement article?) that the teacher may attend. Further, the kind of expenses that are included, but not limited by the third sentence is incredibly broad and could apply to all sorts of expenses, no matter how frivolous (such as first-class air travel and hotel accommodations) that are incurred by the teacher. Not only should these expenses be capped, but they should also require prior approval of the administration.</p> <p>Further, it is unwise for a board to agree to any expense that does not comply with the board's goals. Boards may want to check their existing policies for possibly existing reimbursement procedures and exclusions to reimbursable expenses, such as: required receipts; caps on meal reimbursement; no coverage of liquor costs or costs incurred by a companion; etc. Boards that are inclined to agree to reimbursement for expenses may want to assure that their contractual agreement is consistent with their policy limitations.</p>
<p>H. Reimbursement for the cost of all educational improvement shall be in accordance with normal accounting procedures and paid at such time as said procedures provide but not later than (...negotiated number) calendar days after the educational support professional submits their documentation.</p>	▶	This is unnecessary. Boards that are inclined to agree to reimbursement for expenses may want to assure that their contractual agreement is consistent with their policy limitations.

<p>I. Support staff required to provide turn-key training to their colleagues shall be given release time to prepare for the training. The amount of release time required shall be determined by the educational support professional presenter. Any materials, supplies, office equipment and/or audio visual needs shall be provided by the Board. The educational support professional presenter shall receive additional compensation at their individual per hour rate for all actual hours used in the final presentation.</p>	<p>▶ Another blank check: “amount of release time shall be determined by the education support professional” and “any material, supplies office equipment and/or audio visual needs shall be provided by the Board” are wide open and invite abuse. Lastly, linking payment to the employee’s regular rate of pay means that this rate will automatically increase, without additional negotiations, as salaries increase.</p>
<p>J. Continuing Education Units (CEU’s)</p>	
<p>1. Continuing Education Units shall be awarded to all Educational Support Professionals for educational improvement activities which are not college credit eligible. This includes any studies, training or coursework leading to the issuance of a National Board Teacher Certificate. Accumulation of CEU’s shall be eligible for additional pensionable compensation. CEU’s shall include, but not be limited to, hour per hour district sponsored in-service training, in district or out of district technical training, approved training initiated by the employee as well as any training required by the employer beyond the basic qualifications of the job description.</p>	<p>▶ Depending on the institution offering the course and its content, it is not clear that allowing guide credit for such training is legal under N.J.S.A. 18A:6-8.5. Again, better language would preserve board discretion to make individualized determinations.</p>
<p>2. For every (...negotiated number...) CEU hours the employee shall receive an additional (...negotiated dollar amount...) of pensionable income added to their base salary.</p>	<p>▶ See comment under 1. Also, even if the Board is open to guide credit, tying it to a percent of base salary is not best practice. Doing this is, in effect, an auto-escalation clause that gives more money with out negotiations.</p>
<p>3. Eligible reimbursements shall be made in accordance with normal accounting procedures and paid at such time as said procedures provide but not later than (... negotiated number...) calendar days after the educational support professional submits their documentation.</p>	<p>▶ Not necessary. Ideally, this would be pursuant to policy not part of the contract.</p>
<p>4. The Board shall pre-pay any tuition and fees up to (...negotiated dollar amount...) if the employee submits their request within (...negotiated number...) days/ weeks of the commencement of the training. The Board shall pre-pay any and all fees for employees who are being required by the district to participate in training.</p>	<p>▶ First, “any and all fees” lacks any control and is ripe for abuse. Further, there is not a requirement in this language that the CEU’s be required by the district.</p>
<p>5. Salary adjustments shall become effective July 1 and/ or January 1 immediately following completion of the eligible CEU’s.</p>	<p>▶ This is typical. Some district have September 1 and February 1 as these dates may be easier administratively.</p>
<p>K. Licensure</p>	
<p>1. The Board shall pay all fees and costs associated with obtaining and maintaining state required licenses and certifications. These would include, but not be limited to, bus drivers license, Black Seal License, county substitute certificate, certified pool operator license, assistant occupational and physical therapist certification, et. al.</p>	<p>▶ This reimbursement is negotiable. But note this does not have a cap nor a provision that limits this to requirement of the position in the school district. Again, if the license is a requirement for the job, is it necessary to pay a stipend for it?</p>

<p>2. The Board shall assume all costs associated with obtaining and maintaining any special license or certification it requires of an employee. Said employee shall receive additional compensation in the amount of (... negotiated dollar amount...) as pensionable income.</p>	<p>▶ This is atypical. This can easily be done during non-school hours.</p>
<p>3. The Board shall provide release time for employees to attend seminars and training required for license renewal and/or re-certification.</p>	<p>▶ This is an unheard of contractual provision.</p>
<p>4. For those re-certification and/or licensure programs not offered during the contractual workday, the Board shall provide compensatory time equal to the hours spent in the program. These hours shall be computed as those spent portal to portal.</p>	<p>▶ Another unheard of contractual provision. If it is a requirement of the job, why would the district pay a stipend for it?</p>
<p>5. The Board shall provide tutorial services to employees who so request to prepare for licensure or certification tests.</p>	<p>▶ Yet another unheard of contractual provision. Note there are no controls on amount or content.</p>
<p>(ESP language in districts which have their own professional development hour requirements)</p>	
<p>L. Local Professional Development Committee (LPDC) service.</p>	
<p>1. Support staff members of the LPDC shall become members as per the same procedure prescribed for choosing teacher LPDC members.</p>	<p>▶ This clause implicates scheduling and boards must consult with their administrators to fully understand the districts' needs in this area. It is not a common provision, especially for support staff.</p>
<p>2. ESP members of the LPDC shall be provided with (... negotiated number...) duty free time per week to assess and recommend current professional development opportunities and needs.</p>	<p>▶ See comments above.</p>
<p>3. All district support staff in-service programs under the direction of the LPDC shall be eligible for CEU hours and count toward salary adjustments.</p>	<p>▶ This reimbursement is negotiable. But note this does not have a cap nor a provision that limits this to requirement of the position in the school district. Moreover, it is unclear whether under common provision.</p>
<p>4. Any hours required by members of the LPDC to accomplish its charge which must be served outside of the contractual workday shall be reimbursed at each member's individual per hour rate. Reimbursement shall be made as per Section J-3 of this article.</p>	<p>▶ This reimbursement is negotiable. But note this does not have a cap nor a provision that limits this to requirement of the position in the school district. Moreover, tying the pay to the individuals rate of pay is an auto escalation clause. This is not a common provision.</p>
<p>5. Service on the LPDC shall entitle members to professional development hours up to (...negotiated number...) hours per year for the committee service.</p>	<p>▶ See comments above.</p>