



THE USE OF PROFESSIONAL NEGOTIATORS

Most school board members who have spent time at the bargaining table would quickly admit collective negotiations in public education is a complicated and sophisticated process. A typical school district devotes anywhere from 70 to 80 percent of its budget to employees' salaries and fringe benefits. This enormous financial commitment is only part of the impact of bargaining. The practical impact on day-to-day school district operations must also be assessed. Therefore, whoever negotiates an employee/employer contract in public education has assumed an awesome responsibility that affects matters of finance and governance.

Who should negotiate and how should the negotiations be conducted are questions to which all school boards must address themselves if they wish to be well represented during negotiations. The following bargaining realities demand that the parties have the best possible representation at the table.

- Collective negotiations result in a binding agreement setting forth terms and conditions of employment. Once these terms and conditions of employment are negotiated, they are binding on a board for the length of the agreement, sometimes lasting three years. Mistakes made in negotiations can be extremely costly as they relate to the financial or administrative well-being of the district.
- The outcome of negotiations results in decisions that affect the allocation of increasingly limited economic resources. The ability to contain, or control, the cost of employment is frequently linked to skillful, expert use of bargaining techniques and strategies.
- The ability of a school district to operate smoothly may hinge on specific contract language that, when negotiated, appears benign, but in practice may seriously handcuff school administrators from doing their job effectively. The nuances of contract language, for example, the distinction between "may" or "shall" in a sabbatical leave clause, or an interpretation of the meaning of "whatever reasonable or practicable," are potential trouble spots that require a specialist's attention.
- The increasing use of binding arbitration as a final method of review in the resolution of grievances makes it incumbent on the participants in the bargaining process to completely understand and properly apply contract language to their greatest advantage. Failure to do so could result in adverse consequences that can have a serious impact on school district operations.

- The technical nature of the field is becoming more, not less, complex. The practitioner who will adequately perform his/her duties must keep abreast of court decisions, PERC rulings, legislative changes in the law, etc. The negotiator must also be aware of those matters that indirectly affect the bargaining relationship, such as internal union politics, communications with the public and the press, and board/school administration relations.
- Negotiations is extremely time consuming, requiring inordinate amounts of patience and perseverance, and frankly, is a thankless task to undertake. Only those who have been there before can truly understand this reality.
- Teacher bargaining teams are usually represented by experienced and well-trained negotiators.

All these "facts of life" about collective negotiations demonstrate that the process requires increased professional attention.

Forms of Professional Assistance

Recognizing the growing need for increased professional involvement in school board-school employee bargaining, the Delegate Assembly of the New Jersey School Boards Association, in 1978, adopted a policy encouraging the use of a negotiations specialist. The policy statement suggests three approaches in using a negotiations specialist:

- A full-time staff employee as assistant superintendent or director of employee relations who is entirely responsible for acting as the board's chief spokesperson in all employee negotiations.
- A labor relations consultant to help the board prepare for bargaining and to advise the board during the course of negotiations should be hired. This individual would advise but ordinarily would not be present during negotiations.
- A labor relations professional to assist the board in preparing for bargaining and to act as chief spokesperson for the board during negotiations should be employed.

The first option, hiring an in-house negotiations specialist, has obvious advantages. These individuals must not only address themselves to negotiating the contract, but must also administer the very contract they negotiated. They are more familiar with the school district, its procedures and past practices, and are readily available to serve all other members of the administrative

team when questions of interpretation and/or implementation arise.

However, this option has definite drawbacks, particularly for smaller districts, which would have difficulty justifying the cost of such a position. Nevertheless, if smaller districts require the services of a negotiations specialist, they could hire an upper-level administrator whose responsibilities include, in part, bargaining and contract administration work.

The second option involves the services of a labor relations consultant, whose role in negotiations varies depending upon the specific circumstances, but does not include negotiations at the table. Consultants can do many of the bargaining tasks that either a full-time district employee or an outside professional negotiator can perform. Use of a consultant on a limited basis is helpful in the preparing stage of bargaining, in developing strategies concerning proposals and counterproposals, and suggesting specific tactics. Consultants may occasionally meet with the entire board or with the board's negotiating team and may even assume the role of chief spokesperson on certain occasions if the board thinks it desirable. If sufficient sophistication in negotiations already exists on the board, but technical and tactical advice is needed, a consultant may be helpful, at relatively little expense.

The last option concerns the use of professional negotiators. Professional negotiators can do all of the consultative work described above. However, the major difference in these arrangements is the actual presence of the professional during negotiations.

The value of a professional negotiator can be seen in a number of ways. First, the professional brings immediate expertise concerning bargaining strategy and contract language and helps to assess school district objectives in the process. Although an advocate of management interests, a professional's objectivity regarding realistic bargaining expectations could be most helpful, and may, in fact, strengthen a school board's negotiating position. Second, the presence of a professional allows school managers to attend to their normal duties, rather than having to attend to the laborious tasks and time commitments associated with negotiations. Third, a negotiations professional will commonly absorb the punishments normally meted out to school board members during negotiations, thereby allowing personnel relations between the employer and staff to operate more smoothly. In fact, when professionals leave a district, they frequently take much of the hostility generated during bargaining with them. Finally, a school district should see a professional as a resource person from whom the board and the administrative staff can rely upon to develop their own level of competence in this area.

The Decision to Hire a Professional

Because of the compelling reasons supporting professional representation, an increasing number of school districts have opted to hire a professional negotiator as

their chief spokesperson at the bargaining table. Yet, not all districts have felt the need to hire an outside negotiator. In many districts where the board-union relationship is informal, friendly and productive, board member representation may be the best approach. However, even in these districts, negotiations remains a complex process, and board members should prepare themselves to deal knowledgeably with negotiations.

The decision to have a board member, a staff person or an outside negotiations specialist handle your negotiations should be based on the best way to meet the interests of the district. Rather than simply continuing a district's traditional approach to managing its negotiations efforts, board members should evaluate carefully the current state of employee-employer relations to determine whether a change in the type of chief spokesperson is warranted. Consideration of the following issues will be helpful in selecting the best chief spokesperson for the district:

- Have negotiations been unusually long and difficult, with a negative effect on day-to-day relations between staff and administration?
- Has there been excessive time spent by district staff and board members on negotiations at the expense of other responsibilities?
- Has the board team believed, following negotiations, that a better contract could have been reached if certain mistakes had been avoided?
- Is the union team led by an outside negotiator, or by a district employee with many years of negotiating experience?
- Has the recent grievance and arbitration history shown an increase in employee dissatisfaction?
- Does the existing contract require significant revisions in contract language, contractual benefits or the structure of the salary guide which would improve school management?

The answers to these questions may suggest a need to hire a negotiations specialist. If there is a need, then the next step is to find an individual or firm that best suits your district's need.

Selecting a Professional Negotiator

In a sense, contracting the services of a professional negotiator is, in many ways, similar to deciding to use a particular physician or dentist. Much depends not only on his/her demonstrated skills and abilities, but also upon his/her ability to understand and relate to a client; therefore, the task of hiring a professional should not be taken lightly. Given the potential impact of a professional negotiator's efforts, selecting a negotiator is a most important board decision. Here are some tips.

First of all, there are two basic types of professional negotiators: attorneys and non-attorneys, who may either work for themselves or for a firm. A school board should not necessarily reject one type of negotiator in preference

for another until further inquiries and interviews are conducted.

The NJSBA Labor Relations Department is prepared to assist local school districts in the selection of a professional negotiator. The Department neither recommends nor endorses particular negotiators. Instead, the Department will provide school boards, upon request, with the names of members of the Educational Negotiators Association (ENA), an organization of professional negotiators working in New Jersey. Whether operating from this list or another source, a school district could request from any number of professional negotiators the names of the school districts that they currently represent and have represented. An interested school district would then make a preliminary inquiry about these negotiators by calling their current client districts. The next two steps would be to narrow down the number of professionals or firms and to request that some come in for an interview.

A good preliminary screening of candidates is important. A school district, if it asks the right questions of other districts using professionals, might be able to better assess its own need for an outside professional. Questions should refer to a professional's negotiating style, billing procedures, personality, responsiveness, and, of course, results. Once this screening is completed, the field of candidates should be narrowed down so that no unnecessary time is spent interviewing firms or individuals that the school board has already prejudged as unacceptable. School boards would be well served, once they begin the interviewing process, to keep an open mind until all the interviews have been completed and a full assessment of the professional's credentials have been made. (It is important to note that all professional negotiators gain and lose clients for many, sometimes complex, reasons. Any summary rejection of a candidate on the basis of lost clients without probing the reasons and the circumstances involved would be shortsighted.)

What do you ask a candidate during an interview? You ask many of the same questions you asked their client districts before the interview, plus, of course, more. There is an unlimited number of questions a school board could ask to elicit the information it needs; a typical interview generally covers the following points:

What is your negotiating style?

- Negotiate alone or with other board members
- Demeanor at the table

What is the range of services that you offer?

- Analysis of current contract
- Analysis of union proposals
- Drafting of counterproposals
- Mediation and factfinding
- PERC representation
- Other litigation
- In-service program for administrative staff

What are your fees?

- Hourly, or flat fee
- Expenses and travel
- Billing procedures
- Reasonable estimate of costs for purposes of budgeting

What is the board's role in the negotiations process?

- Selection of board negotiating team
- Development of parameters
- Update meetings

Who will do the negotiating?

- The interviewee or other members of the firm
- Board member participation in the actual negotiations

How busy are you?

- Timely response to phone calls
- Availability for meetings and bargaining sessions

What is your track record?

- Document results for client districts, including settlement rates, contract language changes and salary guides

What is your involvement in salary guide development?

- Preparing guides for the board
- Experience in guide formulation

Additional questions, reflecting individual district's concerns, will also be asked.

The interviewees' responses to your questions will form the basis for your selection of the individual who is best suited to meet your district's needs; for example, if your district's salary guide is in need of serious attention, you most likely will want a negotiator who has expertise in that area. However, keep in mind that the most important factor in selecting your negotiator from a field of qualified professionals may well be an intangible quality: a style that is compatible with the board's and that encourages open communications and trust.

The Board and the Professional Negotiator

If you decide to hire a professional, what should be the appropriate relationship of the school board to the professional negotiator? The first point to remember is that this individual has been hired for his expertise and bargaining skills. The second point to keep in mind is that professional negotiators work for school boards. Professional negotiators do not impose their standards on a local school board. The balance has to be struck between the flexibility that a professional requires to do his job effectively and the interests that the school boards wish to protect.

A school board can ensure its adequate and timely involvement in the process by selecting a negotiating team

of perhaps three regular members (never a majority) who are representative of the thinking of the entire board concerning negotiations strategies and expected outcomes. Board members must recognize, at the onset of bargaining, that proposals are just that: suggested changes which cannot realistically be totally and completely incorporated into the next contract. In much the same way that it would be unimaginable to envision the entire union proposal package being included in the contract, it is likewise approaching fantasy to expect that to happen to all the board's proposals.

Don't expect your professional negotiator to perform miracles; do expect her to get results that will improve the operations of the school district. Don't handcuff the expert by demanding that he get everything and give nothing. Chances are little can be accomplished under those circumstances.

The negotiations specialist is working for the school district, and requires its continued support and allegiance to perform effectively. Avoid any temptation to undercut your professional negotiator by dealing directly with the union without his knowledge or by making overtures of one sort or another in an effort to arrive at a quick settlement. These efforts, however well intended, are doomed to failure and set an intolerable pattern for future negotiations.

Both the school district and the professional negotiator have a mutual need to maintain a genuine and open relationship. The negotiator looks to the school board for its guidance about bargaining expectations and should note to the board, whenever appropriate, the disparity

between these expectations and realistic bargaining outcomes. Moreover, school boards must clearly know the financial picture and must establish the framework within which a final settlement can be made. Both must be conveyed to the professional so that his/her ability to work on behalf of the board's interests is unimpaired. Simply stated, never mislead your specialist by withholding information on a position.

In return, a school board should expect full disclosure from its specialist concerning the direction of negotiations. Communication between the client district and the professional must be ongoing. It must engender mutual support and confidence, and must convey the message to the other side that the school board is united in its resolve to conclude an early satisfactory agreement.

Perhaps the most sensitive area in negotiator/school district relations is the negotiator's fee and the cost to the board for services rendered. Professional negotiators' fees vary; generally they are based on an hourly fee, with extra charges for travel time and additional expenses; some negotiators offer a "flat" or retainer fee which covers the year or the entire round of negotiations. Regardless of the fee structure, which saves the board time and aggravation, the professional performs an expert service for the board and is entitled to some measure of profit. The board, on the other hand, is not only the recipient of expertise but is also making an investment which will bear dividends. These dividends should take the form of improved employee-employer relations, better school management and financial savings for the board of education.