



THE “WIN-WIN” MODEL: LEARNING FROM EXPERIENCE

In the last few years, a number of New Jersey boards have used the “Win-Win” model¹ to negotiate their successor agreements with varying degrees of satisfaction. Some participants, reporting a quick settlement reached through an easy and comfortable process, enthusiastically endorse the model and its future use. Other participants, strongly critical of their experience, find that the process was not helpful in reaching a satisfactory settlement. And still others, while reaching an acceptable contract, are reluctant to repeat a process that, in hindsight, is seen to have been unexpectedly difficult.

Surrounded by conflicting reports, boards that remain intrigued by the possibility of a new approach to bargaining want broader assessments of the “Win-Win” experience. They want to know whether boards’ overall experience with the “Win-Win” model suggests approaches that boards can follow to assure an easier way to reach an acceptable new negotiated agreement.

Experience with the new model clearly shows that “Win-Win” negotiations is not easier than “traditional” bargaining. Rather, collaborative bargaining requires boards to be especially and uniquely well-prepared to understand the process, the issue of conflict, the role of the board and the team, as well as the short and long-term implications of the issues under negotiations. Experience further shows that the board’s thorough preparation, and not the process, is the ultimate determinant of the quality of the resulting settlement. This article will highlight the elements that have been proven to be essential to boards’ ability to protect their district’s interests in “Win-Win” bargaining.

Understanding Collaborative Bargaining

An essential cornerstone of successful “Win-Win” negotiations is an understanding of what collaborative bargaining involves. As you consider the use of a “Win-Win” approach, it is important to understand what collaborative bargaining can, and cannot, achieve.

“Win-Win” Is a Process

Collaborative bargaining is simply a process that is used to reach the same goal as any bargaining model: a negotiated labor contract. As a process, “Win-Win” bargaining establishes its own procedures that differ from the “traditional” approach and that are specifically structured to change the parties’ interaction during negotiations. In fact, the “Win-Win” model has sometimes been observed to be a structured example of behavior modification.

The “protocols” of the process essentially establish new ground rules for the parties’ bargaining. The rules replace the parties’ old expectations and past automatic approaches and responses to bargaining. Rather than requiring the expression of firmly held convictions and the planning of strategies to elicit desired responses, the rules require the parties to cooperatively frame acceptable resolutions to their mutual problems. In short, the rules establish standards and expectations for behavior. The parties’ selection of the model and their acceptance and compliance with the protocols change their mindset, their expectations and their conduct during negotiations. As such, the process changes the dynamics of the parties’ old interactions.

Keep the Process in Perspective Undertaking a new process and observing tangible evidence of new and more comfortable bargaining behavior can be very exciting and rewarding. Frequently, the satisfaction of seeing a changed atmosphere in the bargaining room fuels the parties’ commitment to work through difficult issues. Sometimes, however, one or both of the parties are propelled by their financial and time commitment or by their resolve to be in the forefront of a new “avant-garde” trend. Their commitment to make the process work and to reach a settlement by the established deadline becomes the driving force in their negotiations. While a desire to reach an agreement is important in all negotiations, it can be the script to a district’s “lose-lose” scenario if that resolve simply involves a commitment to have the process succeed without considering the result of the process.

¹ For a description of the “Win-Win” model, please see the article “In Search of An Alternative Approach To Negotiations” in the Selected Topics Affecting Negotiations section of *The Negotiations Advisor*.

Boards must therefore be prepared to keep the process in perspective. They must respect the structure of the process they have selected and work hard to have the process yield a negotiated agreement. However, all participants in “Win-Win” must also guard against “falling in love” with the process. An over-emphasis on the process leads to a tendency to protect it, at all costs, even at the expense of the terms of the settlement and its implications to the district’s ongoing labor relationship.

The Outcome: The Contract and the Ongoing Relationship

A process is a means of reaching a desired goal. The goal of the “Win-Win” model is for the parties to reach a new contract within the time frame established by the protocols. Thus, the success of the “Win-Win” model is generally measured by the parties’ ability to meet this goal. However, it is important for “Win-Win” participants to remember that their agreement, and their labor relationship, will remain governed by New Jersey’s labor law.

The Contract Remains a Legal Document A negotiated contract, whether reached through “Win-Win” or the traditional model, is a legally binding document. The process used to reach agreement cannot, and does not, change the legal foundation of the negotiated document.

Sometimes, boards and administrators who have been most satisfied with the process of reaching agreement through “Win-Win” become sadly disappointed and disillusioned when grievances and requests for binding arbitration crop up, just like the old days, under the new contract. They frequently feel that their association’s pursuit of grievances is a bad-faith repudiation of their new collaborative interaction. Yet, the process does not affect employees’ and associations’ legal right to initiate grievances. And, since the PERC Law requires each contract to have a grievance procedure and mandates binding arbitration of school employees’ grievances over discipline, binding arbitration during the life of the contract will remain a fact of life in New Jersey’s school districts, regardless of the process that was used to reach agreement.

Further, the process used to negotiate the agreement does not, in any way, affect the legal framework governing negotiations and labor relations in New Jersey. Questions over the scope of negotiations and arbitrability, as well as unfair practices under the PERC Law, can and do continue to emerge during the life of a contract negotiated under the “Win-Win” process.

Boards considering “Win-Win” must keep in mind that the model will not change their employees’ rights under the law or the legal nature of the negotiated agreement. The contract remains a binding document. It is therefore most important that boards not lose sight of the importance of the terms of the agreements that are reached through “Win-Win.”

The Terms of the Contract and the Ongoing Relationship Negotiated provisions affect both the district’s operations and its ongoing labor relationship. Thus, boards

and associations must always give serious consideration to the implications of any agreement that will be codified in a written contract.

A contractual clause over terms and conditions of employment is binding upon boards of education, until the clause is amended or deleted as a result of future negotiations. Regardless of their unanticipated negative impact, a district will remain obligated to administer unfavorable clauses that unexpectedly reduce the administration’s flexibility or that result in unforeseen expenditures. Yet, contractual provisions that address illegal topics of negotiations, or that waive employees’ rights under the law, are not legally enforceable and can be nullified during the life of a contract. Ill-advised agreements to obstructive or illegal provisions are always sources of future difficulties, regardless of the process used to reach agreement. However, unanticipated difficulties with contract terms reached through “Win-Win” have tended to be far more disruptive to the parties’ ongoing relationship.

Midcontract disputes that arise after the use of a new approach to bargaining are frequently interpreted as evidence that the other party used the collaborative process as a subterfuge to obtain concessions that would not have been otherwise available. There is a tendency to believe that, while giving lip service to cooperation and mutuality, the other side deliberately withheld its knowledge that the clause would hold damaging consequences, or could not be enforced, in order to benefit its own interest. Inevitably, suspicion of the other’s underlying motivation leads to an affirmation that “those people simply can’t be trusted” and a conclusion that the attempt to find a common ground was a foolhardy, and expensive, exercise. Thus, inattention to the contents of the contract leaves the parties with a long-term “lose-lose” outcome.

Boards that are considering “Win-Win” must understand that the model is a process designed to foster collaboration, trust and mutual respect. Yet, boards cannot forget that a long-lasting collaborative and trusting relationship can only be built through a negotiated agreement that continues to protect their short and long-term interests. Thus, boards must be well-prepared to understand and handle the “Win-Win” process as well as its outcome.

Preparing for the Process

Boards considering a collaborative approach to bargaining need to understand the process they will be accepting. False or unrealistic expectations can set the stage for a disappointing board experience and a “lose-lose” scenario that will damage the district’s ongoing labor relationship.

In preparing for the process, keep in mind that there are a number of different approaches to “Win-Win” bargaining. However, New Jersey’s experience with a structured collaborative style is almost exclusively based

on the use of the model described in *The Negotiations Advisor* article “In Search of An Alternative Approach to Negotiations.” Almost all New Jersey districts that have engaged in a formal approach to collaborative bargaining have relied on variations of that model. As such, the observations that follow are based on the specific structure of the “Win-Win” model.

Be Prepared for Conflict

“Win-Win” bargaining does not, in any way, reduce the conflict that is inherent in negotiating terms and conditions of employment. Regardless of the model that is used to reach a negotiated agreement, labor and management will continue to bring their inherently different perspectives to the bargaining process: unions will continue to seek more benefits for their members and employers will continue to seek cost effectiveness and administrative flexibility. These equally legitimate viewpoints of each organization will continue to be expressed, in various ways, during the “Win-Win” bargaining process as well as during the administration of the contract reached through the collaborative model.

Frequently, however, parties who are searching for a “better way” to negotiate a contract are basically seeking to avoid their discomfort with the underlying conflict that exists, to various degrees, in a labor/management relationship. Bargaining teams who embrace the problem-solving process as a way of disposing of the conflict will, predictably, be disappointed and dissatisfied with their “Win-Win” experience. These teams are ill-equipped and unprepared to deal with expressions of conflict which are likely to emerge during various stages of the process, particularly the final stages of negotiating compensation.

Almost all participants in collaborative bargaining, in New Jersey as well as in other states, report that when the issue of the economic settlement was addressed the process began to look and feel like the “old and traditional” way of doing things. Frequently, other issues like work time and accountability can also become contentious. This is a natural and unavoidable aspect of negotiating terms and conditions of employment. “Win-Win” participants must therefore be prepared to face adversarial positions and to respond appropriately.

Be Prepared to Manage the Conflict It is important to remember that “Win-Win” trainers do not promise the elimination of conflict. What they are promising is a process to manage the conflict. That process is based on mutual respect and open discussions of the problems to find a mutually satisfying and acceptable solution. “Win-Win” training also stresses that collaboration does not mean capitulation. In other words, it is expected that each party will remain the advocate of its constituents’

interests and will not accept a solution that will damage its underlying needs. However, this fundamental principle of collaborative bargaining is frequently the most difficult element of a “Win-Win” approach.

Many new “Win-Win” participants tend to focus almost exclusively on communicating cooperation and goodwill. They are reluctant to express the strength of their differences with the interests expressed by the association for fear that they will be seen to be adversarial rather than collaborative. They are also reticent to communicate the extent of the boards’ commitment to certain important interests, like containment of insurance costs, which they know will meet with strong union opposition. Untrained in communication techniques, they do not know how to express their disagreement without fear of sounding disagreeable.

These board teams soften the expression of their concerns and try to manage the conflict through avoidance. Thus, the board’s uncommunicated needs cannot be addressed in the resolution reached by the parties, and while the process may result in a settlement, the new contract will not be designed to protect the board’s fundamental concerns. Predictably, these boards will soon feel that they were used and abused by the association during negotiations. To avoid this “win-lose” scenario, board teams must fully understand the meaning of cooperation.

Collaborating Without Capitulating Boards that participate in “Win-Win” cannot avoid their responsibility to protect their interests. They need to understand that collaboration means respecting the legitimacy of the other party’s needs without neglecting or abandoning their own needs. They need to be prepared to fully present the board’s interests honestly and openly and to reject proposed solutions that fail to consider the board’s needs and constraints.

It is important for board teams to remember that what they have to say should never be a problem. Rather, it is essential that all of the board’s underlying concerns and interests be expressed fully in all bargaining models. Yet, problems can arise in the way in which the board expresses its needs. Thus, a board’s bargaining team must become familiar and comfortable with communication styles that permit expressions of differences without hostility or aggression.² They must become skilled in identifying their needs and in communicating their objections to a solution that does not address their underlying needs and does not improve the contract’s current problems.

Without this preparation, boards’ underlying needs will neither be expressed in negotiations nor addressed in the final contract. Without this preparation, boards will fail to communicate their concerns with contemplated solutions and are more likely to agree to inadvisable

² Different methods of collaborative bargaining place different emphasis on communications training. The Harvard Model focuses almost exclusively on this type of training while the “Win-Win” model used by most boards spends relatively little or no time in developing communication skills. Boards should discuss this aspect with the various consultants and determine their needs, and means, to obtain this essential training.

contractual terms that will predictably result in a damaging contract and a damaged labor relationship.

Be Prepared to Represent the Board

For a number of legal and tactical considerations, districts' bargaining have been deeply grounded in the delegation of bargaining to representatives of the respective parties. Thus, a board's bargaining team is given the authority to negotiate a tentative agreement, but the ultimate authority to accept, or reject, the agreement rests with the full board of education. Boards participating in "Win-Win" must be aware of aspects of the model's protocol that can disturb this strong practice.

The Selection of the Board's Bargaining Team

Occasionally, the protocols of a "Win-Win" model suggest that the full board should participate in the process.³ Boards need to consider whether this arrangement supports the board's needs. Districts' established practices generally require ratification of the tentative agreement by the board and the members of the association. If the full board sits in the "Win-Win" circle, then board ratification of the tentative agreement is automatically guaranteed by the presence of the majority of the board. However, the members of the association continue to retain their right to reject a tentative agreement that does not meet their expectations. This results in an uneven ability to influence the settlement that can be most disadvantageous to boards.

There also are negative practical implications in having the full board involved in the "Win-Win" model. Planning two weekends to fit the schedule of all board members can present great difficulties. More importantly, all board members' involvement in the intense time frame of the committee work can virtually preclude board members from attending to other board business. Board members who are not on the team can sit as observers during the communication and negotiations weekend. Some can also serve as resources to the committees' deliberations. It is, nevertheless, advisable to keep a numerical minority of the board as the main participants in the "Win-Win" model.

In addition, the protocols of the "Win-Win" model generally require the parties to designate, early in the process, the individuals who will participate in bargaining. At that time, it is important for the board to assure that the superintendent and business administrator (or other key administrators) will be available to assist the board team at all stages of bargaining. It is also most advisable for boards to retain their ability to bring in resources, including a professional negotiator or their attorney, at any time during the process.

The Communications Weekend Communications in

collaborative bargaining are intended to disclose the parties' underlying needs and interests. In the "Win-Win" model, the structure of the communications weekend, which permits everyone to speak, encourages open communication. Occasionally, board members have interpreted the absence of a designated spokesperson as a signal that they are free to express their own individual opinions on any issue under discussion. However, this interpretation ignores the underlying reason for the session: the negotiations of the board's contract.

While sitting in the communications circle, board members must keep in mind that they are representing the board and the board's interests. Their own individual perceptions and reactions must be tempered by the board's direction. Thus, if an individual team member is personally opposed to the board's desire to change the district's benefit package to contain the costs of employment, that team member is still obligated to explain the board's needs. During board meetings, that individual board member remains free to express her opinions and attempt to change the board's direction. However, during the communications weekend, that board member must be committed to presenting and explaining the board's consensus.

Communications with the Full Board The protocols of the "Win-Win" model can also include an agreement to confidentiality that restricts communication during negotiations. While this protocol is similar to the common "news blackout" ground rule of traditional bargaining, it has sometimes been interpreted to preclude communication with the rest of the board. From the start, boards must insist that this rule cannot be read to limit their ability to communicate with the board during the "Win-Win" process.

The team's ability to communicate with the full board during "Win-Win" bargaining is essential. The opportunity to share with the board the concerns and interests expressed by the union is important to the board's ability to reassess its direction and to reexamine its range of acceptability. Waiting until the tentative agreement has been reached can result in a divided board, or worse, a rejection of the team's settlement.

Understanding the Role of the Facilitator The "Win-Win" model usually involves a facilitator whose primary function is to guide and protect the process by assuring the parties' adherence to the ground rules. The facilitator coordinates sessions, guides the parties' exchange during the communications weekend, and is available to answer process questions that may arise during the committees' work. During the negotiations weekend, the facilitator keeps track of the agreements reached by the parties and, at some time, the facilitator may begin to function as a mediator to assist the parties reach agreement on the more difficult issues.

³ Keep in mind that board members who have a conflict of interest under the School Ethics Law are also excluded from participating in any aspect of "Win-Win" negotiations. For a full discussion of the School Ethics Commission's definition of who cannot participate in negotiations, please turn to the article "Impact of the School Ethics Act On Negotiations" in the References section of *The Negotiations Advisor*.

It is important for boards to remember that as a mediator, the facilitator will be singularly focused, like all mediators, on reaching agreement. At that time, the facilitator's function is not to protect the parties' interests—it is simply to help the parties reach an agreement by the designated deadline. In that task, the facilitator will, like all mediators and factfinders in traditional bargaining, use a variety of tactics that may be productive in breaking the parties' resistance and yield a settlement. Yet, like all other mediators, the facilitator does not have the authority to impose a settlement on the parties. Therefore, the terms of the "Win-Win" settlement, like that reached in traditional bargaining, remain the parties' responsibilities. It is thus not surprising that experience with "Win-Win" reaffirms the importance of the board team's thorough preparation to understand the issues and the implications of including possible resolutions in a negotiated agreement.

Preparing for the Bargaining Issues

It has often been said that all successful negotiations are based upon thorough and careful preparation that is designed to provide negotiators with a thorough understanding of all the bargaining issues. This same preparation remains critical in the "Win-Win" model.

The process of preparing to identify boards' bargaining needs does not change because of a change in the district's approach to negotiations. The analyses of the provisions of the contract and of the salary guide, the costs of the current agreement, consultation with the administration, the identification of the district's needs and of contractual changes that are necessary to a more effective and efficient administration of the district remain necessary and productive steps in preparing for bargaining.⁴ However, participation in the "Win-Win" model requires some additional considerations.

The Importance of Established Board Parameters

A negotiated contract is a board policy governing terms and conditions of employment. As such, the team's negotiating effort must be guided by the areas of change identified by the consensus of the full board. Sometimes, boards that have participated in "Win-Win" have lost track of the need for the full board to establish parameters for the new settlement. Perhaps certain aspects of the "Win-Win" model suggest that collaborative bargaining eliminates the importance of board parameters; however, it is important to remember that the full board has the authority to ratify, or to reject, a tentative agreement. Therefore, it is important to assure that the role of the full

board⁵ is not compromised by the "Win-Win" process.

Board parameters establish the board's direction for negotiations; parameters thus reflect the board's definition of what components are necessary to an agreement that can obtain the board's ratification. Since the "Win-Win" settlement is said to be based on the framing of mutual solutions, rather than the acceptance of one party's position, some board participants in the model have concluded that board parameters are irrelevant. This is a serious error as a board committee participating in "Win-Win" bargaining must have a sense of what would be acceptable to the full board. In other words, that board team needs board parameters.

Parameters in "Win-Win" Board parameters in "Win-Win" bargaining are likely to require a broader definition than those set in traditional bargaining. For example, the flow of traditional bargaining generally develops as a result of modifications of initial proposals. Thus, if a board had identified the desire for a longer work year, the board's initial proposal could have sought to increase the length of the school year by six additional days, even though the board's "bottom line," or its parameter for this issue, was set at two additional days.

In "Win-Win," the board's identified need for the longer work year will be framed as a question, such as "What can we do to assure more time for instruction and for in-service?" The resolution of that board interest would depend on the parties' ability to agree to a mutually acceptable solution. Yet, in order to reach an agreement that will ultimately be acceptable to the full board, the team in "Win-Win" still needs to know the board's identified need in this area. Is the board and the administration seeking more instructional days or more in-service days? How many days are absolutely necessary? And how important is this change to the district's educational program? This guidance is necessary to the team's ability to participate meaningfully in the development of a mutually acceptable solution. Thus, board parameters are an important aspect of preparing for the contract that will be negotiated by the "Win-Win" model.

Direction from the board remains essential in "Win-Win" bargaining. That direction, however, can be most helpful if it is framed in terms of the board's needs, rather than its "wants." In general, board parameters must give the team room to negotiate. "Win-Win" parameters, in particular, must give the team room to find solutions and, generally, those parameters cannot dictate an absolutely firm position. The one exception to this rule occurs when the board's interests mandate an all-out rejection of a particular association concern. For example, if a board cannot accommodate the association's interest in a longer lunch hour, or has an adamant philosophical opposition to the union's interest in negotiating an agency shop

⁴ The Bargaining Skills section of *The Negotiations Advisor* contains a number of articles delineating the necessary elements of preparation, including "Preparing For Bargaining: A Plan," "The Role of Administrators in Negotiations," and "Bargaining Parameters."

⁵ For a discussion of the board's role in negotiations, please see the articles "A Board Policy on Negotiations" and "The Full Board's Responsibility in Negotiations" in the Bargaining Skills section of *The Negotiations Advisor*.

provision, then the board's parameters in these areas would clearly indicate that there is no intent to agree to solutions in these issues. However, in other areas, the board would identify the board's needs that must be considered and protected in any acceptable solution. At all times, however, the board's parameters must be defined, from the start, in terms of the board's identified needs.

Early Identification of the Board's Needs Ultimately, all board parameters reflect boards' underlying needs. Yet, in traditional bargaining, the focus on needs develops and evolves as the bargaining process unfolds. As the slow give-and-take of the traditional process progressively reveals the possible as well as the unachievable, the parties continue to reexamine issues that have become familiar and well-understood and gradually come to identify the underlying needs of their positions. With the "Win-Win" model, however, needs identification must be an early and deliberate process. From the start, boards must look beyond the tangible surface of their desired changes to identify why their districts' circumstances require new contractual terms. This is generally a complex and time-consuming analytical process that can only be achieved by a full understanding of the issues.

Early Preparation

Traditionally, boards begin to set their groundwork for bargaining way before the first negotiations session. However, in traditional bargaining, boards have the time to continue to gather information and refine their assessment of their needs throughout bargaining. Negotiations that span a number of months, and includes meetings scheduled many weeks apart, provide an opportunity for further research and analysis. However, a "Win-Win" model that is based on a tight timeline for settlement requires boards to be far more prepared at the on-set of negotiations.

Experience has shown that the compressed time frame of the "Win-Win" model, which typically requires a settlement to be reached within four to six weeks of the communications weekend, often precludes or complicates the board's ability to obtain additional information or to engage in careful deliberations of the issues. For example, one board whose scheduled "Win-Win" process coincided with an incredibly hectic board schedule, including a difficult budget development, found it difficult to schedule discussions of the board's parameters and entered into the final negotiations weekend without a good sense of what would be ultimately acceptable to the full board. Another board found that the time set for committee meetings did not provide either party with sufficient time to fully understand the complexities of the issues before them. Thus, boards participating in the "Win-Win" model must be well-prepared to understand their own needs before they begin their negotiations. This is particularly essential when boards do not have the benefit of a

professional negotiator's expertise during the committees' deliberations or during the negotiations weekend.

Achieving a Thorough Understanding of the Issues

The slow pace of traditional bargaining permits the parties to have an evolving sense of the issues, their importance and their implications. The fast pace of "Win-Win" bargaining requires that the parties approach their committee work with a fully developed understanding of their issues.

For example, a board that has an interest in containing its costs of insurance will want to have access to available alternative approaches to providing the benefits, different levels of coverage and their concurrent costs, before its committee work. Having this information available may require contacting a number of insurance carriers, or an insurance consultant, before the committee even begins to address the issue of health insurance. Waiting to request the information until the committee deals with the issue may result in the inability to gather and assess all the possible options before the scheduled negotiations weekend. A lack of information can thus prevent consideration of the best alternative. Obtaining the information that can be anticipated to be helpful in finding solutions before the committees begin their work is important to achieving a thorough and timely understanding of the issues.

Keep in mind that in all negotiations, including "Win-Win," parties raise concerns that may be of little importance to the final settlement and that will eventually disappear from discussion. While the time frame of the "Win-Win" model complicates the identification of these non-essential issues, board members need to remain alert to the issues' differing degrees of importance. Discussions held during the communications weekend, as well as the agenda set by the committees, can be good indicators of the importance of the association's issues. Discerning the important concerns from the "non-issues" is always essential in anticipating the settlement; in "Win-Win," it also can help a board to focus its preparation, research and analysis to the areas necessary to the agreement.

Assessing Implications of Solutions

Committee members need to understand the board's interests in all areas that will be discussed. They also need to be sensitive to the implications of possible solutions to the district's operations. What will be the impact on scheduling if prep time is guaranteed in the contract? Is it really true all other elementary districts provide a daily guarantee of prep time? How do they provide student coverage? Are their approaches appropriate to our district? Many questions can be answered by an administrator who is a member of the committee; however, some questions will require additional research that goes beyond the district's own experience.

It is essential that the board committee members obtain as much information about the issues under consideration before the committee adopts a proposed solution. If a solution appears to be acceptable, but requires additional verifying information, then it would

be advisable to table a tentative agreement, pending additional research and consultation.

In addition to gathering and analyzing data, a board may also need to consult with its legal and labor relations resources before reaching a committee agreement. Assuring the legality of a possible solution and assessing its potential impact on the district's operations is an essential step that must be taken before there is an agreement on the issue. Experience shows that in "Win-Win," as in any other approach to negotiations, boards should never agree to a contractual clause which they do not fully understand.

Understanding Comparative Data As in all negotiations, the "going rate" will be a consideration in "Win-Win" bargaining.⁶ In fact, in some districts, "Win-Win" has elevated the importance of comparative data as some settlements have been based on a formula that includes, among other factors, other districts' settlement rates. Districts considering reference to an average settlement rate must clearly obtain an early understanding of the complexities of relying on comparative research.

First, while an average settlement rate reflects a number of different factors, it does not reflect the average cost of the settlement to boards of education. For example, a high settlement rate could have been accompanied by a significant economic give-back in another area of that district's total compensation package; the high rate, but not its offsetting savings, would thus be reflected in the formula. In addition, in the 1990s, settlement rates have dropped in every year; relying on settlements reached when the going rate was higher, will be disadvantageous to a board of education. Finally, a settlement rate that is driven by other districts' settlements ignores each district's unique circumstances and resources. Understanding all of these factors can help boards inclined to use a formula to design an approach that addresses these difficulties. For example, some boards have limited the settlements used in the formula to those reached within a defined period of time; other boards have achieved greater control of the outcome of the formula by placing a cap and a floor on the result of the formula.

Boards participating in "Win-Win" have had another frustrating experience with comparative data. Most, if not all, "Win-Win" settlements occur relatively early. When a "Win-Win" negotiations weekend occurs, there are few, if any, new settlements for the upcoming school year. Those in place, establishing the average increase for the upcoming school year, are contained in multiyear contracts that were negotiated two or three years ago and thus do not reflect current economic conditions and restraints. Thus, the board team must fully understand the available data and be prepared to assess its applicability and relevance.

In collaborative bargaining, preparation remains essential to a board's successful negotiations of a new contract. When a "Win-Win" model is based on an abbreviated and compressed time frame, it is important that boards become well-prepared and well-informed before the onset of committee meetings and the negotiations weekend. Timely and thorough preparation assures that boards will not agree to any provisions that they do not fully understand. Boards will be well-served to remember their need for early and thorough preparation and to schedule their "Win-Win" process appropriately to provide sufficient time for the preparation that is so essential to successful negotiations.

Learning From Experience

Districts' experience with "Win-Win" bargaining suggests that the model does not guarantee easier or more successful negotiations. Rather, experience tells us that the most important factor affecting the outcome of negotiations is not the process that is used but what the parties bring to the process. Boards that wish to ensure that their negotiated agreement continues to build on mutual trust and cooperation must be prepared to manage the inherently different perspectives of labor and management within New Jersey's legal framework. They must be ready to understand the process and to manage the protocols and the compressed time frame of the "Win-Win" model. They must be ready to identify underlying needs and participate in mutual solutions that protect those needs. And they must be ready for the intense and complex preparation required to negotiate effective terms and employment.

Boards that believe that the structure of the model is an essential element to modifying their districts' past conduct of negotiations must carefully assess their ability to meet the challenges of the "Win-Win" model. They must also assess whether their district's environment is conducive to the model. Both boards and their associations need to consider, separately and together, their desire for change and the ability of the process to meet their fundamental goals. Generally, a collaborative approach to bargaining works best in a district whose daily operations are marked by existing trust and cooperation between the parties. Collaborative bargaining can build upon emerging elements of cooperation, but it is not a magical catalyst that can change the pervasive distrust and hostility of a district's environment.

Occasionally, the parties' motivation to pursue collaborative bargaining to increase a district's emerging trust level may work, if the effort is supported by a strong majority on all sides and is headed by skilled and sophisticated participants. A good indicator of the

⁶ For a full discussion of comparability data, please see the article "The Pitfalls of Comparability Research" in the Bargaining Skills section of *The Negotiations Advisor*.

potential success of that possibility may be found in the amount of support that each party brings to the new process. Support of only a slight majority of a board, or of an association, is likely to be an early warning that the district does not have the critical mass necessary for a change in environment. In addition, the knowledge that a large number of the membership is skeptical of the process, and is likely to argue that a better contract could have been achieved the old way, tends to chill the representative's ability to cooperatively agree to significant changes.

Whether the "Win-Win" model is a viable alternative approach to negotiations is a decision that must be made

by each board, based on its own district's needs and the knowledge gained from other boards' experiences. Many boards have determined that their traditional approach to bargaining has always been marked by mutual respect and a focus on the parties' commonality. A number of other boards have decided to incorporate many of the principles of collaborative bargaining into their traditional approaches to negotiations. Whatever the decision, experience with the "Win-Win" model has emphasized districts' appreciation that school negotiations must always be based on preparation, cooperation, trust, and mutual problem solving.