



COLLECTIVE BARGAINING AND EDUCATIONAL EXCELLENCE

A new school year brings renewed hope to those concerned with improving the quality of education—that children will learn more through the increased effort of those responsible for providing quality education. School board members, administrators, teachers, and parents all hope to join together to achieve their common goal—educational excellence.

Unfortunately, many obstacles exist to achieving this goal, and several prominent ones arise in the context of negotiations between school boards and their organized employees. The collective negotiations process is not geared to promote quality education; rather, it is a decision-making process which is designed to establish employees' terms and conditions of employment. As such, school employee unions will seek to advance and protect the economic and personal interests of their membership. Frequently, however, bargaining concessions have a direct and adverse effect on the quality of the educational program.

A quick look at several negotiable areas can illustrate how collectively negotiated agreements can implicate districts' ability to provide a quality educational program. Boards of education's awareness of the potential impact of negotiated agreements on their local educational program can alert them to keep in mind their instructional and educational goals as they prepare their bargaining proposals and consider their responses to union positions.

Paid Time Off During the Regular School Day

Paid time off during the regular school day takes on many forms: preparation time, duty-free lunch, half-days off to allow for in-service programs or parent-teacher conferences, released time granted to certain extracurricular advisors, union leaders, mentors, and members of curriculum development committees. Although this paid time off may serve legitimate and desirable purposes for both the teachers and the district, it denies students more contact time with their teachers. Proposals to increase time away from students directly translate into less student-teacher contact time, a key factor in achieving quality education.

Boards must therefore carefully balance their districts' need for instructional time with the value of the release time. If inclined to agree to additional time off, boards must assure that the release time is used for its intended purposes. For example, preparation time reduces student-teacher contact time but it can contribute to the quality of the educational program by providing teachers with structured time to prepare lessons or to confer with the Child Study Team, supervisors, and parents. However, if the contract, or the district's practice, simply allows this time to be a "duty-free" period in which the teacher is free to leave the building or to engage in activities not related to professional duties, the educational value of the release time has been lost; the district's prep time no longer contributes positively to the school's educational program. Similarly, if members of the curriculum development committee are automatically released from their classes one afternoon a week, regardless of the committee's activities, this time off is unrelated to the district's educational program. Carefully drafted board proposals and counterproposals can diminish the adverse effect of paid time off during the school day.

Paid Days Off During the Normal School Year

This kind of paid time off again denies students access to their most valuable resource—their teachers. The granting of additional sick days beyond the statutory minimum or the unrestricted use of personal days reduces the total amount of time that teachers spend with students. The simple fact is that if days off are available, they will be used. Substitute teachers generally do not and cannot provide the same continuity of instruction that the regular teacher obviously provides.

Monitoring cases of sick leave abuse and taking appropriate action, when necessary, is one way of reducing the incidences of staff absenteeism. If, however, teachers may take three personal days each year without a contractually stated purpose and without giving reasons, the likelihood is that many teachers will use most, if not all, of these days. Well-defined personal leave clauses can eliminate or reduce unnecessary staff absences which interfere with educational continuity.¹

¹ For a full discussion of this topic, please see "An Analysis of Personal Leave" in the Selected Contract Clauses section of *The Negotiations Advisor*. Also see "Addressing Staff Absenteeism" in the Selected Topics section of *The Negotiations Advisor*.

In addition to these most common paid days off, many teachers' contracts provide for additional days off for a variety of reasons including school visitations and attendance at professional meetings. These days off may be warranted but, again, if the contract does not provide for administrative approval, these absences may not benefit the district's educational program. Boards can assure that "professional" absences contribute to staff development by negotiating procedures which guarantee the administration's right to approve all professional absences and which require the teacher to report the experience to the principal and/or to the staff.

Contractual days off during the school year may be necessary in teachers' personal and professional lives. However, boards should carefully consider the total number of paid days off provided by their contracts and their contractual ability to control these occasional absences. Your ability to provide a continuously strong instructional program may be hampered by contractual provisions which do not recognize the district's need for staff presence.

Limitations on Instructional Time

Work load is a well-established mandatory topic of negotiations: the number of hours per day that a teacher can be assigned to instruct students; limitations on consecutive hours of instruction and the number of different teaching preparations that can be assigned are all negotiable work load issues. Many school contracts in New Jersey contain some, or all, of the above limitations on instructional time. PERC has held that these types of clauses primarily affect teachers' work and welfare and, as long as they do not represent a significant interference with the school board's ability to carry out its educational program, the clauses are legal and enforceable.²

Boards that find that contractual provisions or binding past practices place unfavorable limitations on instructional time can seek to negotiate changes in existing terms of employment. For example, a board whose contract establishes a maximum of five instructional periods per day has a variety of options to eliminate, or modify, the restrictive language. These options range from a complete deletion of the restrictive language to an agreement to provide additional compensation for any teacher who is assigned a sixth teaching period.³ Within this range, there are a number of options that do not require additional compensation, such as: agreement to a rotational schedule of an involuntary assignment of a sixth period among qualified staff so that no teacher is assigned an additional instructional period for more than one school year; or an agreement that limits the number of staff that can

be assigned to an additional period at any one time. The chosen alternative will depend upon the board's current and future need in the area as well as its ability to persuade the union of the importance of achieving movement in this important area. (See discussion on Allocation of Existing Financial Resources later in this article.)

Length of the School Day and School Year

While the student calendar is a nonnegotiable topic, the length of the teachers' workday and work year, beyond 180 days, is mandatorily negotiable. Obviously, the negotiated teacher day and teacher year affects boards' ability to schedule student instruction. Teachers' unions have traditionally sought to reduce both the length of the workday and the work year. This bargaining posture is a legitimate position for a union who is at the table to provide improvements in its membership's employment conditions. However, boards of education have other concerns.

Boards must consider their ability to provide a quality educational program within the confines of the negotiated workday and work year. Is there enough instructional time to deliver a sound educational program? Would a longer day, or year, improve student learning or permit enrichment of the curriculum? Is there sufficient instructional time but insufficient time for in-service? The answers to these questions can help local boards determine their need to propose an increase in the length of the workday and/or the work year.

Many boards that have given high priority to their identified needs for longer school days or school years have been successful in obtaining negotiated increased teacher work time. These achievements include cross-the-board increases in the length of the teacher workday and/or work year, as well as specific increases in work time to address particular concerns such as more days for inservice or longer days for teachers in selected district buildings, such as elementary or high schools, where more time was necessary.

In addition, districts have also been successful in negotiating flexibility in the length of certain teachers' workday. To eliminate pull-out programs and to enrich curriculum offerings, boards have negotiated staggered work hours for some staff to permit scheduling of some classes before, or after, the normal student and teacher workday, without additional compensation.⁴

Achieving an increase in teachers' work hours requires skillful negotiations and may involve board concessions on other issues. However, if the additional instructional

² See, for example, *Ramsey Board of Education*, PERC No. 85-119, 11 *NJPER* 16134.

³ The issue of additional compensation for additional work would be negotiable even if, because of compelling educational reasons, the assignment did not require negotiations. See, for example, *Hoboken Board of Education*, PERC No. 93-15, 19 *NJPER* 23.

⁴ Should the decision to stagger work hours be necessary as a matter of governmental or educational policy, the issue of compensation for the changes in the normal workday would remain a severable, mandatorily negotiable issue. *Hoboken Board of Education*, *supra*.

or inservice time is used wisely to improve the district's educational program, then negotiations have indeed been successful for the board. Given the realities of negotiations, the responsibility of assessing and improving the relationship between the instructional program and staff work hours rests with the board of education.

Allocation of Existing Financial Resources

Most people would agree that school employees deserve to earn a fair salary, with reasonable benefits and working conditions. The challenge is to accomplish this goal while also ensuring that valuable educational programs remain intact or are expanded. There is only so much money available, and how that money is divided among competing priorities is the dilemma that a school board faces.

Approximately seventy to eighty percent of a school budget is committed to employees' salaries and benefits. Much of the rest is linked to fixed costs, such as utilities, insurance, etc. An additional one percent salary increase could curtail or eliminate a valuable educational program as teachers may have to be laid-off to pay for this additional pay increase. That is the hard decision a school board, not the union, must make. Boards must, therefore, carefully review all their negotiated costs of employment to assure that, wherever possible, contractual expenditures enhance the district's educational program.

Boards' concerns with the costs of employment within the framework of limited resources must be communicated to the union. Linking increases of staff's contractual time commitments to concurrent increases in compensation has been a successful technique to obtain additional time without additional compensation.⁵ This approach, discussed at length in *The Negotiations Advisor* article on "Trade-Offs and Packaging," can be particularly successful when boards can convince the union that the community will be supportive of salary increases only if the settlement includes tangible evidence of the staff's increased commitment to improve the quality and quantity of the district's educational program.

Staff Development

One of the clearest connections between costs and educational improvements may be found in the area of professional development.

Tuition reimbursement, district paid attendance to professional workshops, sabbatical leaves, and horizontal movement on the guide in recognition of teachers' continuing education have become established conditions

of teacher employment. Teachers' unions frequently introduce proposals to initiate or to improve these accepted teacher benefits. Unions' desires to extend these benefits have increased with the state's required 100 hours of continuing education. Too frequently, boards have agreed to pay for individuals' development without a concurrent requirement that the activity be related to the teacher's function in the schools, improved performance, or to the district's needs. Yet, staff development provisions can be structured to enhance the teacher's effectiveness and the district's educational program.

Eligibility for tuition reimbursement and for sabbatical leaves can be conditioned on factors designed to improve the district's educational program.⁶ Similarly, negotiations can establish that only credits and/or activities deemed to be relevant to improving a teacher's function in the district will count towards future horizontal movement on the guide. Boards can also raise proposals that condition vertical progression through the salary guide upon continuing education, either in the form of approved workshops or formal coursework. Districts have successfully negotiated a variety of approaches to encourage continuing education, such as: establishing eligibility for incremental movement on a column of the guide that is conditioned upon satisfying a defined training requirement; or that limits advancement on the guide for staff who do not obtain additional coursework by providing a short BA column and progressively longer columns for additional approved coursework. These traditional "teacher" benefits can be designed to consistently benefit the students and the educational program.

Carefully drafted board proposals and counter proposals can reflect the board's commitment to support a program of staff training and development that is related to the district's goal of attaining educational and instructional excellence.

The Structure of the Guide and Securing High Quality Staff

Perhaps the key to improving the quality of education is to attract more qualified individuals to the profession. This can only be done if starting salaries are competitive. However, if boards do not participate in the distribution of moneys on the guide and ignore their starting salaries, they will be at a disadvantage in competing with other districts to attract quality staff.

Distribution of the negotiated settlement should also consider the board's ability to retain quality staff. The middle of the guide should not be ignored in favor of the most experienced teachers. To assure that the structure of the guide can meet the district's staffing needs, boards

⁵ For a district-by-district report of salary settlements that include additional time, please consult the "Settlements in Perspective" section of the NJSBA "Current Negotiations Data" available to members at the Labor Relations Page on NJSBA's web site at www.njsba.org.

⁶ Please see related articles in the Selected Contract Clauses section of *The Negotiations Advisor*.

should participate in guide construction. The distribution of moneys on the guide, like the total increase on the guide, is a negotiable topic; boards should not, by omission, waive their right to negotiate over this important issue.⁷ Boards may also wish to regain, through negotiations, the flexibility to place new hires on the guide in accordance with the district's educational and instructional needs.

Summary

Experience has shown that bargaining in public education has not been a means of improving public education. Indeed, negotiated agreements can have an adverse effect on the amount of instructional time and students' access to qualified instructors. Smart, hard bargaining on the board's side can minimize the possibilities of adverse consequences of the process.

Every union proposal should be evaluated in terms of its potential impact on your educational program. Your current contract should be reviewed and board proposals should seek changes to further educational excellence. Administrative practices, such as early dismissals for students, should be examined to see if they assist or deter the achievement of district educational goals; if these practices have risen to the level of a binding past practice, boards should consider bargaining proposals to change an undesirable pattern.

Collective bargaining was not intended to help children or to improve public education. However, while carrying out their bargaining obligation, school boards cannot forget their basic responsibility to provide their communities and their children a thorough and efficient system of education.

⁷For a discussion of salary guide construction, please consult the Salary Guides section of *The Negotiations Advisor*.