

Article from
American School Board Journal

*Common mistakes
in contract negotiations
and how to avoid them*

BETTER



BARGAINING

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NOTHING TEARS A COMMUNITY APART LIKE A TEACHER STRIKE.

Even the *threat* of teachers walking off the job can leave lasting scars. That's why collective bargaining is such an important part of American public education and is even required by many states to determine the salaries, fringe benefits, and other working conditions of many employees in school organizations.

But just because most school districts engage in collective bargaining doesn't mean they've learned to do it right. Many school organizations do not have adequate data to make informed decisions, do not develop sound bargaining objectives, and do not have a good bargaining strategy. As a result, board members and administrators repeat predictable mistakes.

These mistakes have serious consequences. Personnel costs in most districts account for at least 75 percent of total expenditures, and bargaining agreements often include provisions on such vital issues as pupil-teacher ratios, staff planning time, and other standards and practices that impact on the delivery of instruction and the content of the curriculum.

What are these common mistakes? Let's look at a baker's dozen:

1 Putting the board at the negotiating table. One of the most frequent blunders board members make is to do the negotiating themselves. This blunder often brings absolute joy to the teachers unions. Look at it this way: Board members do not teach. They do not drive buses, cook in cafeterias, or coach athletic teams. They are not familiar with the detailed operations of the district. Consequently, school board members tend to negotiate agreements with clauses that have serious adverse consequences that they don't fully understand at the time.

Furthermore, when board members do the negotiating, the district is placed at a crucial strategic disadvantage. Many agreements are consummated under deadline pressure in the early morning hours, when negotiators are fatigued. Teacher representatives normally insist that any agreement be ratified by the entire teachers organization, but board members cannot ethically—and, in some states, cannot legally—oppose ratification of an agreement that they have negotiated themselves. So the negotiating board forfeits its rights to consider ratification in a deliberate, non-crisis atmosphere, away from the pressure of

a deadline and the frustration and dynamics of a negotiations session.

Board members' interest in participating in negotiations is usually motivated by curiosity, good intentions, or the honest belief it is the board's legal, moral, or ethical responsibility. But negotiations require a certain degree of skill and knowledge of complicated labor laws, state regulations, and the consequences of past settlements. Certainly, many board members can acquire these skills and this knowledge, but the negotiating table is a very costly place to learn—especially when the lesson is usually that the task is better left to more qualified personnel. And frankly, many board members do not have the personality traits required for effective negotiations. (Believe me, this is as much compliment as it is criticism.)

The most important reason that the board should stay away from the negotiating table is that negotiations require enormous amounts of time. So much time is required for both preparations and discussions that participating in negotiations weakens a board's ability to do its most important task, which is policymaking.

2 Failing to recognize the beginning of negotiations. School boards make more costly mistakes in their initial reactions to negotiations than at any other time. It is not unusual for the entire course of negotiations to be dominated by board mistakes that were made at the very outset, when board members were not aware of the consequences of a seemingly sensible, innocent action.

Sometimes, for instance, board members agree to preliminary discussions with the teachers union to define and discuss the issues. Make no mistake: This is the beginning of actual bargaining, and seemingly innocent but damaging comments by board members at these sessions will be hurled back, out of context, during the formal negotiations sessions.

The point is that the board should not embark on the bargaining process until it seeks advice from someone experienced in negotiations. This will minimize the chance for a serious mistake that could prolong or adversely affect negotiations.

3 Failing to give authority to the negotiating team. Some boards recognize the need to stay out of the negotiating process and establish a negotiating team but fail to give it sufficient authority. Consequently, the negotiating team must refer every issue back to the board and does not have the authority to agree to anything, except a few specifics previously ap-

proved by the board. (For advice on the composition of a negotiating team, see the sidebar on page 20.)

Clearly, a board should retain the right to ratify an agreement. But a board should not regard its negotiating team as mere messengers, relaying messages from the board to the teachers and back. The negotiating team must be empowered to reach an agreement within certain parameters that the team knows will be acceptable for ratification.

Many boards fear that delegation of authority to negotiate will mean abdication of their decision-making power. This will not happen if the board understands what to delegate. Generally, the board should not delegate policy decisions, such as student-teacher ratio or the length of the work day or work year, without considerable guidance to the negotiation team. However, the board should generally delegate the resolution of administrative matters, such as pay dates or staff-assignment process, that involve the effective operation of schools.

For effective negotiations, the board must give its negotiating team a realistic idea of the total amount of money it is willing to make available for a settlement and the issues that are important to the board. Without this information, the negotiators cannot develop an effective bargaining strategy that will produce a settlement within the parameters established by the board.

4 Failing to learn the bargaining language of the teachers. It is important for board members to understand the special language of collective bargaining as the teachers union uses it. It is even more important that the public understand it. For example, when the union cries, "The board is not bargaining in good faith," it usually means, "The board isn't giving us what we want." It's crucial for everyone to understand the difference between what is said and what is meant.

Union negotiators can be very self-righteous. When they say, "Bring in the board," or "The board is refusing to bargain," they are trying to circumvent—or, better yet, remove—the school administrators and professional negotiators at the negotiating table. All too frequently, union leaders find a superintendent or board member willing to come to their rescue. Such willingness accommodates the union's objective, which is to exhaust or harass the board into concessions.

5 Circumventing the bargaining team. In almost every bargaining effort, particularly when it is difficult or prolonged, either the superintendent or a board member believes that he or she can talk to several teachers privately to arrange a settlement. This is frequently known as the savior maneuver.

There are very few instances when such a maneuver is successful, and the savior sometimes reveals information that jeopardizes the outcome of bargaining objectives. The undesirable consequences can reach far into the future, undermining negotiating teams for years to come. Future contract negotiations will be that much harder, because teachers will want to go straight back to the savior, or wait until a new one surfaces, while the district's official negotiators sit mute with their hands tied.

The board must speak with a unified voice, both publicly and at the bargaining table. Circumventing the bargaining team prolongs the resolution of a contract and confuses teachers by holding out hope that a better settlement might be achieved outside the formal process.

6 Permitting unions to define the comparison base. One of the most important influences on the negotiating process is the wages and benefits of surrounding districts. The closer these comparison districts are to a school district, the more they will influence the settlement in that district. Comparisons are particularly crucial in public education because school districts bargain in a political as well as an economic environment, and neither the school board nor the employees want to feel cheated.

A school board that pays more than a nearby district for supplies and equipment faces criticism for waste and extravagance. The value of teachers is, of course, not standardized as precisely as scissors, crayons, or paper, but it is nevertheless difficult to demonstrate meaningful differences in staff effectiveness between school districts. Clearly, taxpayers do not differentiate or distinguish the staff of one district from another. For this reason, a school board that pays teachers substantially more than the going rate in the area, or pays teachers beyond the economic demographics of the community, risks political retaliation. Minor differences usually are ignored or can be safely explained away; major differences cannot be so easily rationalized and are not likely to be ignored.

The same pressures are at work on the teachers' side. Obviously, every union negotiator would like to win as much as possible from the school board. In most cases, however, negotiators are not so much concerned with achieving a victory as they are with avoiding a defeat. That is, the union wants to avoid a settlement that is visibly inferior to other settlements in the immediate area.

To get as much as possible from the board, the union negotiator attempts to demonstrate how disadvantaged his or her constituents are. When agreement is reached, however, the negotiator must try to portray it as a victory, which means emphasizing how the teachers have fared better than their counterparts in nearby districts. This is not always easy to do. A good union negotiator frequently has to tell the district negotiating team what a rotten deal they have offered, then walk into the next room to tell teachers what a terrific contract they are getting.

Districts need to realize how important it is to define the appropriate comparison base. Teachers will define a comparison base that, most frequently, will include the highest-paying districts or those with the most generous settlements. District negotiators need to know whether these comparisons are fair, whether they are competing with the comparison districts for teachers, and whether the comparison districts have comparable socioeconomic characteristics. Of course, district negotiators should define the comparison base that is most favorable to the board's position.

7 Waving a red flag. Some statements—such as saying teachers don't work a full day or a full year—irritate teachers and heighten their antipathies so predictably that saying these things is like waving a red flag in front of a bull. These inflammatory remarks will unify teachers against the district.

There are far too many instances when settlements have been delayed or strikes provoked as a result of indiscriminate comments that have infuriated teachers. In fact, many professional negotiators have urged board members to withhold any comments during negotiations simply out of fear that an ill-considered comment might impede and hinder the negotiations process.

8 Being willing to negotiate every union demand. The chief negotiator for the teachers union will come up with ever-increasing demands, many of which are not germane to the local circumstances but instead might represent statewide union initiatives. This is the job of the professional negotiator for the teachers, and it is the way the union justifies its existence to its members. Upping the ante every year is standard practice.

It is important to realize that very few of the union's proposed items are serious; the job of the negotiating team and the board is to ferret out those that are truly rock-bottom demands. One way to do this is to make the union representatives justify every proposal they make. Documenting the reasons for every proposal is such a formidable task that the list of issues usually shrinks rapidly. Even if items don't disappear altogether, the amount of documentation behind each item will reveal the significant issues.

Another way to determine the union's true priorities is to package proposals. The district's negotiators should include only those items in package proposals that they believe are important to the local teachers and that the board is willing to negotiate. This approach is much more effective than negotiating item by item in a piecemeal fashion. The package method will force the union to focus on its priority items and help the board smoke out featherbed proposals.

9 Failing to differentiate rhetoric from reality. Union rhetoric often cannot withstand the test of reality. Many union proposals that are designed to benefit teachers are masked in language that professes concern for the education or safety of students. Unions also mask proposals designed to improve conditions of employment with rhetoric that promotes the view that teachers can do no wrong.

Union proposals on leave policy, for instance, often include clauses that enable teachers to be absent from work with no requirement to demonstrate that the time was used for its designated purposes, and unions will frequently demand that any requirement for a minimum number of hours on the job be dropped—school boards should simply trust the teachers to get their jobs done. When a board responds to such proposals by insisting on safeguards against abuse, the position of the board is often characterized by union rhetoric as an attack upon the integrity or professionalism of the teachers.

Be wary of union demands that are rationalized in terms of concern for students or the professionalism of teachers. Despite the fact that such arguments are difficult to oppose, a reasonable perspective will generally reveal the absurdity, impracticality, or myth of the union rhetoric.

10 Taking the bait too soon. There is inevitably frustration with the prolonged process of negotiations. Many boards are inclined to put their best offer on the table at the outset of negotiations to avoid the time and the expense of numerous meetings. However, no effective union negotiator is going to snap up the board's first offer—ever. Were he or she to do that, the union members would begin to wonder why they need a negotiator and why they pay such substantial dues. And, for that matter, neither would the board want to agree immediately to the initial demands of the union. Both sides need to demonstrate to their respective constituencies that they have fought the good fight.

It is important to remember that the essence of collective bargaining is discussion and compromise. Both parties to the negotiations need to feel that they have gone through the whole process. If you try to skip steps to hurry things along, a settlement will not be achieved any sooner. In fact, a skilled union negotiator will use the last best offer of the board as a starting point to extract concessions.

11 Failing to resolve intra-board conflict. Disagreement within, rather than between, bargaining teams can be one of the greatest difficulties of collective bargaining. Every experienced negotiator—whether on the management side or the union side—can cite cases where disagreements within the team, often over salary or fringe benefits, were more difficult to resolve than the disagreements between the two teams.

It is generally wise to not let the other side know about internal differences. The reason is fairly obvious: A skillful adversary can exploit the divisions. The chances for a successful outcome to negotiations are increased if the board can resolve internal differences or, at the very least, not divulge or communicate them to the union.

12 Accepting ambiguous solutions. Both sides know it is much easier to accept an ambiguous solution than to continue negotiating the details of a sensitive issue. But experienced negotiators never forget that the district must administer the contract that has been negotiated.

When determining how vacant positions will be filled, for instance, both sides might agree that "seniority will prevail if all things are equal as determined by management." What does this mean? That seniority prevails unless there is overwhelming evidence of the senior candidate's incompetence or unsuitability? Or that management's decision will not be arbitrary and capricious?

If such ambiguities do get into the contract, make sure that the negotiating history supports the board's view as to what the language means. If that is not possible, then it might well

be essential to confront the issue squarely during the process, despite the immediate difficulties of doing so.

13 **Trusting the mediator.** Mediation is usually attempted when an impasse has been reached in the bargaining process. In many cases, the parties must agree on the need for a third party to assist in negotiations. State governments often provide such assistance.

The role of the mediator is advisory, which means the mediator has no authority to dictate a settlement. The mediator will attempt to gain the trust of both parties, often by meeting with both parties separately and attempting to ascertain what concessions each party might be willing to make to reach an agreement. It is important to understand that mediators gener-

ally communicate any indications of possible concessions to the other side. Such a premature disclosure might compromise bargaining strategy.

So be careful what you say in the presence of a mediator—or anyone else, for that matter. Even if you're not sitting at the bargaining table, you can be sure that teachers unions are listening and watching for information they can use in negotiations.

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Selecting the members of your team

Who should be on a school district's negotiating team? The superintendent? School board members? The school's chief financial officer? Principals? A professional negotiator?

In general, the superintendent should not be part of the team that negotiates teacher contracts—and neither should school board members, who need to keep cool heads for reviewing and ratifying the final offer. The superintendent and the board should be kept informed throughout the proceedings and should provide direction to the team within guidelines set by the board.

The superintendent should be available, but not necessarily present in the building, during negotiations sessions. This distance and remoteness enables the superintendent to preserve a professional relationship with teachers that is not entangled and complicated by negotiations.

The most difficult decision in many districts concerns whether to employ an outside negotiator. On the one hand, bringing in a professional negotiator allows the board to pay for the technical expertise it needs—no more, no less—and can be compared to using the services of a bond counsel, an investment adviser, or an architect. It's too expensive for most districts to retain these services on an ongoing basis, and an outside negotiator brings broader negotiating experience and perspective to counter the professional expertise and resources provided by the state's teachers union.

The main disadvantage to using an outside negotiator is that he or she does not know the district. This can be mitigated by employing the same individual to negotiate subsequent contracts and to handle ongoing labor issues such as grievances and arbitrations. Over time, an outside labor relations person can develop familiarity with the district.

Local expertise can also come from district employees on the negotiating team. In making appointments to the team, the school board should turn to trusted employees who are likely to stay with the district, as a way of providing continuity in negotiations and contract management. In addition, the board

should appoint employees who have good judgment, knowledge of the school system, and specific technical expertise, such as the ability to assess the financial impact of contract proposals. Consider including the district's chief business official, director of human resources, director of curriculum and instruction, and a building principal.

I recommend having at least two, and no more than five, people on a negotiating team. While there is no perfect size, it's obvious that the smaller the team, the easier it will be to reach agreement, both within the team and with the teacher team. Having fewer people means less time spent in caucus, less confusion, and less need for formal procedures. But the smaller the team, the greater the danger of a serious mistake in negotiations. Even the most knowledgeable and experienced administrators might be unaware of a particular school situation that should affect their response to teacher proposals.

To mitigate the possibility of mistakes, the negotiating team must thoroughly explore all teacher proposals with management staff, including building principals. One way to do that is to have experts on hand for consultation when necessary. For example, it might be advisable to have payroll staff or special education personnel available during negotiation sessions to provide immediate information on specific issues.

But remember that administrators and negotiators are expensive resources. In too many cases, boards end up diverting thousands of dollars in administrative time and professional fees to negotiate items that cost just a few hundred dollars.

No matter how big the team is, you'll probably whittle it down as you approach the end of negotiations. When it gets down to crunch time in contract negotiations, often the most effective procedure is to have just two or three members of each team negotiate. Make sure each team has at least two members, as a safeguard against mistakes in judgment, imprecise language, or faulty calculations that can easily occur in a tense environment.—D.G.B.