Bargaining Over Money in Difficult Economic Times

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Abstract:

As school district budgets continue to shrink, the ability to understand the dynamics of compensation, bargaining total compensation, and compensating employees creatively has never been as important as it is now. Learn the current data, talking points, and solutions that negotiators can use at the table to keep compensation within the budget.

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LEGAL CONSIDERATIONS AFFECTING BOARD COMMUNICATION[1]

When school district funds for wage and benefit improvements are scarce, having an effective communications plan that allows the school board to discuss its financial condition with affected staff and the school community can play a pivotal role. School boards sometimes refrain from doing so, however, out of fear of committing an unfair labor practice. Knowing the legal parameters should help boards understand that an effective communication plan with employees and other stakeholders can (and should) be utilized as part of the overall bargaining process. While controlling law varies from state to state, certain basic principles are almost universal.

NO "DIRECT DEALING"

School boards should not directly communicate with their unionized employees about mandatory subjects that must be negotiated with the union, or about the district's specific bargaining proposals, in a manner designed or perceived to bypass the role of the designated union representatives. The collective bargaining obligation requires the school board to negotiate and deal with the union and its designated bargaining representative. Communications which circumvent or undermine the union make the board vulnerable to valid charges of unfair labor practices, and are in any case, generally not persuasive with staff or community.

The prohibition against "direct dealing" or "bypassing the union" is found in most if not all jurisdictions which engage in public sector collective bargaining.[2] The factors considered in ascertaining whether direct dealing has occurred vary somewhat and must be analyzed in detail by the board's negotiator before establishing an effective communications plan.

[1] This portion of the paper was written by Barbara Ruga of Clark Hill PLC.

[2] California School Employees Association and its Walnut Chapter No. 446 v. Walnut Valley Unified School District, No. LA-CE-460, PERB Decision No. 160 (Mar. 30, 1981), http://www.perb.ca.gov/decisionbank/pdfs/0160E.pdf; s*ee also* Bd. of Educ. v. Illinois Educ. Labor Relations Bd., 620 N.E.2d 418 (Ill. App Ct. 1993).

The school board must deal with the designated union negotiator in making its proposals and persuading that representative to accept the board's proposals, rather than dealing directly with individual employees or even groups of employees. Flowing from this obligation, then, a board wishing to inform its union employees about the contents of its specific bargaining proposals, typically must ensure that the union's designated representative saw the proposals first. For example, in Michigan, a school board may not communicate its specific proposals directly to employees unless the proposals have first been formally presented to the union representative *and* the union has had a reasonable opportunity to consider them.[3]

The above is not applicable in jurisdictions where state labor laws may *require* a school board to make its *initial* proposals public, for example, California Government Code § 3547 provides:

> (a) *All initial proposals* of exclusive representatives and of public school employers, which relate to matters within the scope of representation, *shall be presented at a public meeting* of the public school employer and thereafter shall be public records.[4]

Absent such statutory mandates, it is generally prudent for a school board to refrain from disclosing its initial bargaining proposals until after they have been communicated to the union and the union has had a reasonable time to consider them. Further, the board should carefully consider the context in which it discloses bargaining proposals. If the staff and community do not understand the underlying financial conditions that drive the proposal, merely communicating the proposal may be ineffective and perhaps counterproductive.

BOARDS MAY COMMUNICATE THE DISTRICT'S FINANCIAL CONDITION

Importantly, the prohibition against direct dealing does not preclude boards from widely disseminating general information about the district's financial condition, academic needs, wages, pension and benefit costs, and declining school funding. School boards also may typically make general statements to employees and the public about the status of bargaining, the number of meetings held, and positions taken at the bargaining table, without divulging specific proposals. In some jurisdictions, management has a recognized statutory right to express its views on bargaining, as long as that expression is not intimidating, coercive, or threatening.[5]

From a communications perspective, it may very well be more effective for boards to discuss the economic conditions and academic needs that inspire their concessionary proposals, rather than publicizing the concessionary proposals themselves.[6] For example, a board may make public a budget crisis and the

[3] St. Clair Cmty. College, 21 MPER 12 (2008).

[4] *See also* San Mateo City Sch. Dist. v. Public Employment Relations Bd., 33 Cal. 3d 850, 864 (Cal. 1983) (superseded by statute on other grounds) (emphasis added).

[5] See, e.g., South Suburban Community College, 6 PERI (LRP) P 1117 (1990); 1990 PERI LEXIS 153 (citing Section 14(c) of the Act as establishing management's right to express its viewpoint).

[6] Michigan Educ. Ass'n v. North Dearborn Heights Sch. Dist, 425 N.W.2d 503 (Mich. App. 1988).

actions it is considering to deal with the crisis, including a request for concessions from its unions.[7] This may be a more effective communications strategy than disseminating its proposal for a 10% salary cut and/or a 50% increase in employee contributions toward insurance costs.

> In *Pontiac School District*, the school superintendent wrote a letter to staff, which said in part:
>
> As you may already know, the School District of the City of Pontiac is facing an unprecedented financial crisis which requires unprecedented measures for reduction in its operational costs to avoid a substantial deficit. Michigan law prohibits a public school district from incurring a deficit.
>
> The members of the Board of Education have given us an opportunity to engage in discussion with each bargaining unit on the need for reductions in the operational costs of the school district.
>
> Currently, we need to cut $ 12 million from the budget for the 2005-2006 school year due to escalating costs of retirement, health and other benefits coupled with decreased state funding. I believe it's fair for all of us to share in this dilemma. I WANT YOU HERE AND I WANT YOU WORKING.
>
> You will hear from your union president very soon. I am expecting to hear from your president after he/she has had an opportunity to get your input.
>
> Your understanding and consideration in this regard will be greatly appreciated.

The Michigan Employment Relations Commission upheld the superintendent's letter:

> Prior to these communications, Respondent had already made public the fact that it was facing a budget crisis and that it was considering the privatization of non-instructional support services. The MEA then launched a vigorous and ultimately successful campaign opposing the privatization plan. In this context, there can be no dispute that the entire school community, including the Unions and their members, were well aware of the district's financial woes by the time the superintendent wrote to employees and stakeholders. In these letters, the superintendent merely reviewed the district's financial problems and reiterated its commitment to balancing the budget. **There is no indication that Respondent sought to circumvent Charging Parties or to give employees a greater say than the Unions with respect to how the financial situation should be addressed.** To the contrary, the superintendent specifically indicated in both letters that the administration would be discussing the district's financial situation with Charging Parties' presidents. In her June 22nd letter, she noted that employees should expect to hear from their bargaining representatives regarding these issues. At no point did the superintendent make any proposal or offer any benefit to employees, nor did she request that they enter into any agreement with the district

[7] Pontiac Sch. Dist, 22 MPER 51 (2009).

> with respect to their terms and conditions of employment. Accordingly, I find nothing in the record to support Charging Parties' claim of direct dealing.[8]

This Michigan case is illustrative of the parameters affecting school boards in communicating with employees about distressed financial conditions. Boards may candidly discuss the financial condition, and even outline general solutions, as long as the board is not trying to circumvent the union's exclusive representative role.

COMMUNICATIONS MUST BE ACCURATE AND NON-COERCIVE

Most jurisdictions require that the school board's communications must be accurate and non-coercive, in order to be consistent with the board's collective bargaining obligation. A recent decision of the California Public Employment Relations Board (PERB) explains these concepts:

> [A] public school employer is entitled to express its views on employment-related matters over which it has legitimate concerns in order to facilitate full and knowledgeable debate.
>
> . . . .
>
> [T]he Board finds that an employer's speech which contains a threat of reprisal or force or promise of benefit will be perceived as a means of violating the Act and will, therefore, lose its protection and constitute strong evidence of conduct which is prohibited by section 3543.5 of the EERA.[9]

As to the accuracy of employer speech the California PERB stated the following:

> Additionally, the Board has placed considerable weight on the accuracy of the content of the speech in determining whether the communication constitutes an unfair labor practice. *Thus, where employer speech accurately describes an event, and does not on its face carry the threat of reprisal or force, or promise of benefit, the Board will not find the speech unlawful.*[10]

A coercive aspect within an employer's message can tip the scales in determining the validity of the employer's communication. Recently, the General Counsel of the Florida Public Employment Relations Commission dismissed the union's claim of an illegal communication, ruling that a survey of employees on recommendations for budget cuts was not coercive:

> A public employer violates Section 447.501(1)(a) and (c), Florida Statutes, if it negotiates directly with bargaining unit employees rather than the certified bargaining agent. An employer is prohibited from negotiating directly with employees because it can undermine

[8] *Id.* (emphasis added).

[9] *Id.* at 20.

[10] California Faculty Ass'n v. Trustees of the California State Univ., 34 PERC 78 (2010) (citations omitted) (emphasis added).

> the exclusive status of the employee organization. *An employer is, however, allowed to communicate with employees so long as such expression contains no promise of benefit or threat of reprisal or force.*[11]

Notably, the survey in the above case was administered prior to actual bargaining taking place. The union nonetheless argued that the survey results would give the district an unfair advantage in the ensuing contract talks.

Coercion may be inferred based on the timing of a particular communication. Contrary to the *Duval Teachers* case discussed above, when a survey was distributed to Michigan teachers during an active process of collective bargaining, the Michigan Employment Relations Commission reasoned that conducting a survey of bargaining unit members in midst of negotiations on a topic being negotiated was unlawful direct dealing with an intent to undercut the union's position.[12] However, were the subject of a survey related to a permissive subject of bargaining, there was no unfair labor practice.[13]

IS COMMUNICATION INFORMATIONAL OR PERSUASIVE?

In some jurisdictions, a communication obviously designed to persuade employees to ignore their union may be unlawful, but communications that are purely informational typically survive legal challenge.

> In addition, a communication transmitted directly from a public employer to employees represented by a certified bargaining agent is not unlawful if it is informational only. To ascertain whether a communication concerning terms and conditions of employment is informational or unlawful, it must be determined whether the communication has the effect of enlisting unit employees to withdraw or abandon their support of the certified bargaining agent through coercive statements.[14]

While the line is not always clear, communications encouraging employees to change their union's position, sent in the midst of negotiations and directly to the unionized employees, are more likely to lead to a finding that an unfair labor practice occurred. In *County of Jackson* v. *Police Officers' Association of Michigan*,[15] the employer sent each bargaining unit member a communication detailing what each individual employee forfeited in back pay after the union rejected the employer's last offer and opted to utilize the state's binding arbitration process. Noting that it was a close case, the administrative law judge ruled that the failure to provide such data first to the union indicated that the employer's intent was to persuade the

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[11] Duval Teachers United v. Sch. Dist. of Duval County, Florida, 36 FPER (LRP) P62 (2010) (emphasis added) (citations omitted).

[12] Grand Rapids Public Schools, 1986 MERC Labor Op. 560 ("facts and circumstances test").

[13] Leoni Township, 22 MPER 45 (2009) (concluding it is okay for the employer to survey firefighters about voluntary cross training although the union opposed it).

[14] *Id*. at 372 (citation omitted); *see also* Duval Teachers United v. Sch. Dist. of Duval County, Florida, 36 FPER (LRP) P62 (2010).

[15] 18 MPER 22 (2005).

employees by directly dealing with them and bypassing the union. Had the employer first notified the union of the back pay per member flowing from its offer, and then omitted its criticism of the union who was simply pursuing a lawful dispute resolution process, the result may have been more positive for the county and more effective with the employees.

At the same time, most public employment relations boards are reluctant to censor an employer's right to communicate with its employees, in the exercise of its own free speech rights. Communications that are non-coercive, have been previously provided to the union, and accurately convey factual or positional information, are generally upheld.

> Direct communications from an employer to employees may be an unfair labor practice if the action tends to erode the union's position as the employees' agent. However, the Commission has expressed a reluctance to censor propaganda between parties to collective bargaining in public employment. PERA is not violated when either the employer or the union communicates a bargaining proposal that has already been introduced at the bargaining table to employees, or to other union or employer representatives. Public statements regarding the status of negotiations do not constitute a violation of an employer's bargaining duty. Similarly, no unfair labor practice will be found even when the employer's communications contain exhortations that employees give favorable consideration to its bargaining position.[16]

CONCLUSION

During distressed financial times, it is essential that school boards educate staff, stakeholders, and community about the factors that drive its bargaining positions. Effective communications that accurately detail the district's economic circumstances can, over time, assist the board in achieving a collaborative resolution with the union. Boards should not hesitate to engage in such communications, after consulting with legal counsel on the applicable legal parameters in their jurisdiction.

SALARY SCHEDULES AND DURATION OF CONTRACT: ALTERNATIVE SALARY SCHEDULE PROPOSALS[17]

Step increases are part of the culture for both licensed and classified bargaining units in Oregon. They have long been seen as automatic, and are rarely acknowledged by the unions as being true salary increases. Whether or not the unions recognize them as increases, they have a dramatic impact on district budgets and do constitute raises for those not at the top of the salary schedule. In fact, most step increases represent anywhere from a 2.5% to 5% increase in salary, and that is without any increase to the schedule or potential column movement.

While they have long been viewed as a birth right by unit members, many districts are starting to examine whether it is possible to continue awarding full step increases each year. Doing so has a variety of negative consequences for districts including:

[16] Ferris State University v. Ferris Faculty Association, 11 MPER (LRP) P 29,050 (1998) (citations omitted).
[17] This portion of the paper was written by Brian Hungerford of the Hungerford Law Firm.

- High cost
- Disincentive to reach settlement, especially where no cost of living adjustment (COLA) is being proposed. (This is largely because in Oregon, step increases based on an additional year of service are considered part of the status quo. Therefore they are automatically granted if the parties are in a hiatus period and have not settled, although the old contract has expired.)
- Impact only a portion of the bargaining unit and often those not at the bargaining table
- Lack of employees' understanding or recognition as a true increase, despite cost
- Automatic in nature as a result of the status quo requirement.

Changing the status quo regarding step increases is very difficult. Because they are so ingrained in the culture of public education, any proposed change is seen by the associations as disrespectful and as an extreme rollback in employee compensation. Nonetheless, more and more districts are proposing changes to the step increases, and some have had success. Possible alternatives to the current step system include:

- Eliminating step increases for a period of time
- Awarding delayed steps (step goes into effect in January instead of August)
- Advancing eligible employees the full step, but paying them on a shadow half-step
- Re-working the salary schedule to have more steps with smaller increments in between
- Awarding step movement every other year or even less frequently (some community colleges follow this model).

Each of these concepts presents its own challenges or drawbacks.

Foregoing step increases for a period of time

Teachers who are eligible for step increases are, in general, the lower paid members of the bargaining unit. Wage freezes, coupled with insurance increases, therefore hit this group harder. A temporary cessation of step increases has a significant impact on this group. In addition, teachers often equate their place on the salary schedule with their years of service in the district or relative seniority compared to other members. Eliminating step increases for a period of time has the effect of teachers being "misplaced" on the salary schedule. The district is likely to get a proposal at some future bargaining to "correctly place" teachers on the schedule.

Sample contract language:

Salaries for 2010-2014 shall be paid as follows:

2010-11 Appendix A, which represents a 2.1% COLA for all certified employees. No step increases will be awarded.

2011-12 Appendix A. Eligible teachers will be granted a step increment. Any teacher at the bottom of the schedule [highest salary] not receiving a step will receive a 2% longevity stipend based on their previous years base salary.

2012-13 Appendix B, which represents a 2.1% COLA for all certified employees. No step increases will be awarded.

2013-14 Appendix B. Eligible teachers will be granted a step increment. Any teacher at the bottom of the schedule [highest salary] not receiving a step will receive a 2% longevity stipend based on their previous years base salary.

Awarding delayed steps

Delaying the timing of step increases (to the middle of a year, for example) produces only a one-time savings. Because teachers still move up a step in that year, the district will still be in the position of paying increased salary costs for the subsequent year. While it is a true wage freeze, it is temporary in nature.

***Sample contract language*:**

Salary schedule increases for 2010-13 shall be as shown in Attachments A, B, and C. The salary increase for 2010-11 is 1% on the schedule, implemented effective half-way through the year. The salary increase for 2011-12 will be ½ of 1%, implemented at the beginning of the year. The salary increase for 2012-13 will be 1%, paid for the entire year. Each year, eligible employees will receive a full step movement half-way through the year. As of June 1, 2012, the Association may request to re-open bargaining over a salary increase above the 1% COLA.

Shadow step or true half-step

The impact of moving teachers on the schedule, but paying them the same as they were paid in the previous year has the same problems as the delayed step. Here the savings is larger—a whole year's worth of step cost. It is no less of a one-time savings, however. In addition, the shock to the district's finances is extreme in the following year, when the district is effectively forced to pay eligible teachers for going up two steps in a single year (unless you can bargain to put off the next year's step, as well).

Sample contract Language:

For 2010-11, teachers will be paid half-way between their 2009-10 step and the step that is one greater. For 2011-12, teachers will be paid at the next step greater than their 2009-10 step. For example, a teacher paid at MA, Step 5 in 2009-10 ($44,000) will be paid at MA, Step 6 in 2011-12 ($46,000) and during 2010-11 will be paid $45,000.

More steps, smaller increments

Often it is the size of the step increase that is the major problem; in many cases a step increase for an eligible teacher can be as much as 4-5%. This can be modified by adding more steps to the schedule and reducing the size of the increment. This is difficult to do, however, without engaging in the costly process of increasing the top step. If the top step is kept the same, but more steps are added, the effect of placing people

on the new schedule will be a net decrease in salary for many individuals (unless you re-place individuals on the new salary schedule, as illustrated in the language above). Furthermore, it will now take longer for people to move to the top of the schedule, which can have a negative impact on retention.

Sample contract language:

[Where the collective bargaining agreement currently provides for each step to be 4% larger than the step before, replace with this language:]

For 2011-12, a new salary schedule shall be created, as shown in Appendix A, which will have the same $36,000 base salary (BA, 0 experience) as was paid in 2010-11. Each step increase will be equal to 4% of the base salary ($1440). The number of steps shall be increased to ___, such that the top step of the MA+45 column is the same as was the maximum paid in 2010-11 ($_____). Each teacher shall be placed on the new schedule in the column he or she qualifies for, based on degrees and credit hours earned. Within that column, each teacher will be placed for 2011-12 at the step where he or she receives 98%-102% of his or her 2010-11 salary.

Less frequent step movement

Some districts have reached agreements in which step movement happens every other year, rather than each year, at least for a set period of time. Over the course of a contract term, this clearly reduces the district's increment cost. The problems associated with such proposals/agreements are similar to those associated with foregoing step movement for a period of time.

Sample contract language:

For 2011-12, a new salary schedule shall be created, as shown in Appendix A, which will have the same $36,000 base salary (BA, 0 experience) as was paid in 2010-11. Following successful completion of the probationary period, in the teacher's fourth year in the district, the teacher will be paid on Step 2. The teacher shall advance to Step 3 in the fall following attainment of a "proficient" rating on all 10 performance standards, but no sooner than the teacher's seventh year in the district. The teacher shall advance to Step 4 the fall following attainment of a "distinguished" rating on at least 3 of the 10 performance standards and "proficient" in all others, but no sooner than the teacher's tenth year in the district. The teacher shall advance to Step 5, no sooner than the thirteenth year in the district, upon being selected as a Master teacher through a professional review process. Each step will be equal to 25% of the base salary ($9,000). All teachers will be moved to the correct step but no teacher shall be paid less in 2011-12 than paid the previous year (2010-11).

No matter how it is portrayed by the local association, no proposal is truly a wage freeze if it still includes steps. If the current state of school funding continues, districts will be forced to address the issue in some way. Despite the issues associated with each of the possible alternatives to the yearly step format, the cost savings will almost always outweigh any of the negatives, especially if long-term change can be achieved.

DURATION CONSIDERATIONS/PROVIDING FOR MULTI-YEAR AGREEMENTS

Some districts will have no choice but to enter into one-year agreements in this economic climate. However, no public employer typically wants to bargain a contract every year. The drain on administrative time and associated costs make such a proposition undesirable. With the unknown state of school funding, however, many boards are reluctant or unwilling to commit their districts for future wage and salary increases. Unless the local association is willing to take multiple years of no salary or insurance increases, some alternative must be found to allow for multi-year agreements.

Before determining whether to pursue a multi-year contract, districts should weigh several factors:

- How certain is funding in the future, both long and short-term. Is the amount of school funding announced by the state, and typically reliable after that, or is it dependant upon local (or state) elections, the results of which cannot be foretold?
- What is the district's likely ending fund balance at the close of the current fiscal year? Will a significant balance exist that would allow for a gradual drawdown?
- What is the size and experience of the district's staff that is responsible for collective bargaining? Can all necessary, day-to-day human resources work be effectively completed during a bargaining year, or is bargaining such a disruption to the human resources department that continuous bargaining is a severe hardship?
- Does the district want to try to stagger the bargaining it must do with multiple bargaining units? How closely do those groups align with one another, and is it advisable to have them bargaining during the same year?
- Is the current language of the contract advantageous or disadvantageous to the district? That is, who would benefit more, the district or the union, from repeated opportunities for change to the current language?
- What is the nature of the current labor-management climate? Does the bargaining process threaten an already tenuous peace, and if so will yearly bargaining create a work environment in which there is heightened labor unrest, grievances, etc.?

Assuming that a review of these factors leads a district to conclude that a multi-year agreement is the best course of action (or is even possible), districts have been looking at the below options for maintaining flexibility and cost control in a multi-year agreement.

Automatic reopeners on economics in outlying years

Pros and cons:

The biggest benefit of automatic reopeners on economic issues is to postpone bargaining over economic benefits until the district's likely resources for the outlying year(s) are better known, while

avoiding a repeat of full contract bargaining over time consuming language issues. This may benefit the union, however, which would bargain harder if there is an upswing in resources (perhaps because of increased tax collections or approval of a new levy).

The biggest detriment is that the economic reopener can be just as difficult and time-consuming as bargaining a successor contract. Sometimes the narrowness of the scope of bargaining makes it harder to reach an agreement that the union can get ratified. Finally, if non-economic language in the contract (such as reduction in force or the guaranteed work year) proves unworkable in the first year, there is no chance to re-negotiate it unless the union mutually agrees to a change.

Sample contract language:

Economic provisions for year 2 of the contract period will be bargained under a reopener. No later than April 12, 2011, parties will meet and exchange initial proposals regarding the articles to be reopened, which shall include Article 14 (calendar), Article 21 (insurance), Article 24 (early retirement), Article 25 (professional salaries), Article 26 (extra duty) and Article 23 (professional development). Up to two non-economic sections of an article selected by each team may be part of the reopener negotiations.

Potential salary and/or insurance increases based on funding triggers (for example, percentage increase to per-pupil funding)

Pros and cons:

A formula for salary or insurance increases based on triggers generates a specific economic outcome, and time-consuming bargaining will not be necessary. The district's expenditures are directly linked to its ability to pay, assuming the trigger is constructed accurately. However, it is sometimes difficult to write precise trigger language for different levels of economic benefit for the employees, and the parties can end up in litigation. Also, triggers that go into effect at a certain point in the year may cause economic increases that are rendered unaffordable by subsequent reductions in funding. Unless the trigger contains a clause for future adjustments, the district will be stuck paying based on economic conditions that are no longer as favorable.

Sample contract language:

For years 2 and 3 (2011-12 and 2012-13), the 2010-11 salary schedule shall be modified as follows, based on the funding level authorized by the legislature (or thereafter adjusted by the legislative finance office report in May of the previous year):

*State K-12 funding at more than $6 billion	1% increase each year
*State K-12 funding at $5.8-$6.0 billion	½ of 1% increase each year
*State K-12 funding of $5.4-$5.799 billion	0% each year

*State K-12 funding of less than $5.4 billion	0%, but the district may reopen to bargain a reduction

Reopeners in the event certain economic conditions are not met

Pros and cons:

This language gives the school board the unlimited discretion to reopen and re-bargain over economic provisions at any time, as long as the board has a good faith belief that its resources will not support the previously-negotiated compensation. Under Oregon law, the board may implement its final offer if no settlement is reached after the statutorily-required bargaining process is completed. Such a "funding" clause is very difficult to obtain in bargaining, however. Further, rank-and-file bargaining unit members are likely to believe the board is reneging on the original agreement because they never understood the funding clause or have forgotten that it exists.

Other triggers could be agreed upon to allow reopening by the board if certain conditions are met, but these must be carefully identified and clearly written so that the union does not file a grievance when the board invokes the reopener. The same dangers apply as is the case in trying to construct an accurate, dependable trigger for automatic economic consequences.

Sample contract language:

The salary schedule shall increase for each subsequent year of the agreement by 1.5% over the previous year. However, if the board determines that resources will not meet the expenditure requirements for all economic benefits provided by the contract, then all provisions of this agreement shall be subject to renegotiation between the parties upon written request for renegotiation being made by the district to the association, and the parties will bargain replacement provisions under the expedited bargaining procedure in state statute.

Language which provides the ability to unilaterally cut the employee work year

Pros and cons:

A reduction in the employee work year, and a corresponding reduction in pay, produces fairly high levels of savings and is often the measure of last resort for school districts. While it would be preferable to simply retain the current work year and roll back wages, most unions will not agree to such terms without a reduction in work as well. Reducing work days (and wages) preserves the integrity of the current salary schedule while reducing the district's expenditures for the year significantly. It may be the only way to avoid large scale layoffs that would mean very large class sizes and the loss of key programs.

First the impact on students is undeniable. A reduction in the work year generally means at least some reduction in student learning time; even if the reduced days are staff development or preparation days, an impact on students will still be felt. Reducing days is not a long-term fix, and in some states it may not be possible due to student seat time requirements. Districts also need to be careful in effecting work year reductions to avoid unemployment liability.

Sample contract language:

Based upon current information regarding revenues and expenses, notwithstanding the provisions of Article 14 (work year), the district school board may at any point during the work year cut up to 5 teacher work days (from the 190-day work year). These shall be designated "furlough" days, and result in a proportionate reduction in salary. Teachers will be informed of the loss of these days at least one month in advance.

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