

Collective Bargaining Trends and Strategies



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Current Challenges

- Extraordinary inflation = Extraordinary economic demands
- Sustaining programs and staffing
- Staffing shortages (at all levels)
- Balancing increased costs of health insurance and everything else
- Demands to make permanent increases utilizing COVID- 19 funds
- Downturn on Wall Street
- Unchanged Tax Levy Limit Law
- “Triborough”





The Negotiations Process In NYS Public Schools

- Basic bargaining
- Impasse
- Mediation
- Fact Finding
- Consensual superconciliation
- Potential for infinite impasse

*NOTE: resources about impasse, including FAQs available at perb.ny.gov/impasse-procedures/



Subjects of Negotiations

- Mandatory – wages, hours and other terms and conditions of employment – those that, on balance, have a greater impact on employee work rights than public employer mission
- Non-mandatory (“Permissive”) – matters inherently and fundamentally related to the primary mission of the public employer that may, but need not, be negotiated (examples: class size, staffing levels, job duties)
- Prohibited – subjects that cannot be negotiated because prohibited by statute or public policy – very few subjects will be considered prohibited.

*NOTE: Converted Subjects of Bargaining – district may be required to bargain over a non-mandatory term once it is included in the agreement.



Impact Bargaining

- The obligation to bargain the impact of changes to nonmandatory subjects of negotiations
- Current areas that may require impact bargaining:
 - Use of new technology and associated training
 - Implementation of weather – related remote instruction
- Agreement is **not required** prior to implementation of the change, but impact must be negotiated upon a union's timely demand



Negotiations Trends and Strategies

- Addressing staffing shortages
 - Some mutual benefit
 - Retention bonuses
 - Signing bonuses
 - Ensuring competitive regional salaries
 - Reopening
 - Use of BOCES CO-SER approved cooperative agreements
 - Culture



Triborough Act

- Civil Service Law §209-a.1.e assures the following, absent a contractual provision to the contrary, after expiration of current collective agreement:
 - Step advancement
 - Longevity
 - Graduate credit
 - Health insurance
 - All other terms of expired agreement
- Unless, union has engaged in a strike



Triborough Cost Containment

- Adding half steps
- Application of “flat dollars” to schedule
- Recurring or non-recurring off-schedule payments
- Extending the schedule
- “Freezing” the schedule
- Proposals to slow accrual of graduate credit



Sunset Clauses

- Allow the right to revert to previous *status quo* concerning any term and condition on a date certain
 - e.g., “The terms of this agreement will sunset, becoming null and void in all regards, effective close of business on June 30, 2024.”
- Such a clause can cause an entire collective agreement to actually expire
- More practically, a sunset clause can be used to provide temporary measures to address temporary challenges
- Review specific financial terms to see if they arguably sunset



Health Insurance

- Costs continue to escalate
- Utilization of consultant/broker
- Propose coverages based on employee needs
- Consider Tiering your Plan
- Consider self-insurance
- Prepare for messaging to employees – proposed health insurance changes are always a tough sell with unions and employees





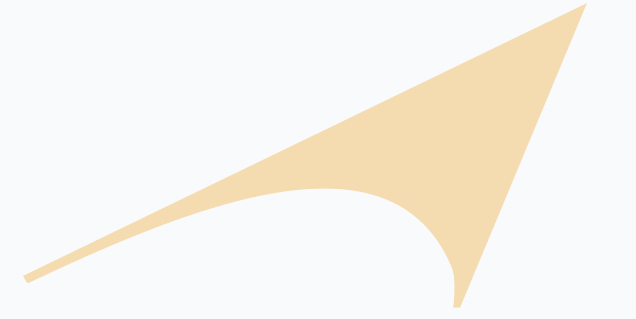
Retiree Health Insurance

- A union may not negotiate on behalf of retired employees; BUT
- A union may negotiate a health insurance benefit for current employees to be applicable when they retire
- If such an agreement is explicit as to contribution rates and duration, it will be binding
- It should be worthwhile, however, to substitute Medigap and other coverage/contribution rates for current employees before they retire



Hybrid and Remote Instruction

- Method of instruction is a nonmandatory subject
- Number of classes instructed is a nonmandatory subject
- Length of periods is a nonmandatory subject
- How about instructing from home?
 - Probably nonmandatory
 - At the community college level, it was found by PERB to be nonmandatory
- The alternative is instruction from a school building or other District directed site
- Impact, however, is negotiable



Use of Cameras and Video

- Installation and use of cameras in work area can be a mandatory subject of bargaining, including how and if employees may be disciplined
- PERB employs a “balancing test” to determine negotiability, weighing
 - Interests of the employer (e.g., core mission and safety) and
 - Whether camera use unnecessarily intrudes on the interest of employees
- Impact of use of cameras is mandatorily negotiable
- If there are existing CBA provisions on evaluation and discipline, it is likely that the use of camera images or video footage for purposes of evaluation or discipline will be arbitrable



Safe Workplace and Potential Work Stoppage

- Employees are expected to work as directed, unless there is a clear contract provision to the contrary (“work now, grieve later” doctrine)
- An exception exists where compliance with a work directive “would present an unusual threat to health and safety”



Safe Workplace and Cannabis

- In light of MRTA, review impact of legalized marijuana use on bargaining
- Pre-employment drug testing is not a mandatory subject of negotiations
- But, drug testing procedures and consequences for union members are mandatory subjects of bargaining
- Review CBA language for consistency with MRTA.
 - May be able to make changes necessary to comply with statutory obligations without bargaining – e.g. – just removing marijuana from list of substances included in random panels.
 - More substantial changes to the procedures for or consequences of testing must be bargained to agreement.

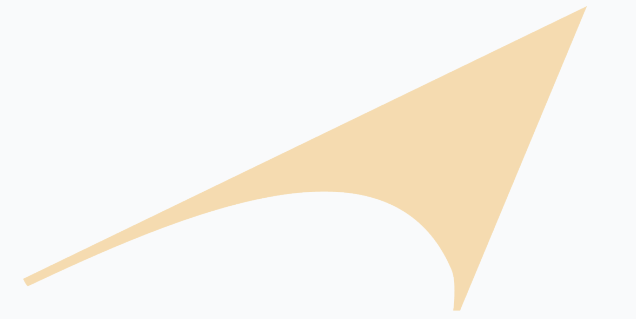


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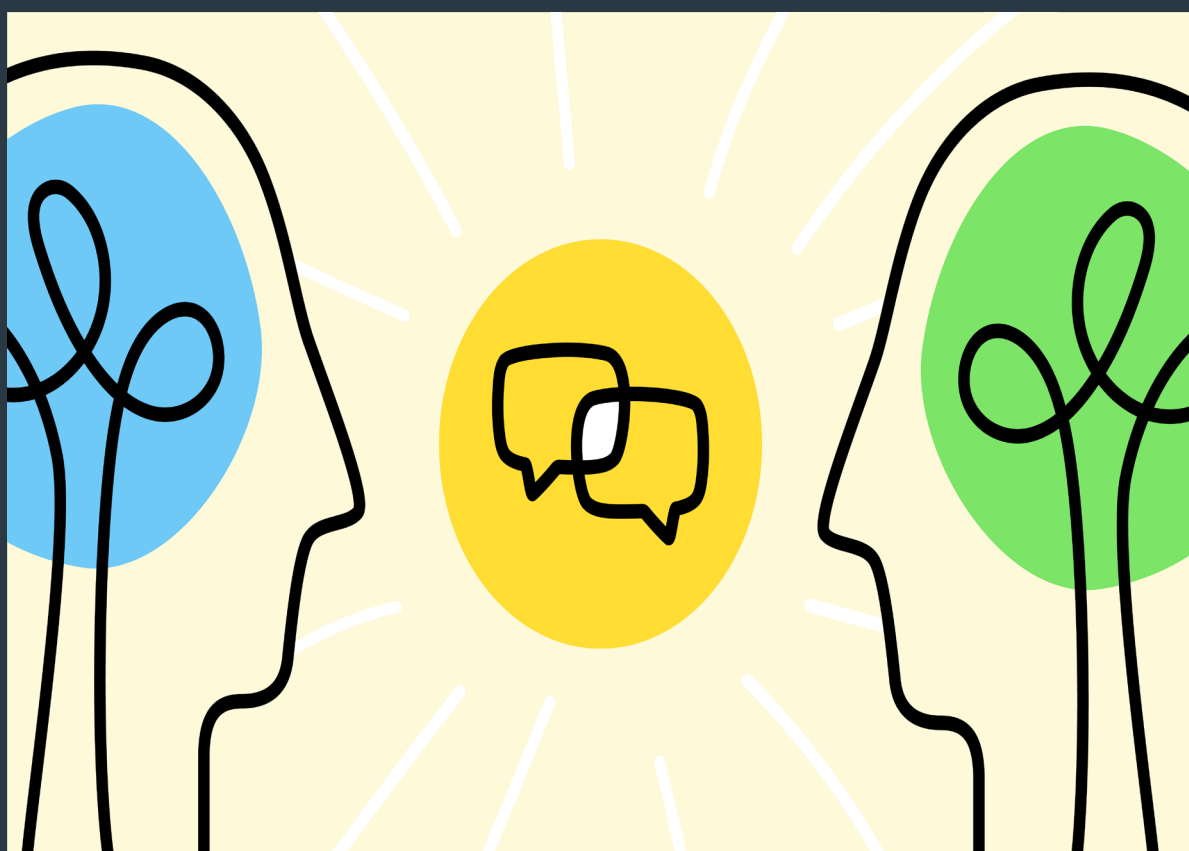
Strike Activity

- Any concerted stoppage of work or slow down by public employees
- Even the threat of a strike must be addressed
- Some examples:
 - Failure to attend parent-teacher conferences
 - Failure to participate in field trips
 - Refusal to work scheduled hours
 - Resignation from extra-curricular assignments
 - Refusal to attend and/or participate in faculty meetings



“Good Faith” Bargaining

- Essentially involves meeting at reasonable times and places with the sincere desire to reach agreement
- Must present comprehensible proposals
- Must be able to explain the objectives of the proposals
- May have to provide information to substantiate the basis for the proposals
- “Hard bargaining” acceptable, but “Surface bargaining” isn’t
- “Regressive bargaining” can be permissible depending on intervening circumstances (e.g., budget rejection or economic situation)



Communications Strategy

- Generally, best to keep communication between spokespeople while negotiations ongoing, especially if there's a “ground rule”
 - Important Note: “informal negotiations” are still negotiations – be careful of regressive bargaining
- A District can communicate directly with union members and/or the general public to explain its bargaining positions and/or respond to inaccuracies
- But “direct dealing” with employees, or threats of reprisal, are improper
- Being factual is the trick



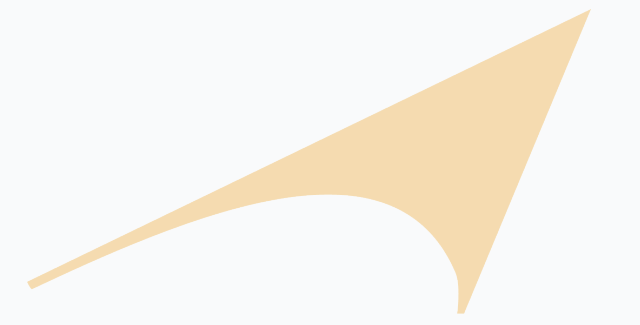
Some Conclusions

- The inevitability factor
- One size does not fit all – the main keys to success are:
 - Creativity
 - Flexibility
 - Patience
- The parties needn't be friends, but they shouldn't be enemies either
- “If at first you don't succeed,”

Questions?



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